STATE OF MAINE
YORK, SS.

UNFIFIED CRIMINAL DOCKET
Location: York
Docket No.: YRKCD-CR-18-41107

STATE OF MAINE, Plaintiff	)))	
v.	)	MS. XXX'S MOTION TO SUPPRESS
ALANA XXX, Defendant	))	

NOW COMES Alana XXX, 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 Operating Under the Influence.

(2) Ms. XXX is a 24-year old female with no major criminal history.

(3) On or about September 8, 2018, the police responded to a single motor vehicle accident. Upon arrival, Officer Arsenault made contact with the operator who had minor injuries, including her head, requiring the services of an ambulance.

(4) Based on Ms. XXX admitting to drinking and the accident, the police requested a blood test and one was brought to the hospital before any determination as to implied consent was offered or made.

(5) No warrant was obtained for the blood draw. Ms. XXX was hesitant to agree to the test and did so only at the insistence of the officer. Accordingly, the consent was not voluntarily obtained.

(6) Evidence obtained based on the illegality of a Constitutional violation renders it as "fruit of the poisonous tree." *United States v. D'Andrea*, 648 F.3d 1,6 (1st Cir. 2011). The proper remedy for the illegality is the exclusion of any evidence obtained as a direct result or found to be derivative of the illegal stop, search, or seizure. *Segura v. United States*, 468 U.S. 796, 804 (1984).

STATEMENT OF UNCONTESTED FACTS

1) Ms. XXX was involved in a single vehicle accident on September 8, 2018.
2) Officers responding to the scene made contact with Ms. XXX within minutes after the accident.
3) There was no evidence at the scene of Ms. XXX having consumed alcohol or being intoxicated.
4) Ms. XXX suffered injuries including to her head and was dazed and confused.
5) Ms. XXX did admit to having one drink and also stated the accident was a result of her being exhausted.
6) Despite this admission, no warrant for a blood test was ever requested. There was also no request for a blood test.

7) Officer Arsenault opted for a blood test after Ms. XXX allegedly told one of the paramedics that she had two drinks.
8) Ms. XXX was taken to York Hospital where Officer XXX arrived with the blood test.
9) Ms. XXX did not initially agree to the blood test and only did so after believing, based on the statements and circumstances, that she would go to jail if she refused.
10) The obtaining of the blood for testing was not recorded.

ARGUMENT

I. THE CONSENT OBTAINED FOR THE WARRANTLESS BLOOD DRAW WAS NOT VOLUNATARY, THUS THE TEST RESULTS SHOULD BE SUPPRESSED

A blood test for alcohol or drugs is different from a breath test in that it is more intrusive and therefore constitutes a search that more seriously infringes on the protections of the Fourth Amendment. See *Birchfield v. North Dakota*, 579 U.S. ---, 136 S. Ct. 2160, 2173-2185 (2016). For the results of a blood test to be admissible in the State's case-in-chief, the search effectuated through that blood test must meet the Fourth Amendment's requirement that a search be reasonable. See *id*. at ---, 136 S. Ct. at 2173. A search is reasonable if it is conducted pursuant to a legally obtained warrant or if an exception to the warrant requirement applies. See *U.S. Const. amend. IV; Birchfield*, 579 U.S. at ---, 136 S. Ct. at 2173.The State has the burden of proving "by a preponderance of the evidence that exigent circumstances excusing the warrant requirement existed." *State v. Arndt*, 2016 ME 31, ¶ 9, 133 A.3d 587. Exigent circumstances exist where the totality of the circumstances demonstrates that "there is a compelling need to conduct a search and insufficient time in which to secure a warrant." *Id*. (quotation marks omitted); see Missouri

v. McNeely, 569 U.S. 141, 149 (2013). "A claim of exigent circumstances . . . must be evaluated in terms of the time 9 when the law enforcement authorities first had an opportunity to obtain a search warrant . . . ." *State v. Dunlap*, 395 A.2d 821, 824 (Me. 1978). The "natural dissipation of alcohol in the blood," by itself, is not sufficient to establish exigent circumstances, although, in some circumstances, it can contribute to the creation of an exigency. *Id*.

Consent 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 consent to be 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 consent was not voluntary, and not the result of free will and rational intellect, then use of any evidence obtained at trial would potentially violate {XXX'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)).

The test was taken at the hospital where Ms. XXX was being treated for injuries. She was not agreeable to the blood test and only did so after understanding that she would go to jail if she refused. No Miranda warnings were provided and Ms. XXX was advised that she was being charged with Operating Under the Influence. Based upon these factors, the consent was not voluntary and the test results should be suppressed.

WHEREFORE Alana XXX respectfully requests that this Honorable Court suppress any and all tests that occurred on September 8, 2018 and any and all other relief that this Honorable Court deems fit and just.

RESPECTFULLY SUBMITTED:
ALANA XXX
By Her Attorney
DAVID J. BOBROW, Bar No. 9164
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Date:_____

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David J. Bobrow, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this date I mailed, postage paid, a copy of this Motion to: Assistant District Attorney, York, ME.

Date:_____ _____

David J. Bobrow, Esq.