

STATE OF MAINE
KENNEBEC, SS.

UNIFIED CRIMINAL DOCKET
Location: Augusta
Docket No.: KENCDCR-2018-21317

STATE OF MAINE,)	
Plaintiff)	
)	
v.)	MS. KUBRINA’S MOTION TO SUPPRESS
)	
)	
VLADISLAVA KUBRINA,)	
Defendant)	

NOW COMES Ms. Kubrina, by and through her attorney, David J. Bobrow, with this Motion to Suppress particularly stated as follows:

- (1) This matter is currently before the Court on the State’s charge of Domestic Violence Assault.
- (2) Ms. Kubrina is a 28 year-old female with no criminal history.
- (3) Ms. Kubrina is not a United States Citizen. She is present on a visa which has been in existence for ten years.
- (4) On or about November 21, 2018, Officers Heath and Dumas responded to the Silver Street Tavern for a reported confrontation in a vehicle. Upon arrival, they made contact with witnesses who described a man and a woman in a vehicle and stated the women was striking the male. The Officers followed tire tracks and made contact with the two individuals. The male, Michael Palow, stated that “everything is fine” and that nothing

happened. The female, later identified as the Defendant, was questioned and denied wrongdoing. The Officers believed that Ms. Kubrina was intoxicated. Ms. Kubrina was arrested.

- (5) Statements are “admissible in evidence only if voluntary, and the State bears the burden of establishing voluntariness beyond a reasonable doubt.” *State v. Coombs*, 704 A.2d 387, 390 (Me.1998). “In order to find a statement voluntary, it must first be established that it is the result of defendant’s exercise of his own free will and rational intellect.” *State v. Rees*, 748 A.2d 976 (Me.2000). The voluntariness requirement protects against objectionable police practices, protects the mental freedom of the individual, and preserves the quality of fundamental fairness in the criminal justice system. *State v. Mikulewicz*, 462 A.2d 497, 500 (Me.1983). Factors that the Court considers in determining voluntariness are: “details of the interrogation, duration of the interrogation, location of the interrogation, whether the interrogation was custodial, recitation of the Miranda warnings, number of officers involved, persistence of the officers, police trickery, threats, promises or inducements made to the defendant, the defendant’s age, physical and mental health, emotional stability, and conduct. *Rees* at 977. If the statements were not voluntary, and were not the result of free will and rational intellect, then use of the statements at trial would potentially violate {Kubrina’s} rights under the Fifth and Fourteenth Amendments of the United States Constitution and Art. I, Section 6 of the Constitution of Maine. *State v. Edwards*, Cumberland Sup. Court, May 4, 2007.
- (6) A person under the influence of alcohol is legally competent to waive constitutional rights if, despite the degree of intoxication, she is "aware and able to comprehend and to

communicate with coherence and rationality." *State v. Hazelton*, 330 A.2d 919, 924 (Me.1975)

- (7) Based on factors for voluntariness, the Defendant's statement to the officers on September 23, 2012 should be suppressed.

STATEMENT OF UNCONTESTED FACTS

- 1) On or about November 21, 2018, Officers Heath and Dumas responded to the Silver Street Tavern for a reported confrontation in a vehicle.
- 2) Upon arrival, they made contact with witnesses who described a man and a woman in a vehicle and stated the woman was striking the male.
- 3) The witnesses described the woman as having a foreign accent.
- 4) The Officers searched the area outside for the vehicle described by the witnesses.
- 5) The Officers searched the area and made contact with the two individuals at Cancun Restaurant in the described vehicle.
- 6) The male, Michael Palow, stated that "everything is fine" and that nothing happened.
- 7) Officer Dumas reports that Mr. Palow stated they argued and she got out of the car and

left. He further stated that she is from Estonia and does not know the area.

- 8) Officer Dumas told Mr. Palow that they had received a report that Ms. Kubrina had struck him several times. He allegedly muttered “yeah, she did.”
- 9) The conversation was not recorded.
- 10) The female, later identified as the Defendant, was questioned and denied wrongdoing.
- 11) At no time did the Officers make any determination of her comprehension of English or of their questions.
- 12) At no time did the Officers read Ms. Kubrina *Miranda* warnings.
- 13) The Officers believed that Ms. Kubrina was intoxicated.
- 14) The conversation between Ms. Kubrina and the Officers was not recorded.
- 15) Ms. Kubrina was arrested and charged with Domestic Violence Assault.
- 16) Ms. Kubrina has no criminal history or prior experience in dealing with law enforcement.

ARGUMENT

**I. MS. KUBRINA'S STATEMENTS TO THE POLICE ON NOVEMBER 21, 2018
SHOULD BE EXCLUDED BECAUSE OF HER INABILITY TO COMPREHEND
ENGLISH AND HER INTOXICATION**

A confession is admissible in evidence only if voluntary, and the State bears the burden of establishing voluntariness beyond a reasonable doubt. *State v. Coombs*, 704 A.2d 387, 390 (Me.1998). In order to find a statement voluntary, it must first be established that it is the result of defendant's exercise of his own free will and rational intellect. *State v. Rees*, 748 A.2d 976 (Me.2000). The voluntariness requirement protects against objectionable police practices, protects the mental freedom of the individual, and preserves the quality of fundamental fairness in the criminal justice system. *State v. Mikulewicz*, 462 A.2d 497, 500 (Me.1983). Factors that the Court considers in determining voluntariness are: "details of the interrogation, duration of the interrogation, location of the interrogation, whether the interrogation was custodial, recitation of the Miranda warnings, number of officers involved, persistence of the officers, police trickery, threats, promises or inducements made to the defendant, the defendant's age, physical and mental health, emotional stability, and conduct." *Rees* at 977. If the statements were not voluntary, and were not the result of free will and rational intellect, then use of the statements at trial would potentially violate {Kubrina's} rights under the Fifth and Fourteenth Amendments of the United States Constitution and Art. I, Section 6 of the Constitution of Maine. *State v. Edwards*, Cumberland Sup. Court, *J. Studstrup*, May 4, 2007. The Maine Supreme Court has previously identified three values that are served by the voluntariness requirement: " '(1) it discourages objectionable police practices; (2) it protects the mental freedom of the individual; and (3) it preserves a quality of fundamental fairness in the criminal justice system.' " *State v.*

Sawyer, 772 A.2d 1173, 1176 (quoting *State v. Mikulewicz*, 462 A.2d 497, 500 (Me.1983)).

Under the factors enunciated in *Rees*, the confession was involuntary. During the interrogation, the officers spoke to Ms. Kubrina in English and never ascertained her level of comprehension. This was clearly confusing as English is not her first language.

Additionally, Officer Dumas noted that Ms. Kubrina was intoxicated.” In *State v. Finson*, 447 A.2d 788 (Me. 1982), the Court held that “[a] person under the influence of alcohol is not necessarily incapable of waiving his constitutional rights or giving a voluntary statement, if despite the degree of intoxication he is aware and capable of comprehending and communicating with coherence and rationality.” *Id.* at 792. Clearly, intoxication and lack of comprehension of English could not allow for a knowing and voluntary statement.

Language comprehension must be carefully scrutinized to determine voluntary consent. *United States v. Castrillon*, 716 F.2d 1279 (9th Cir.1983). A native language consent form, read and signed, would offer strong evidence of voluntary consent. *United States v. Gaviria*, 775 F. Supp. 495, 500 (D.R.I. 1991).

When the accused claims her statements were involuntary, the State must establish the voluntariness of the statements by proof beyond a reasonable doubt. *State v. Collins*, 297 A.2d 620, 627 (Me.1972). Because of issues related to language comprehension, the number of officers present, the lack of previous contact with the police, and intoxication, the State cannot meet that burden in this matter. Accordingly, the statements of November 21, 2018 by Ms. Kubrina should be excluded.

WHEREFORE the Defendant respectfully requests that this Honorable Court exclude any and all statements made to the police during the interrogation that occurred on November 21, 2018

and any and all other relief that this Honorable Court deems fit and just.

RESPECTFULLY SUBMITTED:
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By Her Attorney
DAVID J. BOBROW, Bar No. 9164
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(207) 439-4502

Date: _____

David J. Bobrow, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this date I mailed, postage paid, a copy of this Motion to Michael Madigan, Esq., Assistant District Attorney, Kennebec District Attorney's Office.

Date: _____

David J. Bobrow, Esq.