

APPENDIX

State of Maine v. Randall Weddle

Law Court Docket Number KNO-18-138

Jeremy Pratt, Esq.  
Ellen Simmons, Esq.  
Attorneys for Appellant

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STATE OF MAINE

v.

RANDALL JUNIOR WEDDLE  
3540 BLUE SPRINGS PARKWAY  
GREENEVILLE TN 37743

CRIMINAL DOCKET  
KNOX, ss.  
Docket No KNOCD-CR-2016-00474

DOCKET RECORD

DOB: 05/09/1962

Attorney: JEREMY PRATT  
PRATT & SIMMONS PA  
92 MECHANIC ST  
PO BOX 335  
CAMDEN ME 04843  
APPOINTED 02/07/2017

State's Attorney: GEOFFREY RUSHLAU

Attorney: CHRISTOPHER MACLEAN  
ELLIOTT MACLEAN GILBERT & COURSEY LLP  
20 MECHANIC STREET  
CAMDEN ME 04843  
APPOINTED 02/21/2017

Filing Document: CRIMINAL COMPLAINT  
Filing Date: 04/29/2016

Major Case Type: HOMICIDE

Charge (s)

- 1 MANSLAUGHTER 03/18/2016 WASHINGTON  
Seq 4248 17-A 203 (1) (A) Class A  
SPEAR / KNO
- 2 MANSLAUGHTER 03/18/2016 WASHINGTON  
Seq 4248 17-A 203 (1) (A) Class A  
SPEAR / KNO
- 3 OUI (ALCOHOL) -DEATH 03/18/2016 WASHINGTON  
Seq 12960 29-A 2411(1-A) (D) (1-A) Class B  
SPEAR / KNO
- 4 OUI (ALCOHOL) -DEATH 03/18/2016 WASHINGTON  
Seq 12960 29-A 2411(1-A) (D) (1-A) Class B  
SPEAR / KNO
- 5 OUI (ALCOHOL) -INJURY 03/18/2016 WASHINGTON  
Seq 12958 29-A 2411(1-A) (D) (1) Class C Charged with INDICTMENT on Supple  
SPEAR / KNO
- 6 AGGRAVATED DRIVING TO ENDANGER 03/18/2016 WASHINGTON  
Seq 11122 29-A 2413(1-A) Class C Charged with INDICTMENT on Supple  
SPEAR / KNO
- 7 DRIVING TO ENDANGER 03/18/2016 WASHINGTON  
Seq 1232 29-A 2413(1) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO
- 8 RULE VIOL, OPERATION WITH FALSE DUTY 03/18/2016 WASHINGTON  
STATUS  
Seq 12906 29-A 558-A(1) (A) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO

9 RULE VIOL, FATIGUED DRIVER 03/18/2016 WASHINGTON  
Seq 12923 29-A 558-A(1) (A) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO

10 RULE VIOL, DETECTABLE PRESENCE OF ALCOHOL 03/18/2016 WASHINGTON  
Seq 12914 29-A 558-A(1) (A) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO

11 RULE VIOL, POSSESS OR USE ALCOHOL ON DUTY 03/18/2016 WASHINGTON  
Seq 12913 29-A 558-A(1) (A) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO

12 RULE VIOL, OPERATION WITH FALSE DUTY 03/18/2016 WASHINGTON  
STATUS  
Seq 12906 29-A 558-A(1) (A) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO

13 RULE VIOL, OPERATION WITH FALSE DUTY 03/18/2016 WASHINGTON  
STATUS  
Seq 12906 29-A 558-A(1) (A) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO

14 RULE VIOL, OPERATION WITH FALSE DUTY 03/18/2016 WASHINGTON  
STATUS  
Seq 12906 29-A 558-A(1) (A) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO

15 RULE VIOL, OPERATION WITH FALSE DUTY 03/18/2016 WASHINGTON  
STATUS  
Seq 12906 29-A 558-A(1) (A) Class E Charged with INDICTMENT on Supple  
SPEAR / KNO

Docket Events:

04/29/2016 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 04/29/2016

04/29/2016 Charge(s): 1,2,3,4  
WARRANT - ON AFFIDAVIT REQUESTED ON 04/29/2016

PAUL SPEAR, KNO

04/29/2016 Charge(s): 1,2,3,4  
WARRANT - \$100,000.00 ON AFFIDAVIT ORDERED ON 04/29/2016  
PAUL MATHEWS , JUDGE  
\$100,000.00 CASH BAIL. NO THIRD PARTY BAIL ALLOWED. NO USE/POSSESSION OF ALCHOL OR  
ILLEGAL DRUGS, SUBMIT TO SEARCH AND TEST FOR SAME AT ANY TIME; NO CONTACT WITH THE  
FAMILIES OF CHRISTINA TORRES-YORK; AND PAUL FOWLS; NO CONTACT WITH TRACY MORGAN OR TRACY  
COOK. TO ABIDE BY A MAINE PRETRIAL CONTRACT PRIOR TO RELEASE.

04/29/2016 Charge(s): 1,2,3,4  
WARRANT - \$100,000.00 ON AFFIDAVIT ISSUED ON 04/29/2016

\$100,000.00 CASH BAIL. NO THIRD PARTY BAIL ALLOWED. NO USE/POSSESSION OF ALCHOL OR  
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ILLEGAL DRUGS, SUBMIT TO SEARCH AND TEST FOR SAME AT ANY TIME; NO CONTACT WITH THE FAMILIES OF CHRISTINA TORRES-YORK; AND PAUL FOWLS; NO CONTACT WITH TRACY MORGAN OR TRACY COOK. TO ABIDE BY A MAINE PRETRIAL CONTRACT PRIOR TO RELEASE.

04/29/2016 MOTION - MOTION TO IMPOUND FILED BY STATE ON 04/29/2016

DA: JEFFREY BAROODY  
MOTION TO IMPOUND COMPLAINT

04/29/2016 MOTION - MOTION TO IMPOUND GRANTED ON 04/29/2016  
PAUL MATHEWS , JUDGE  
COPY TO PARTIES/COUNSEL

05/06/2016 Charge(s): 1,2,3,4  
WARRANT - ON AFFIDAVIT RECALLED ON 05/06/2016

Charge(s): 1,2,3,4  
WARRANT - ON AFFIDAVIT CANCEL ACKNOWLEDGED ON 05/06/2016 at 01:16 p.m.

05/06/2016 WARRANT - ON AFFIDAVIT REQUESTED ON 04/29/2016

05/06/2016 WARRANT - \$100,000.00 ON AFFIDAVIT ORDERED ON 04/29/2016  
PAUL MATHEWS , MAGISTRATE  
\$100,000.00 CASH BAIL - NO THIRD PARTY BAIL ALLOWED. NO USE/POSSESSION OF ALCOHOL OR ILLEGAL DRUGS, SUBMIT TO SEARCH AND TESTING FOR SAME. AT ANY TIME: NO CONTACT WITH THE FAMILIES OF CHRISTINA TORRES-YORK AND PAUL FOWLES. NO CONTACT WITH TRACY MORGAN OR TRACY COOK. TO ABIDE BY A MAINE PRETRIAL CONTRACT PRIOR TO RELEASE.

05/06/2016 WARRANT - \$100,000.00 ON AFFIDAVIT ISSUED ON 04/29/2016

\$100,000.00 CASH BAIL - NO THIRD PARTY BAIL ALLOWED. NO USE/POSSESSION OF ALCOHOL OR ILLEGAL DRUGS, SUBMIT TO SEARCH AND TESTING FOR SAME. AT ANY TIME: NO CONTACT WITH THE FAMILIES OF CHRISTINA TORRES-YORK AND PAUL FOWLES. NO CONTACT WITH TRACY MORGAN OR TRACY COOK. TO ABIDE BY A MAINE PRETRIAL CONTRACT PRIOR TO RELEASE.

05/06/2016 WARRANT - ON AFFIDAVIT EXECUTED BY AGENCY ON 05/06/2016 at 04:18 p.m.

05/11/2016 Party(s): RANDALL JUNIOR WEDDLE  
ATTORNEY - APPOINTED ORDERED ON 05/11/2016

Attorney: DAVID PARIS

05/16/2016 Charge(s): 1,2,3,4  
HEARING - INITIAL APPEARANCE HELD ON 05/16/2016  
WILLIAM STOKES , JUSTICE

05/16/2016 Charge(s): 1,2,3,4  
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 05/16/2016

05/16/2016 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 07/28/2016 at 08:30 a.m.

05/16/2016 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 05/16/2016

05/16/2016 BAIL BOND - \$100,000.00 CASH BAIL BOND SET BY COURT ON 05/16/2016  
WILLIAM STOKES , JUSTICE  
AND MAINE PRETRIAL CONTRACT

06/07/2016 ORDER - SPECIAL ASSIGNMENT ENTERED ON 05/26/2016

JUSTICE STOKES SPECIALLY ASSIGNED.

06/10/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
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SUPPLEMENTAL FILING - INDICTMENT FILED ON 06/10/2016

06/10/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - ARRAIGNMENT SCHEDULED FOR 06/22/2016 at 01:00 p.m.

06/10/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - ARRAIGNMENT NOTICE SENT ON 06/10/2016

06/22/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - ARRAIGNMENT HELD ON 06/22/2016  
WILLIAM STOKES , JUSTICE  
DEFENDANT INFORMED OF CHARGES.

06/22/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 06/22/2016

06/22/2016 HEARING - DISPOSITIONAL CONFERENCE NOT HELD ON 06/22/2016

06/22/2016 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 08/25/2016 at 08:30 a.m.

06/22/2016 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 06/22/2016

07/22/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY DEFENDANT ON 07/21/2016

08/16/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO CONTINUE FILED BY STATE ON 08/15/2016

08/16/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO CONTINUE GRANTED ON 08/16/2016  
PAUL MATHEWS , JUDGE  
COPY TO PARTIES/COUNSEL

08/16/2016 HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 08/16/2016

08/16/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 10/27/2016 at 08:30 a.m.

08/16/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 08/16/2016

09/27/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - OTHER MOTION FILED BY DEFENDANT ON 09/27/2016

MOTION TO MOVE UP DISPO CONF TO AN EARLIER DATE

09/27/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - OTHER MOTION DENIED ON 09/27/2016  
SUSAN SPARACO , JUDGE  
MOTION TO MOVE UP DISPO CONF TO AN EARLIER DATE

EARLIER DATE REQUESTED IS

UNAVAILABLE / TO RESET TO A LATER DATE

09/27/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 09/27/2016  
SUSAN SPARACO , JUDGE

09/28/2016 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
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HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 09/29/2016 at 02:30 p.m.

09/29/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - DISPOSITIONAL CONFERENCE HELD ON 09/29/2016  
WILLIAM STOKES , JUSTICE

09/30/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 09/29/2016

09/30/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO CHANGE VENUE FILED BY DEFENDANT ON 09/29/2016

09/30/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 09/29/2016

09/30/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 09/29/2016

09/30/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - OTHER MOTION FILED BY DEFENDANT ON 09/29/2016

MOTION FOR EXPERT REPORT

12/05/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - STATUS CONFERENCE SCHEDULED FOR 12/29/2016 at 08:30 a.m.

12/05/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - STATUS CONFERENCE NOTICE SENT ON 12/05/2016

12/29/2016 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - STATUS CONFERENCE HELD ON 12/29/2016  
WILLIAM STOKES , JUSTICE

12/29/2016 HEARING - CONFERENCE SCHEDULED FOR 01/09/2017 at 09:00 a.m.

NOTICE TO PARTIES/COUNSEL

SETTLEMENT CONFERENCE

12/29/2016 HEARING - CONFERENCE NOTICE SENT ON 12/29/2016

02/07/2017 HEARING - CONFERENCE HELD ON 01/09/2017  
BRUCE MALLONEE , JUDGE

02/07/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 02/07/2017

02/07/2017 Party(s): RANDALL JUNIOR WEDDLE  
ATTORNEY - WITHDRAWN ORDERED ON 02/07/2017

Attorney: DAVID PARIS

02/07/2017 Party(s): RANDALL JUNIOR WEDDLE  
ATTORNEY - APPOINTED ORDERED ON 02/07/2017

Attorney: JEREMY PRATT

02/21/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - OTHER MOTION FILED BY DEFENDANT ON 02/21/2017

MOTION FOR CO-COUNSEL

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02/22/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - OTHER MOTION GRANTED ON 02/21/2017  
WILLIAM STOKES , JUSTICE  
MOTION FOR CO-COUNSEL

02/22/2017 Party(s): RANDALL JUNIOR WEDDLE  
ATTORNEY - APPOINTED ORDERED ON 02/21/2017

Attorney: CHRISTOPHER MACLEAN

02/28/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 02/07/2017  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

03/15/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 05/24/2017 at 08:30 a.m.

03/15/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 03/15/2017

05/24/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - DISPOSITIONAL CONFERENCE HELD ON 05/24/2017  
WILLIAM STOKES , JUSTICE

05/24/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION FOR DISCOVERY GRANTED ON 05/24/2017  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL  
COMPLIED

STATE HAS

05/24/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 05/24/2017

VEHICLE SEARCH

05/24/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 05/24/2017

STATEMENTS

05/24/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 05/24/2017

SEARCH WARRANTS

05/24/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 05/24/2017

AND SUPPRESS MEDICAL RECORDS

05/24/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 05/24/2017

EXCLUSION OF HOSPITAL BLOOD TEST

05/24/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 05/24/2017

EVIDENCE / WARRANTLESS BLOOD TEST

05/24/2017 HEARING - OTHER MOTION SCHEDULED FOR 07/24/2017 at 08:30 a.m.

MULTIPLE MOTIONS / 2 DAYS

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05/24/2017 HEARING - OTHER MOTION NOTICE SENT ON 05/24/2017

MULTIPLE MOTIONS / 2 DAYS

07/25/2017 CASE STATUS - CASE FILE LOCATION ON 07/25/2017

WITH JUSTICE STOKES

08/22/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
OTHER FILING - OTHER DOCUMENT FILED ON 08/18/2017

LEGAL MEMORANDUM IN RESPONSE TO DEFENDANTS MOTION TO SUPPRESS

08/22/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
OTHER FILING - OTHER DOCUMENT FILED ON 08/17/2017

DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS

08/25/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
OTHER FILING - OTHER DOCUMENT FILED ON 08/25/2017

DEFENDANTS RESPONSE TO STATES LEGAL MEMORANDUM ON MOTION TO SUPPRESS EVIDENCE

10/17/2017 HEARING - OTHER MOTION HELD ON 07/24/2017

WILLIAM STOKES , JUSTICE

Attorney: CHRISTOPHER MACLEAN

DA: JEFFREY BAROODY

Reporter: LAURIE GOULD

MULTIPLE MOTIONS / 2 DAYS

11/03/2017 ORDER - COURT ORDER FILED ON 11/03/2017

WILLIAM STOKES , JUSTICE

PROCEDURAL ORDER

PARTYS SHALL

INFORM THE COURT NO LATER THAN 11/10/17 WHETHER THIS CASE IS FIRM FOR TRIAL. VOIR DIRE  
QUESTIONS AND PROPOSED JUROR QUESTIONNAIRES BY 12/15/17. JURY SELECTION ON 01/03/18.  
FURTHER JURY SELECTION 01/19/18.

11/30/2017 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 11/30/2017

11/30/2017 MOTION - OTHER MOTION FILED BY DEFENDANT ON 11/30/2017

MOTION FOR TRANSCRIPT AT STATE EXPENSE

12/01/2017 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 12/01/2017

WILLIAM STOKES , JUSTICE

COPY TO PARTIES/COUNSEL

EMAILED TO OTO.

12/06/2017 SUMMONS/SERVICE - PROOF OF SERVICE FILED ON 12/06/2017

JEREMY WADSWORTH SERVED BY WALDO CO SHERIFFS OFFICE

12/18/2017 TRIAL - JURY TRIAL SCHEDULED FOR 01/19/2018 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL

JURY SELECTION

12/27/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 12/27/2017

RE: CHAIN OF CUSTODY

12/27/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 12/27/2017

RE: ELECTRONIC CONTROL MODULE

12/27/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

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HEARING - MOTION IN LIMINE SCHEDULED FOR 01/22/2018 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL

12/27/2017 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

HEARING - MOTION IN LIMINE NOTICE SENT ON 12/27/2017

01/03/2018 CASE STATUS - CASE FILE RETURNED ON 01/03/2018

01/12/2018 OTHER FILING - MEMORANDUM OF LAW FILED ON 01/12/2018

MEMORANDUM OF LAW RE: CHAIN OF CUSTODY

01/16/2018 OTHER FILING - OTHER DOCUMENT FILED ON 01/16/2018

STATES RESPONSE TO DEFENDANTS MOTION FOR SANCTIONS

01/16/2018 MOTION - MOTION FOR SANCTIONS FILED BY DEFENDANT ON 01/16/2018

01/22/2018 MOTION - MOTION FOR SANCTIONS DENIED ON 01/19/2018

WILLIAM STOKES , JUSTICE

AFTER HEARING

01/22/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

MOTION - MOTION TO RECONSIDER FINDING FILED BY DEFENDANT ON 01/22/2018

01/22/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

MOTION - MOTION TO RECONSIDER FINDING DENIED ON 01/22/2018

WILLIAM STOKES , JUSTICE

COPY TO PARTIES/COUNSEL

01/22/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

HEARING - MOTION IN LIMINE HELD ON 01/22/2018

WILLIAM STOKES , JUSTICE

01/22/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

MOTION - MOTION IN LIMINE DENIED ON 01/22/2018

WILLIAM STOKES , JUSTICE

COPY TO PARTIES/COUNSEL

01/22/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

MOTION - MOTION IN LIMINE DENIED ON 01/22/2018

WILLIAM STOKES , JUSTICE

COPY TO PARTIES/COUNSEL

01/23/2018 TRIAL - JURY TRIAL SELECTED ON 01/19/2018

WILLIAM STOKES , JUSTICE

Attorney: CHRISTOPHER MACLEAN

DA: JEFFREY BAROODY

Reporter: LAURIE GOULD

DAY 1 OF JURY SELECTON

01/23/2018 TRIAL - JURY TRIAL SELECTED ON 01/22/2018

WILLIAM STOKES , JUSTICE

Attorney: CHRISTOPHER MACLEAN

DA: JEFFREY BAROODY

Reporter: JANETTE COOK

DAY 2 OF JURY SELECTION

01/23/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

MOTION - MOTION TO SEQUESTER WITNESSES MADE ORALLY BY DEF ON 01/23/2018

Attorney: JEREMY PRATT

01/23/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15

MOTION - MOTION TO SEQUESTER WITNESSES GRANTED ON 01/23/2018

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WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

01/24/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 01/24/2018

TO EXCLUDE EVIDENCE WITH INCORPORATED MEMORANDUM OF LAW

01/24/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION IN LIMINE GRANTED ON 01/24/2018

WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

DECISION PUT ON

THE RECORD

01/24/2018 TRIAL - JURY TRIAL HELD ON 01/24/2018

WILLIAM STOKES , JUSTICE

Attorney: CHRISTOPHER MACLEAN

DA: JEFFREY BAROODY

Reporter: JANETTE COOK

Defendant Present in Court

2ND DAY OF JURY TRIAL. ATTY JEREMY PRATT AND LAURA SHAW AS CO COUNSEL FOR THE DEFENDANT.

01/24/2018 TRIAL - JURY TRIAL HELD ON 01/23/2018

WILLIAM STOKES , JUSTICE

Attorney: CHRISTOPHER MACLEAN

DA: JEFFREY BAROODY

Reporter: JANETTE COOK

Defendant Present in Court

1ST DAY OF JURY TRIAL. ATTORNEY JEREMY PRATT AND LAURA SHAW AS CO COUNSEL FOR DEFENDANT.  
DA JON LIBERMAN FOR THE STATE.

01/24/2018 TRIAL - JURY TRIAL SELECTED ON 01/22/2018

01/24/2018 TRIAL - JURY TRIAL HELD ON 01/23/2018

01/24/2018 TRIAL - JURY TRIAL HELD ON 01/23/2018

WILLIAM STOKES , JUSTICE

Attorney: CHRISTOPHER MACLEAN

DA: JEFFREY BAROODY

Reporter: JANETTE COOK

Defendant Present in Court

01/25/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 01/25/2018

EXCLUDE HEARSAY EVIDENCE WITH INCORPORATED MEMORANDUM OF LAW

01/25/2018 TRIAL - JURY TRIAL HELD ON 01/25/2018

WILLIAM STOKES , JUSTICE

Attorney: CHRISTOPHER MACLEAN

DA: JONATHAN LIBERMAN

Reporter: JANETTE COOK

Defendant Present in Court

3RD DAY OF JURY TRIAL.

01/29/2018 TRIAL - JURY TRIAL HELD ON 01/26/2018

WILLIAM STOKES , JUSTICE

Attorney: CHRISTOPHER MACLEAN

DA: JONATHAN LIBERMAN

Reporter: JANETTE COOK

Defendant Present in Court

4TH DAY OF JURY TRIAL.

01/29/2018 TRIAL - JURY TRIAL HELD ON 01/29/2018  
WILLIAM STOKES , JUSTICE  
Attorney: CHRISTOPHER MACLEAN  
DA: JONATHAN LIBERMAN Reporter: JANETTE COOK  
Defendant Present in Court

5TH DAY OF JURY TRIAL. STATE RESTS. DEFENDANT RESTS. STATE RESTS FINALLY. CLOSING ARGUMENTS AND INSTRUCTION. CASE TO THE JURY AT 3PM. JURY LEAVE AT 5 PM TO RETURN ON 1/30/18 AT 9 AM TO CONINTUE DELIBERATIONS.

01/29/2018 MOTION - MOTION FOR JUDGMENT MADE ORALLY BY DEF ON 01/29/2018

Attorney: JEREMY PRATT  
DEFENSE ORALLY MOVES FOR JUDGMENT OF ACQUITTAL OF COUNTS 11 AND 13.

01/29/2018 MOTION - MOTION FOR JUDGMENT DENIED ON 01/29/2018  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

01/30/2018 TRIAL - JURY TRIAL HELD ON 01/30/2018  
WILLIAM STOKES , JUSTICE  
Attorney: JEREMY PRATT  
DA: JONATHAN LIBERMAN Reporter: JANETTE COOK  
Defendant Present in Court

6TH DAY OF JURY TRIAL. JURY RESUMES DELIBERATIONS AT 9 AM. VERDICT

10:30 AM -

01/30/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
VERDICT - GUILTY RETURNED ON 01/30/2018

01/30/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
FINDING - GUILTY ENTERED BY COURT ON 01/30/2018  
WILLIAM STOKES , JUSTICE

01/30/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
FINDING - GUILTY CONT FOR SENTENCING ON 01/30/2018

01/30/2018 BAIL BOND - NO BAIL ALLOWED SET BY COURT ON 01/30/2018  
WILLIAM STOKES , JUSTICE

01/30/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - SENTENCE HEARING SCHEDULED FOR 03/23/2018 at 01:00 p.m.

01/30/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - SENTENCE HEARING NOTICE SENT ON 01/30/2018

01/30/2018 MOTION - OTHER MOTION GRANTED ON 12/01/2017  
WILLIAM STOKES , JUSTICE  
MOTION FOR TRANSCRIPT AT STATE EXPENSE

01/30/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS WITHDRAWN ON 05/24/2017  
WILLIAM STOKES , JUSTICE

01/30/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO DISMISS DENIED ON 07/25/2017  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

01/30/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - OTHER MOTION GRANTED ON 05/24/2017  
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WILLIAM STOKES , JUSTICE  
MOTION FOR EXPERT REPORT

01/30/2018 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS WITHDRAWN ON 07/25/2017

WILLIAM STOKES , JUSTICE

03/16/2018 OTHER FILING - SENTENCING MEMORANDUM FILED BY STATE ON 03/16/2018

03/19/2018 OTHER FILING - SENTENCING MEMORANDUM FILED BY DEFENDANT ON 03/19/2018

03/21/2018 LETTER - FROM NON-PARTY FILED ON 03/21/2018

LETTERS OF SUPPORT FOR DEFENDANT

03/23/2018 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
OTHER FILING - OTHER DOCUMENT FILED ON 03/22/2018

BY DEF; ADDENDUM TO MEMORANDUM IN AID OF SENTENCING

03/23/2018 Charge(s) : 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
HEARING - SENTENCE HEARING HELD ON 03/23/2018

WILLIAM STOKES , JUSTICE

Attorney: JEREMY PRATT

DA: JEFFREY BAROODY

Defendant Present in Court

03/23/2018 Charge(s) : 1

RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 1 MANSLAUGHTER 17-A 203(1) (A) Class A as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 30 year(s).

This sentence to be served concurrently with: KNOCD CR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 8  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 9  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 10  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 11  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 12  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 13  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 14  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 15

It is ordered that all but 25 year(s) of the sentence as it relates to confinement be suspended.

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

It is ordered that the defendant be placed on a period of probation for a term of 4 year(s) upon conditions attached hereto and incorporated by reference herein.

Said Probation to commence after completion of the unsuspended term of imprisonment.

\$ 35 VICTIMS COMPENSATION FUND  
TOTAL DUE:\$ 35.00.

**Special Conditions of Probation:**

1. refrain from all criminal conduct and violation of federal, state and local laws.
  2. report to the probation officer immediately and thereafter as directed and within 48 hours of your release from jail.
  3. answer all questions by your probation officer and permit the officer to visit you at your home or elsewhere.
  4. obtain permission from your probation officer before changing your address or employment.
  5. not leave the State of Maine without written permission of your probation officer.
  6. maintain employment and devote yourself to an approved employment or education program.
  7. not possess or use any unlawful drugs and not possess or use alcohol.
  8. identify yourself as a probationer to any law enforcement officer if you are arrested, detained or questioned for any reason and notify your probation officer of that contact within 24 hours.
  9. waive extradition back to the State of Maine from any other place.
  10. not own, possess or use any firearm or dangerous weapon if you have ever been convicted of a crime in any jurisdiction with a potential penalty of one year or more or any crime involving domestic violence or the use of a firearm or dangerous weapon.
  11. pay to the Department of Corrections a supervision fee of \$ 10.00 per month.
- 12a. provide a DNA sample if convicted of applicable offense listed in 25 MRSA Section 1574.  
submit to random search and testing for alcohol at the direction of a law enforcement officer.  
submit to random search and testing for drugs at the direction of a law enforcement officer.

not operate or attempt to operate any motor vehicle.

Have no contact of any kind with TRACY COOK and the family of said person.  
Have no contact of any kind with TRACY MORGAN and the family of said person.  
Have no contact of any kind with PAUL FOWLES and the family of said person.  
Have no contact of any kind with CHRISTINA TORRES YORK and the family of said person.

03/23/2018 Charge(s): 2

RULING - ORIGINAL ORDERED ON 03/23/2018

**INSERTED VIA FEE PROCESSING**

It is adjudged that the defendant is guilty of 2 MANSLAUGHTER 17-A 203(1) (A) Class A as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 30 year(s).

This sentence to be served concurrently with: KNOCD201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD201600474 Charge: 3  
This sentence to be served concurrently with: KNOCD201600474 Charge: 4  
This sentence to be served concurrently with: KNOCD201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD201600474 Charge: 6  
This sentence to be served concurrently with: KNOCD201600474 Charge: 7  
This sentence to be served concurrently with: KNOCD201600474 Charge: 8  
This sentence to be served concurrently with: KNOCD201600474 Charge: 9  
This sentence to be served concurrently with: KNOCD201600474 Charge: 10  
This sentence to be served concurrently with: KNOCD201600474 Charge: 11

This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 12  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 13  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 14  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 15

It is ordered that all but 25 year(s) of the sentence as it relates to confinement be suspended.

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

It is ordered that the defendant be placed on a period of probation for a term of 4 year(s) upon conditions attached hereto and incorporated by reference herein.

Said Probation to commence after completion of the unsuspended term of imprisonment.

\$ 35 VICTIMS COMPENSATION FUND  
TOTAL DUE: \$ 35.00.

**Special Conditions of Probation:**

1. refrain from all criminal conduct and violation of federal, state and local laws.
  2. report to the probation officer immediately and thereafter as directed and within 48 hours of your release from jail.
  3. answer all questions by your probation officer and permit the officer to visit you at your home or elsewhere.
  4. obtain permission from your probation officer before changing your address or employment.
  5. not leave the State of Maine without written permission of your probation officer.
  6. maintain employment and devote yourself to an approved employment or education program.
  7. not possess or use any unlawful drugs and not possess or use alcohol.
  8. identify yourself as a probationer to any law enforcement officer if you are arrested, detained or questioned for any reason and notify your probation officer of that contact within 24 hours.
  9. waive extradition back to the State of Maine from any other place.
  10. not own, possess or use any firearm or dangerous weapon if you have ever been convicted of a crime in any jurisdiction with a potential penalty of one year or more or any crime involving domestic violence or the use of a firearm or dangerous weapon.
  11. pay to the Department of Corrections a supervision fee of \$ 10.00 per month.
- 12a. provide a DNA sample if convicted of applicable offense listed in 25 MRSA Section 1574.  
submit to random search and testing for alcohol at the direction of a law enforcement officer.  
submit to random search and testing for drugs at the direction of a law enforcement officer.

not operate or attempt to operate any motor vehicle.

Have no contact of any kind with TRACY COOK and the family of said person.  
Have no contact of any kind with TRACY MORGAN and the family of said person.  
Have no contact of any kind with PAUL FOWLES and the family of said person.  
Have no contact of any kind with CHRISTINA TORRES YORK and the family of said person.

03/23/2018 Charge(s): 3

RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 3 OUI (ALCOHOL) - DEATH 29-A 2411(1-A) (D) (1-A) Class B as charged and convicted.

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Printed on: 08/23/2018

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 10 year(s).

This sentence to be served concurrently with: KNOCD CR201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 8  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 9  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 10  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 11  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 12  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 13  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 14  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

It is ordered that the defendant's motor vehicle operator's license or permit to operate, right to operate and right to apply for and obtain a license is suspended for a period of 10 year(s) effective 03/23/2018. The defendant's right to register a motor vehicle is suspended. Charge #3: It is ordered that the defendant forfeit and pay the sum of \$ 2,100.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

\$ 35 VICTIMS COMPENSATION FUND  
3% MAINE CRIMINAL JUSTICE ACADEMY 2006 \$ 63.00  
100% GENERAL FUND \$ 2100.00  
1% MSP COMPUTER CRIMES \$ 21.00  
1% COUNTY JAIL \$ 21.00  
10% GOV'T OPERATION SURCHARGE FUND \$ 210.00  
\$ 30 DEPARTMENT OF TRANSPORTATION FINES  
5% GENERAL FUND ADDL 5% SURCHARGE \$ 105.00  
**TOTAL DUE: \$ 2,585.00.**

03/23/2018 Charge(s): 4

RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 4 OUI (ALCOHOL)-DEATH 29-A 2411(1-A)(D)(1-A) Class B as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 10 year(s).

This sentence to be served concurrently with: KNOCD CR201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 8  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 9

This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 10  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 11  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 12  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 13  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 14  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

It is ordered that the defendant's motor vehicle operator's license or permit to operate, right to operate and right to apply for and obtain a license is suspended for a period of 10 year(s). The defendant's right to register a motor vehicle is suspended.

Charge #4: It is ordered that the defendant forfeit and pay the sum of \$ 2,100.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

**\$ 35 VICTIMS COMPENSATION FUND**

It is ordered that \$ 2100.00 of fine is non-cumulative.

**TOTAL DUE:\$ 35.00.**

03/23/2018 Charge(s): 5

RULING - ORIGINAL ORDERED ON 03/23/2018

**INSERTED VIA FEE PROCESSING**

It is adjudged that the defendant is guilty of 5 OUI (ALCOHOL)-INJURY 29-A 2411(1-A) (D) (1) Class C as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 5 year(s).

This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 1  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 2  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 3  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 4  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 6  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 7  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 8  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 9  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 10  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 11  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 12  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 13  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 14  
 This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

It is ordered that the defendant's motor vehicle operator's license or permit to operate, right to operate and right to apply for and obtain a license is suspended for a period of 6 year(s). The defendant's right to register a motor vehicle is suspended.

Charge #5: It is ordered that the defendant forfeit and pay the sum of \$ 2,100.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

**\$ 35 VICTIMS COMPENSATION FUND**

It is ordered that \$ 2100.00 of fine is non-cumulative.  
**TOTAL DUE:\$ 35.00.**

03/23/2018 Charge(s): 6

RULING - ORIGINAL ORDERED ON 03/23/2018

**INSERTED VIA FEE PROCESSING**

It is adjudged that the defendant is guilty of 6 AGGRAVATED DRIVING TO ENDANGER 29-A 2413(1-A) Class C as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 5 year(s).

This sentence to be served concurrently with: KNOCD201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD201600474 Charge: 3  
This sentence to be served concurrently with: KNOCD201600474 Charge: 4  
This sentence to be served concurrently with: KNOCD201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD201600474 Charge: 7  
This sentence to be served concurrently with: KNOCD201600474 Charge: 8  
This sentence to be served concurrently with: KNOCD201600474 Charge: 9  
This sentence to be served concurrently with: KNOCD201600474 Charge: 10  
This sentence to be served concurrently with: KNOCD201600474 Charge: 11  
This sentence to be served concurrently with: KNOCD201600474 Charge: 12  
This sentence to be served concurrently with: KNOCD201600474 Charge: 13  
This sentence to be served concurrently with: KNOCD201600474 Charge: 14  
This sentence to be served concurrently with: KNOCD201600474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

It is ordered that the defendant's motor vehicle operator's license or permit to operate, right to operate and right to apply for and obtain a license is suspended for a period of 180 day(s). The defendant's right to register a motor vehicle is suspended.  
Charge #6: It is ordered that the defendant forfeit and pay the sum of \$ 575.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

**\$ 35 VICTIMS COMPENSATION FUND**

It is ordered that \$ 575.00 of fine is non-cumulative.  
**TOTAL DUE:\$ 35.00.**

03/23/2018 Charge(s): 7

RULING - ORIGINAL ORDERED ON 03/23/2018

**INSERTED VIA FEE PROCESSING**

It is adjudged that the defendant is guilty of 7 DRIVING TO ENDANGER 29-A 2413(1) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCD201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD201600474 Charge: 3

This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 8  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 9  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 10  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 11  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 12  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 13  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 14  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

It is ordered that the defendant's motor vehicle operator's license or permit to operate, right to operate and right to apply for and obtain a license is suspended for a period of 30 day(s). The defendant's right to register a motor vehicle is suspended.

Charge #7: It is ordered that the defendant forfeit and pay the sum of \$ 575.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

**\$ 20 VICTIMS COMPENSATION FUND**

It is ordered that \$ 575.00 of fine is non-cumulative.

**TOTAL DUE:\$ 20.00.**

03/23/2018 Charge(s) : 8

RULING - ORIGINAL ORDERED ON 03/23/2018

**INSERTED VIA FEE PROCESSING**

It is adjudged that the defendant is guilty of 8 RULE VIOL, OPERATION WITH FALSE DUTY STATUS 29-A 558-A(1)(A) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 1  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 9  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 10  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 11  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 12  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 13  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 14  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

**\$ 20 VICTIMS COMPENSATION FUND**

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**TOTAL DUE:\$ 20.00.**

03/23/2018 Charge(s): 8  
RULING - AUDIT REPORT FINE UPDATED ON 03/23/2018

Charge: 8 Previous value(s) => Base Fine: 500 Current value(s) => Base Fine: 0

03/23/2018 Charge(s): 9  
RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 9 RULE VIOL, FATIGUED DRIVER 29-A 558-A(1) (A) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCD CR201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 7  
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This sentence to be served concurrently with: KNOCD CR201600474 Charge: 12  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 13  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 14  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

\$ 20 VICTIMS COMPENSATION FUND  
**TOTAL DUE:\$ 20.00.**

03/23/2018 Charge(s): 10  
RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 10 RULE VIOL, DETECTABLE PRESENCE OF ALCOHOL 29-A 558-A(1) (A) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCD CR201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 8

This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 9  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 11  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 12  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 13  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 14  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department of Corrections in KNOX.

\$ 20 VICTIMS COMPENSATION FUND  
TOTAL DUE:\$ 20.00.

03/23/2018 Charge(s): 11

RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 11 RULE VIOL, POSSESS OR USE ALCOHOL ON DUTY 29-A 558-A(1) (A) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 1  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 2  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 3  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 4  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 5  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 6  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 7  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 8  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 9  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 10  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 12  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 13  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 14  
This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department of Corrections in KNOX.

\$ 20 VICTIMS COMPENSATION FUND  
TOTAL DUE:\$ 20.00.

03/23/2018 Charge(s): 12

RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 12 RULE VIOL, OPERATION WITH FALSE DUTY STATUS 29-A 558-A(1) (A) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCD-CR-2016-00474 Charge: 1

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Printed on: 08/23/2018

This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 8  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 9  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 10  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 11  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 13  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 14  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

\$ 20 VICTIMS COMPENSATION FUND  
**TOTAL DUE:\$ 20.00.**

03/23/2018 Charge(s): 13  
RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 13 RULE VIOL, OPERATION WITH FALSE DUTY STATUS 29-A 558-A(1) (A) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 1  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 8  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 9  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 10  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 11  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 12  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 14  
This sentence to be served concurrently with: KNOCDCCR201600474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

\$ 20 VICTIMS COMPENSATION FUND  
**TOTAL DUE:\$ 20.00.**

03/23/2018 Charge(s): 14  
RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 14 RULE VIOL, OPERATION WITH FALSE DUTY STATUS 29-A 558-A(1)(A) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCD CR201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 8  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 9  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 10  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 11  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 12  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 13  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 15

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

\$ 20 VICTIMS COMPENSATION FUND  
TOTAL DUE: \$ 20.00.

03/23/2018 Charge(s): 15

RULING - ORIGINAL ORDERED ON 03/23/2018

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 15 RULE VIOL, OPERATION WITH FALSE DUTY STATUS 29-A 558-A(1)(A) Class E as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 6 month(s).

This sentence to be served concurrently with: KNOCD CR201600474 Charge: 1  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 2  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 3  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 4  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 5  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 6  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 7  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 8  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 9  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 10  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 11  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 12  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 13  
This sentence to be served concurrently with: KNOCD CR201600474 Charge: 14

The defendant shall serve the initial portion of the foregoing sentence at the Department Of Corrections in KNOX.

\$ 20 VICTIMS COMPENSATION FUND  
TOTAL DUE:\$ 20.00.

03/23/2018 Charge(s): 4  
RULING - AUDIT REPORT FINE UPDATED ON 03/23/2018  
  
Charge: 4 Previous value(s) => Base Fine: 2100 Current value(s) => Base Fine: 2100  
Override Code: NC Override Amount: 2100

03/23/2018 Charge(s): 5  
RULING - AUDIT REPORT FINE UPDATED ON 03/23/2018  
  
Charge: 5 Previous value(s) => Base Fine: 2100 Current value(s) => Base Fine: 2100  
Override Code: NC Override Amount: 2100

03/23/2018 Charge(s): 6  
RULING - AUDIT REPORT FINE UPDATED ON 03/23/2018  
  
Charge: 6 Previous value(s) => Base Fine: 545 Current value(s) => Base Fine: 545  
Override Code: NC Override Amount: 545

03/23/2018 Charge(s): 7  
RULING - AUDIT REPORT FINE UPDATED ON 03/23/2018  
  
Charge: 7 Previous value(s) => Base Fine: 545 Current value(s) => Base Fine: 545  
Override Code: NC Override Amount: 545

03/27/2018 Charge(s): 1  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 2  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 3  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 4  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 5  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 6  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 7  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 8  
RULING - ORIGINAL ISSUED ON 03/23/2018  
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WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 9  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 10  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 11  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 12  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 13  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 14  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 Charge(s): 15  
RULING - ORIGINAL ISSUED ON 03/23/2018  
WILLIAM STOKES , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

03/27/2018 OTHER FILING - FINE PAYMENT SCHEDULE ORDERED ON 03/27/2018

INSTALLMENT PYMTS: 0.00; WEEKLY:F; BI-WEEKLY:F; MONTHLY:F; BI-MONTHLY:F; PYMT  
BEGIN: AT 0000; PYMT IN FULL:20430323 AT 1600; THRU PPO:F; PYMT DUE AMT:  
2,931.19; PMT DUE:20430323 AT 1600; OTHER:TO BE TAKEN FROM PRISON ACCOUNT WHEN  
AVAILABLE

03/27/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
ABSTRACT - BMV ISSUED ON 03/23/2018

03/27/2018 Charge(s): 6,7  
MOTION - MOTION TO AMEND INFORMATION FILED BY STATE ON 03/27/2018

MOTION TO AMEND FINE AMOUNT ON COUNT 6 & 7

03/27/2018 Charge(s): 6  
RULING - AUDIT REPORT FINE UPDATED ON 03/27/2018

Charge: 6 Previous value(s) => Base Fine: 545 Override Code: NC Override Amount: 545  
Current value(s) => Base Fine: 575 Override Code: NC Override Amount: 575

03/27/2018 Charge(s): 7  
RULING - AUDIT REPORT FINE UPDATED ON 03/27/2018

Charge: 7 Previous value(s) => Base Fine: 545 Override Code: NC Override Amount: 545  
Current value(s) => Base Fine: 575 Override Code: NC Override Amount: 575

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03/27/2018 Charge(s): 6,7  
MOTION - MOTION TO AMEND INFORMATION GRANTED ON 03/27/2018

03/30/2018 Charge(s): 3,4,5,6,7,8,9,10,11,12,13,14,15  
ABSTRACT - BMV ISSUED ON 03/30/2018

AMENDED ABSTRACT

03/30/2018 Charge(s): 3,4,5,6,7,8,9,10,11,12,13,14,15  
ABSTRACT - BMV ISSUED ON 03/30/2018

AMENDED ABSTRACT

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION IN LIMINE GRANTED ON 01/24/2018  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL  
FOR REASON STATED ON THE RECORD. SEE RULE 403.

MOTION GRANTED

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS DENIED ON 09/11/2017  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO DISMISS DENIED ON 09/11/2017  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS DENIED ON 09/11/2017  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO SUPPRESS DENIED ON 09/11/2017  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 02/07/2017  
WILLIAM STOKES , JUSTICE  
COPY TO PARTIES/COUNSEL

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION TO CHANGE VENUE MOOT ON 03/23/2018  
WILLIAM STOKES , JUSTICE

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
MOTION - MOTION IN LIMINE MOOT ON 03/23/2018  
WILLIAM STOKES , JUSTICE

04/11/2018 Charge(s): 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15  
APPEAL - NOTICE OF APPEAL FILED ON 04/11/2018

04/11/2018 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 04/11/2018

04/11/2018 ORDER - TRANSCRIPT ORDER ENTERED ON 04/11/2018

04/13/2018 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 04/12/2018  
WILLIAM STOKES , JUSTICE

05/07/2018 APPEAL - RECORD ON APPEAL DUE IN LAW COURT ON 04/23/2018

DUE BETWEEN 5/9/18-5/16/18

**Receipts**

05/03/2018 Case Payment \$8.81 CK paid.

**FINE PAYMENT SCHEDULE**

Execution/payment stayed to pay in full by 03/23/2043 or warrant to issue.

A TRUE COPY

ATTEST:

\_\_\_\_\_  
Clerk

State Of Maine

UNIFIED CRIMINAL DOCKET

JUDGMENT AND COMMITMENT

Docket No. KNOCD-CR-2016-00474

County/Location KNOX

Male  Female

Date: 3/23/18

DOB 05/09/1962

State of Maine v. RANDALL JUNIOR WEDDLE

Residence: 3540 BLUE SPRINGS PARKWAY GREENEVILLE TN

Offense(s) charged: MANSLAUGHTER

Class: A DOV: 03/18/2016 Seq #: 4248 Title: 17-A / 203 / 1 / A

MANSLAUGHTER

Class: A DOV: 03/18/2016 Seq #: 4248 Title: 17-A / 203 / 1 / A

OUI (ALCOHOL)-DEATH

Class: B DOV: 03/18/2016 Seq #: 12960 Title: 29-A / 2411 / 1-A / D / 1-A

Charge: 1

Charge: 2

Charge: 3

Charged by:

- indictment
 information
 complaint

Plea(s):  Guilty  Nolo  Not Guilty

Date of Violation(s):

Offense(s) convicted:

MANSLAUGHTER

Class: A DOV: 03/18/2016 Seq #: 4248 Title: 17-A / 203 / 1 / A

MANSLAUGHTER

Class: A DOV: 03/18/2016 Seq #: 4248 Title: 17-A / 203 / 1 / A

OUI (ALCOHOL)-DEATH

Class: B DOV: 03/18/2016 Seq #: 12960 Title: 29-A / 2411 / 1-A / D / 1-A

Charge: 1

Charge: 2

Charge: 3

Convicted on:

- plea
 jury verdict 1-30-18
 court finding

It is adjudged that the defendant is guilty of the offenses as shown above and convicted.

It is adjudged that the defendant be hereby committed to the sheriff of the within named county or his authorized representative who shall without needless delay remove the defendant to:

The custody of the Commissioner of the Department of Corrections, at a facility designated by the Commissioner, to be punished by imprisonment for a term of

1-30 years
2-30 years

A County jail to be punished by imprisonment for a term of

3-10 years
5-6-5 years
2-15 6 months

This sentence to be served (consecutively to)(concurrently with) each other

Execution stayed to on or before: at (a.m.)(p.m.)

Notice to Defendant: Your sentence does not include any assurance about the location of the facility where you will be housed during your commitment.

1+2

It is ordered that all (but) 25 years of the sentence (as it relates to confinement)(as it relates to the ) be suspended and the defendant be placed on a period of

probation  supervised release  administrative release

for a term of 4 years (years)(months) upon conditions attached hereto and incorporated by reference herein.

1+2

said probation or supervised release to commence ( ) (upon completion of the unsuspended term of imprisonment).

said administrative release to commence immediately.

The defendant shall serve the initial portion of the foregoing sentence at a County jail.

It is ordered that the defendant forfeit and pay the sum of \$ 2,100 545 545 as a fine to the clerk of the court, plus applicable surcharges and assessments.  
 All but \$ 6520 suspended. The total amount due, including surcharges and assessments is \$ 2940.  
This amount is payable immediately or in accordance with the Order on Payment of Fines incorporated by reference herein.

It is ordered that the defendant forfeit and pay the sum of \$ \_\_\_\_\_ as restitution for the benefit of \_\_\_\_\_ (17-A M.R.S. § 1152-2-A).  
 Restitution is joint and several pursuant to 17-A M.R.S. § 1326-E.  
 Restitution is to be paid through the Office of the prosecuting attorney, except that during any period of commitment to the Department of Corrections and/or any period of probation imposed by this sentence, restitution is to be paid to the Department of Corrections.  
 A separate order for income withholding has been entered pursuant to 17-A M.R.S. § 1326-B incorporated by reference herein.  
 Execution/payment stayed to pay in full by \_\_\_\_\_  
 Installment payments of \_\_\_\_\_ to be made (weekly) (biweekly) (monthly) or warrant to issue  
 Restitution is to be paid to the Department of Corrections on a schedule to be determined by the Department.

It is ordered pursuant to applicable statutes, that the defendant's motor vehicle operator's license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license and/or the defendant's right to register a motor vehicle is suspended in accordance with notice of suspension incorporated herein. Gas 3+4 10yrs | 1st 5 10yrs | 1st 6 180 days  
 It is ordered that the defendant perform \_\_\_\_\_ hours of court-approved community service work within 1st 7 30 days (weeks) (months) for the benefit of \_\_\_\_\_.

It is ordered that the defendant pay \$ \_\_\_\_\_ for each day served in the county jail, to the treasurer of the above named county. (up to \$80/Day) (17-A M.R.S. § 1341)  
 Execution/payment stayed to pay in full by \_\_\_\_\_ or warrant to issue.

It is ordered that the defendant shall participate in alcohol and other drug education, evaluation and treatment programs for multiple offenders administered by the office of substance abuse. (29 M.R.S. § 1312-B (2)(D-1), 29-A M.R.S. § 2411 (5)(F))

It is ordered that the defendant forfeit to the state the firearm used by the defendant during the commission of the offense(s) shown above. (17-A M.R.S. § 1158)

It is ordered that the defendant is prohibited from owning, possessing or having under the defendant's control a firearm. (15 M.R.S. § 393) (1-A)(1) and (1-B)

Other: \_\_\_\_\_

It is ordered that the defendant be unconditionally discharged. (17-A M.R.S. § 1201)

If the defendant has been convicted of an applicable offense listed in 25 M.R.S. § 1574, then the defendant shall submit to having a DNA sample drawn at any time following the commencement of any term of imprisonment or at any time following commencement of the probation period as directed by the probation officer.

**WARNING: IT IS A VIOLATION OF STATE LAW, AND MAY BE A VIOLATION OF FEDERAL LAW, FOR THE DEFENDANT TO OWN, POSSESS OR HAVE UNDER THEIR CONTROL A FIREARM IF THAT PROHIBITION HAS BEEN ENTERED AS PART OF THIS JUDGMENT OR ANY OTHER COURT ORDER.**

It is further ordered that the clerk deliver a certified copy of this judgment and commitment to the sheriff of the above named county or his authorized representative and that the copy serve as the commitment of the defendant. Reasons for imposing consecutive sentences are contained in the court record or in attachments hereto.

All pending motions, other than motions relating to payment of fees and bail are hereby declared moot (except \_\_\_\_\_.)

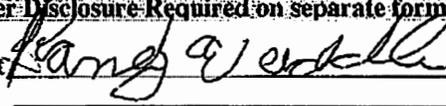
A TRUE COPY, ATTEST: \_\_\_\_\_  
Clerk

  
\_\_\_\_\_  
Judge / Justice

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITMENT. I hereby acknowledge that the disclosure of my Social Security number on the Social Security Disclosure Form is mandatory under 36 M.R.S. § 5276-A. My Social Security number will be used to facilitate the collection of any fine that has been imposed upon me in this action if that fine remains unpaid as of the time I am due a State of Maine income tax refund. My Social Security number also may be used to facilitate the collection of money I may owe the State of Maine as a result of having had an attorney appointed to represent me. Collection of any fine or reimbursement of money, which I owe to the State of Maine, will be accomplished by offsetting money I owe to the State against my State of Maine income tax refund.

Date: 3-23-18

~~SS Number Disclosure Required on separate form~~

Defendant:   
Address: \_\_\_\_\_  
\_\_\_\_\_

**Offense(s) charged:**

**OUI (ALCOHOL)-DEATH** Charge: 4  
 Class: B DOV: 03/18/2016 Seq #: 12960 Title: 29-A / 2411 / 1-A / D / 1-A

**OUI (ALCOHOL)-INJURY** Charge: 5  
 Class: C DOV: 03/18/2016 Seq #: 12958 Title: 29-A / 2411 / 1-A / D / 1

**AGGRAVATED DRIVING TO ENDANGER** Charge: 6  
 Class: C DOV: 03/18/2016 Seq #: 11122 Title: 29-A / 2413 / 1-A

**DRIVING TO ENDANGER** Charge: 7  
 Class: E DOV: 03/18/2016 Seq #: 1232 Title: 29-A / 2413 / 1

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 8  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**RULE VIOL, FATIGUED DRIVER** Charge: 9  
 Class: E DOV: 03/18/2016 Seq #: 12923 Title: 29-A / 558-A / 1 / A

**RULE VIOL, DETECTABLE PRESENCE OF ALCOHOL** Charge: 10  
 Class: E DOV: 03/18/2016 Seq #: 12914 Title: 29-A / 558-A / 1 / A

**RULE VIOL, POSSESS OR USE ALCOHOL ON DUTY** Charge: 11  
 Class: E DOV: 03/18/2016 Seq #: 12913 Title: 29-A / 558-A / 1 / A

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 12  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 13  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 14  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 15  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**Charged by:**  
 indictment  
 information  
 complaint

Plea(s):  Guilty  Nolo  Not Guilty \_\_\_\_\_ Date of Violation(s): \_\_\_\_\_

**Offense(s) convicted:**

**OUI (ALCOHOL)-DEATH** Charge: 4  
 Class: B DOV: 03/18/2016 Seq #: 12960 Title: 29-A / 2411 / 1-A / D / 1-A

**OUI (ALCOHOL)-INJURY** Charge: 5  
 Class: C DOV: 03/18/2016 Seq #: 12958 Title: 29-A / 2411 / 1-A / D / 1

**AGGRAVATED DRIVING TO ENDANGER** Charge: 6  
 Class: C DOV: 03/18/2016 Seq #: 11122 Title: 29-A / 2413 / 1-A

**DRIVING TO ENDANGER** Charge: 7  
 Class: E DOV: 03/18/2016 Seq #: 1232 Title: 29-A / 2413 / 1

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 8  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**RULE VIOL, FATIGUED DRIVER** Charge: 9  
 Class: E DOV: 03/18/2016 Seq #: 12923 Title: 29-A / 558-A / 1 / A

**RULE VIOL, DETECTABLE PRESENCE OF ALCOHOL** Charge: 10  
 Class: E DOV: 03/18/2016 Seq #: 12914 Title: 29-A / 558-A / 1 / A

**RULE VIOL, POSSESS OR USE ALCOHOL ON DUTY** Charge: 11  
 Class: E DOV: 03/18/2016 Seq #: 12913 Title: 29-A / 558-A / 1 / A

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 12  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 13  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS** Charge: 14  
 Class: E DOV: 03/18/2016 Seq #: 12906 Title: 29-A / 558-A / 1 / A

**Convicted on:**  
 plea  
 jury verdict  
 court finding

**RULE VIOL, OPERATION WITH FALSE DUTY STATUS**

Charge: 15

Class: E    DOV: 03/18/2016    Seq #: 12906 Title: 29-A / 558-A / 1 / A

STATE OF MAINE  
UNIFIED CRIMINAL DOCKET

JUDGMENT AND COMMITMENT

Docket No. County/location Date DOB  
KNOCD-CR-2016-00474 KNOX 03/23/2018 05/09/1962

State of Maine  
v.  
RANDALL J WEDDLE

Residence:  
3540 BLUE SPRINGS PARKWAY  
GREENEVILLE TN

**Offense charged:**

AGGRAVATED DRIVING TO ENDANGER

Charged by: CRIMINAL COMPLAINT  
Supplemental Filing  
Charge: 6 INDICTMENT

Class: C DOV: 03/18/2016 OBTN: 174150B006  
Seq #: 11122 Title: 29-A / 2413 / 1-A  
Plea: NOT GUILTY

**Offense convicted:**

AGGRAVATED DRIVING TO ENDANGER

Charge: 6  
PLEA: NOT GUILTY  
FNDG: GUILTY  
VRDT: GUILTY

Class: C DOV: 03/18/2016 OBTN: 174150B006  
Seq #: 11122 Title: 29-A / 2413 / 1-A

It is adjudged that the defendant is guilty of the offenses as shown above and convicted.

It is adjudged that the defendant be hereby committed to the sheriff of the within named county or his authorized representative who shall without needless delay remove the defendant to:

The custody of DEPARTMENT OF CORRECTIONS, to be punished by imprisonment for a term of 5 year(s).

This sentence to be served concurrently with	KNOCDCR201600474	Charge:1
This sentence to be served concurrently with	KNOCDCR201600474	Charge:2
This sentence to be served concurrently with	KNOCDCR201600474	Charge:3
This sentence to be served concurrently with	KNOCDCR201600474	Charge:4
This sentence to be served concurrently with	KNOCDCR201600474	Charge:5
This sentence to be served concurrently with	KNOCDCR201600474	Charge:7
This sentence to be served concurrently with	KNOCDCR201600474	Charge:8
This sentence to be served concurrently with	KNOCDCR201600474	Charge:9
This sentence to be served concurrently with	KNOCDCR201600474	Charge:10
This sentence to be served concurrently with	KNOCDCR201600474	Charge:11
This sentence to be served concurrently with	KNOCDCR201600474	Charge:12
This sentence to be served concurrently with	KNOCDCR201600474	Charge:13
This sentence to be served concurrently with	KNOCDCR201600474	Charge:14
This sentence to be served concurrently with	KNOCDCR201600474	Charge:15

**Notice to Defendant: Your sentence does not include any assurance about the location of the facility where you will be housed during your commitment.**

The defendant shall serve the intial portion of the foregoing sentence at a DEPARTMENT OF CORRECTIONS in KNOX

It is ordered that the defendant forfeit and pay the sum of \$ 575.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

\$ 35 VICTIMS COMPENSATION FUND

It is ordered that \$ 575.00 of fine is non-cumulative.

**TOTAL DUE: \$ 35.00            SS Number Disclosure Required on Separate form**  
Execution/payment stayed to pay in full by 03/23/2043 or warrant to issue.

It is ordered pursuant to applicable statutes, that the defendant's motor vehicle operator's license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license and/or the defendant's right to register a motor vehicle is suspended for a period of 180 DAY(S) in accordance with notice of suspension incorporated herein.

The defendant's right to register a motor vehicle is suspended.

That the defendant is prohibited from owning, possessing, or having under the defendant's control a firearm. (15 M.R.S. § 393 (1-A)(1)and(1-B))

If the defendant has been convicted of an applicable offense listed in 25 M.R.S. § 1574, then the defendant shall submit to having a DNA sample drawn at any time following the commencement of any term of imprisonment or at any time following commencement of the probation period as directed by the probation officer.

**WARNING: IT IS A VIOLATION OF STATE LAW, AND MAY BE A VIOLATION OF FEDERAL LAW, FOR THE DEFENDANT TO OWN, POSSESS OR HAVE UNDER THEIR CONTROL A FIREARM IF THAT PROHIBITION HAS BEEN ENTERED AS PART OF THIS JUDGMENT OR ANY OTHER COURT ORDER.**

It is further ordered that the clerk deliver a certified copy of this judgment and commitment to the sheriff of the above named county or his authorized representative and that the copy serve as the commitment of the defendant. Reasons for imposing consecutive sentences are contained in the court record or in attachments hereto.

All pending motions, other than motions relating to payment of fees and bail are hereby declared moot (except \_\_\_\_\_.)

A TRUE COPY, ATTEST: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
Justice / Judge

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITMENT.

I hereby acknowledge that the disclosure of my Social Security number on the Social Security Disclosure Form is mandatory under 36 M.R.S. § 5276-A. My Social Security number will be used to facilitate the collection of any fine that has been imposed upon me in this action if that fine remains unpaid as of the time I am due a State of Maine income tax refund. My Social Security number also may be used to facilitate the collection of money I may owe the State of Maine as a result of having had an attorney appointed to represent me. Collection of any fine or reimbursement of money, which I owe to the State of Maine, will be accomplished by offsetting money I owe to the State against my State of Maine income tax refund.

SS Number Disclosure Required on Separate form

Date: \_\_\_\_\_

Defendant: \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

CR-121, Rev. 10/15

**STATE OF MAINE  
UNIFIED CRIMINAL DOCKET**

**JUDGMENT AND COMMITMENT**

Docket No.                      County/location                      Date                      DOB  
KNOCD-CR-2016-00474                      KNOX                      03/23/2018                      05/09/1962

State of Maine  
v.  
RANDALL J WEDDLE

Residence:  
3540 BLUE SPRINGS PARKWAY  
GREENEVILLE TN

**Offense charged:**

Charged by: CRIMINAL COMPLAINT  
Supplemental Filing  
Charge: 7                      INDICTMENT

DRIVING TO ENDANGER

Class: E                      DOV: 03/18/2016                      OBTN: 174150B007  
Seq #: 1232 Title: 29-A / 2413 / 1  
Plea: NOT GUILTY

**Offense convicted:**

DRIVING TO ENDANGER

Charge: 7  
PLEA: NOT GUILTY  
FNDG: GUILTY  
VRDT: GUILTY

Class: E                      DOV: 03/18/2016                      OBTN: 174150B007  
Seq #: 1232 Title: 29-A / 2413 / 1

It is adjudged that the defendant is guilty of the offenses as shown above and convicted.

It is adjudged that the defendant be hereby committed to the sheriff of the within named county or his authorized representative who shall without needless delay remove the defendant to:

The custody of DEPARTMENT OF CORRECTIONS, to be punished by imprisonment for a term of 6 month(s).

This sentence to be served concurrently with	KNOCD CR201600474	Charge:1
This sentence to be served concurrently with	KNOCD CR201600474	Charge:2
This sentence to be served concurrently with	KNOCD CR201600474	Charge:3
This sentence to be served concurrently with	KNOCD CR201600474	Charge:4
This sentence to be served concurrently with	KNOCD CR201600474	Charge:5
This sentence to be served concurrently with	KNOCD CR201600474	Charge:6
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This sentence to be served concurrently with	KNOCD CR201600474	Charge:11
This sentence to be served concurrently with	KNOCD CR201600474	Charge:12
This sentence to be served concurrently with	KNOCD CR201600474	Charge:13
This sentence to be served concurrently with	KNOCD CR201600474	Charge:14
This sentence to be served concurrently with	KNOCD CR201600474	Charge:15

**Notice to Defendant: Your sentence does not include any assurance about the location of the facility where you will be housed during your commitment.**

The defendant shall serve the intial portion of the foregoing sentence at a DEPARTMENT OF CORRECTIONS in KNOX

It is ordered that the defendant forfeit and pay the sum of \$ 575.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

\$ 20 VICTIMS COMPENSATION FUND

It is ordered that \$ 575.00 of fine is non-cumulative.

**TOTAL DUE: \$ 20.00 SS Number Disclosure Required on Separate form**  
Execution/payment stayed to pay in full by 03/23/2043 or warrant to issue.

It is ordered pursuant to applicable statutes, that the defendant's motor vehicle operator's license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license and/or the defendant's right to register a motor vehicle is suspended for a period of 30 DAY(S) in accordance with notice of suspension incorporated herein.

The defendant's right to register a motor vehicle is suspended.

That the defendant is prohibited from owning, possessing, or having under the defendant's control a firearm. (15 M.R.S. § 393 (1-A) (1) and (1-B))

If the defendant has been convicted of an applicable offense listed in 25 M.R.S. § 1574, then the defendant shall submit to having a DNA sample drawn at any time following the commencement of any term of imprisonment or at any time following commencement of the probation period as directed by the probation officer.

**WARNING: IT IS A VIOLATION OF STATE LAW, AND MAY BE A VIOLATION OF FEDERAL LAW, FOR THE DEFENDANT TO OWN, POSSESS OR HAVE UNDER THEIR CONTROL A FIREARM IF THAT PROHIBITION HAS BEEN ENTERED AS PART OF THIS JUDGMENT OR ANY OTHER COURT ORDER.**

It is further ordered that the clerk deliver a certified copy of this judgment and commitment to the sheriff of the above named county or his authorized representative and that the copy serve as the commitment of the defendant. Reasons for imposing consecutive sentences are contained in the court record or in attachments hereto.

All pending motions, other than motions relating to payment of fees and bail are hereby declared moot (except \_\_\_\_\_.)

A TRUE COPY, ATTEST: \_\_\_\_\_  
Clerk Justice / Judge

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITMENT.

I hereby acknowledge that the disclosure of my Social Security number on the Social Security Disclosure Form is mandatory under 36 M.R.S. § 5276-A. My Social Security number will be used to facilitate the collection of any fine that has been imposed upon me in this action if that fine remains unpaid as of the time I am due a State of Maine income tax refund. My Social Security number also may be used to facilitate the collection of money I may owe the State of Maine as a result of having had an attorney appointed to represent me. Collection of any fine or reimbursement of money, which I owe to the State of Maine, will be accomplished by offsetting money I owe to the State against my State of Maine income tax refund.

SS Number Disclosure Required on Separate form

Date: \_\_\_\_\_

Defendant \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

CR-121, Rev. 10/15

STATE OF MAINE  
KNOX, SS.

UNIFIED CRIMINAL COURT  
ROCKLAND  
DOCKET NO. CR-2016-474

STATE OF MAINE

V.

**ORDERS ON MOTIONS TO SUPPRESS**

RANDALL J. WEDDLE

**INTRODUCTION**

Before the court for resolution are the following motions:<sup>1</sup> (1) Defendant's Motion To Suppress (Statements) dated May 17, 2017; (2) Defendant's Motion To Suppress (Vehicle Search) dated May 17, 2017; (3) Defendant's Motion To Dismiss and Suppress (Medical Records) dated May 17, 2017; (4) Defendant's Motion To Suppress (Warrantless Blood Test) dated May 16, 2017.

The court held an evidentiary hearing on July 24 and 25, 2017, and heard testimony from the following witnesses: Jeffrey DeGroot (Maine State Police); Reginald Walker (Deputy - Knox County Sheriff's Office); Dr. George Maresh, M.D. (Central Maine Medical Center); Heather Dyer (Chemist, DHHS); Brian Wright, Sr. (Advanced EMT/EMS Captain, Union, Me.); Nicholas Ciasullo (EMT and Fire Captain, Union, Me.); Matthew Elwell (Sgt.-KCSO); Paul Spear (Deputy - KCSO); Daniel Russell (MSP - Commercial Vehicle Unit).

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<sup>1</sup>The Defendant's Motion to Dismiss and/or Consolidate Counts 10 and 11 of the Indictment dated August 5, 2016 was orally denied by the court on July 25, 2017 for the reasons stated on the record. The Defendant's Motion to Suppress (Search Warrants) dated May 10, 2017, premised on a claim that the warrants failed to demonstrate probable cause was withdrawn by Defense Counsel in open court on July 25, 2017. The Defendant's Motion for Change of Venue dated August 5, 2016 is deferred until jury selection. Finally, Defendant's Motion in Limine (Exclusion of Hospital Blood Test) is deferred until trial.

Offered and admitted into evidence were: State's Exhibits 1, 2 & 3, being the audio and video recordings of interviews of the Defendant at CMMC on March 18, 2016 by Trooper DeGroot and Deputy Walker; State's Exhibit 4, being an overhead depiction of that portion of Route 17 in Washington where the accident occurred; State's Exhibits 5-8, being photographs of the accident scene; and State's Exhibits 9-12, being photographs of the tractor truck allegedly being operated by the Defendant, taken at the time of the so-called vehicle autopsy on March 29, 2016. Also admitted into evidence was Defendant's Exhibit 1, the authorization to release medical information signed by the Defendant on March 18, 2016 while he was being treated for injuries at CMMC.

The court heard arguments by counsel on July 25, 2017 on all of the issues raised by the motions, with the exception of the Motion To Suppress (Warrantless Blood Test). With respect to that issue, the parties submitted written memoranda, the last of which being received by the court on August 25, 2017.

Based upon the testimony and exhibits received at the hearing,<sup>2</sup> and after consideration of the parties' written post-hearing arguments, the court makes the following factual findings.

#### **FINDINGS OF FACT**

At approximately 4:45 pm on Friday March 18, 2016 law enforcement officers, as well as fire and rescue personnel, responded to a major motor vehicle accident scene on Route 17, near the intersection Fitch Road, in Washington, Maine. A total of 5 motor vehicles were involved in this crash scene. All five vehicles were located in the field that is adjacent to Route 17. As the first responders arrived at the scene, they found one vehicle engulfed in flames. The

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<sup>2</sup>The court has also reviewed the various search warrants that were issued in connection with this case. There were a total of 5 search warrants issued in connection with this investigation.

occupant of that vehicle (a female) was still inside and assumed to be dead. Another vehicle with an occupant inside was severely damaged in the crash and rescue personnel were attending to the driver (a male) who also appeared to be deceased. Two other vehicles had avoided a crash by driving into the field. The first responders also discovered a tractor truck and trailer upside down in a ditch along the side of Route 17, its large load of cut lumber strewn across the road and into the ditch. The tractor trailer was facing west towards Augusta.

The accident scene was chaotic, confusing, intense and large in scope, involving five vehicles, numerous occupants potentially in need of medical care, and the closing of Route 17 that required the management and redirection of a significant flow of traffic traveling east and west at rush hour. Moreover, it was quickly determined that the operator of the tractor trailer was pinned inside the cab and needed to be extricated.

The response to the crash included deputies with the Knox County Sheriff's Office, troopers with the Maine State Police, including from the Commercial Vehicle Unit, as well as fire and rescue personnel from the local municipalities of Union and Washington. Twelve to fifteen law enforcement officers were at the scene at one point in time, in addition to the fire and rescue personnel. Three or four ambulances arrived as did two life flight helicopters. Verbal contact was made with the Defendant, trapped in the cab of the tractor truck. He acknowledged that he was the driver, that he had some injuries, that he was tired and in pain, but was otherwise "okay." He stated that while he was negotiating a curve on Route 17 he tried to avoid a vehicle traveling in the opposite direction, and lost control of the tractor trailer as the load of lumber shifted.

EMTs and other rescue personnel "triaged" those people at the scene who needed attention. Law enforcement officers were starting the process of organizing the investigation of this event, including identifying the deceased

victims, notifying their next of kin, securing the scene, collecting and documenting evidence, interviewing witnesses and arranging for an accident reconstructionist to conduct an analysis of the accident scene. Efforts were begun to extricate the Defendant from the upside-down tractor truck, while other officers were managing the heavy traffic traveling Route 17 – the major road between Augusta and Rockland.

It took slightly more than an hour to extricate the Defendant. He was immediately placed on a “back board” and driven by ambulance to the waiting life flight copter. After the Defendant was removed from the cab of the truck, one EMT (Nicholas Ciasullo) spoke to him and believed he detected the odor of alcohol coming from him. Sgt. Matthew Elwell of the Knox County Sheriff’s Office also thought he smelled alcohol but was not sure it was coming from the Defendant. Shortly after he arrived at the accident scene on Route 17, and realized what he was dealing with, Elwell had decided that it was necessary to preserve any evidence by taking a blood sample from the Defendant, since a preliminary assessment of the accident scene suggested that he was involved in, if not responsible for, the crash.

Elwell testified that it did not occur to him to contact a justice of the peace or other judicial officer to apply for a search warrant. The testimony at the hearing also established that the Defendant was never asked for, and never gave, consent for the taking of a sample of his blood. Indeed, Elwell testified that he did not think that the Defendant was in any condition to talk. Deputy Elwell testified that he knew that the Defendant was about to be transported by helicopter to a hospital in Lewiston and he believed it was important to obtain a blood sample from him before medical intervention, including the introduction of fluids, took place. Elwell also testified that he did not think, at that time, there was probable cause to believe that the Defendant had been under the influence while operating the tractor

trailer when the accident occurred. Rather, he was relying upon state law in ordering the taking of a blood sample from the Defendant.

Deputy Paul Spear was requested to obtain a blood kit, which he retrieved from his cruiser. Spear asked Advanced EMT Brian Wright if he would perform a blood draw from the Defendant, and he agreed.<sup>3</sup> Spear testified that it did not occur to him to obtain a warrant for the Defendant's blood and that he was relying upon existing state law for the blood draw. He also testified that he did not think at that time that there was probable cause to believe that the Defendant was under the influence at the time of the accident. Both Sgt. Elwell and Deputy Spear were unaware of the availability of a procedure to apply for a search warrant "outside the presence" of the court or justice of the peace, through "reliable electronic means" and by telephone in accordance with M.R.U.Crim.P. 41C.

Deputy Spear testified that the Commercial Vehicle Unit of the State Police found a red duffel bag in the cab of the tractor truck. One of the pockets of the duffel bag was open and a purple Crown Royal bag with prescription bottles inside could be seen.

Minutes before the Defendant was loaded into the helicopter, EMT Brian Wright performed a blood draw and took a sample of the Defendant's blood. He sealed the kit and gave it to Deputy Spear who gave it to Sgt. Elwell.<sup>4</sup> At some later time (March 21, 2016) Spear took the Defendant's blood sample to the DHHS Health and Environmental Testing Laboratory in Augusta. Promptly after his blood sample was taken, the Defendant was transported to CMMC in Lewiston.

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<sup>3</sup> EMT Wright was under the mistaken impression that the Defendant had given consent to the blood draw.

<sup>4</sup> There was some confusion as to the actual chain of custody of the blood kit. Deputy Spear's report indicates that he gave it to Deputy Walker, but during his testimony he corrected that, stating that the kit went from him to Elwell to Walker.

Later that night of March 18, 2017, at approximately 9:00 pm, off-duty trooper Jeffrey DeGroot of the Commercial Vehicle Unit arrived at CMMC and located the Defendant in the emergency room. DeGroot had been asked by his supervisor to make contact with the Defendant and interview him at the hospital.

DeGroot located the Defendant in room 41 in the ER, introduced himself and asked if the Defendant minded if he talked with him. The Defendant replied: "No sir." The interview between DeGroot and the Defendant was audio-recorded and was admitted into evidence as State's Exhibit 1. Trooper DeGroot was dressed in a blue "utility" uniform. He had a sidearm that was concealed. He explained to the Defendant that he knew very little about the accident because he had not been to the scene, and he asked the Defendant to tell him what he remembered.

The Defendant was lying in bed in obvious discomfort. He appeared tired and in some degree of pain. He groaned during the interview and complained mostly about pain in his eyes, one of which was apparently scratched as a result of the accident. Trooper DeGroot did not inform the Defendant of any *Miranda* warnings, and never told him that he was under arrest. The interview lasted just less than an hour. The Defendant could not remember the accident itself, but he did recall an on-coming vehicle that appeared to be over the centerline on the curve. When the Defendant pulled the steering wheel to the right to avoid the on-coming vehicle, the load of lumber he was carrying shifted and he lost control.

The Defendant discussed his route of travel from Boston carrying a load of plastic fencing, then to Robbins Lumber (Searsmont) where he picked up the lumber, and then headed west on Route 17. He told DeGroot that he had been sick with the "flu" for a couple of days and had taken some over-the-counter medications for that, such as Advil and Nyquil. He discussed his medical history and the medications he was taking. He said that the last time he has consumed alcohol (liquor, i.e., Canadian Mist) was on the previous Saturday. The tone and

tenor of the interview was non-confrontational and conversational. The Defendant was cooperative and, although tired, he made appropriate responses to DeGroot's questions.

Towards the end of the interview DeGroot stepped out of the room and, unbeknownst to him, a Knox County Deputy Sheriff (Reginald Walker) came into the room and introduced himself to the Defendant. Deputy Walker video-recorded most of the interview until the memory in his cell phone was exhausted, but the remainder of the interview as audio-recorded. See State's Exhibits 2 & 3. Deputy Walker had been to the accident scene and then went to the hospital, arriving at approximately 10:00 pm. He was not in uniform, but he carried a sidearm and a clip-on badge.

When Walker entered the room, the Defendant was lying on his side in the hospital bed and it appeared to Walker that he may have been resting or sleeping. Walker explained (twice) that the Defendant was not under arrest, that he had not been charged with anything and that he did not have to talk with him. The Defendant indicated that he understood. Walker did not administer any *Miranda* warnings.

The interview with Deputy Walker also lasted under an hour. On the video, the Defendant appears fatigued and somewhat sluggish. His left hand is bandaged and bloodied. Nevertheless, he appears coherent and lucid and responds to questions in an appropriate manner. Deputy Walker explained to the Defendant that a blood sample had been taken from him because there had been a death as a result of the accident. He also asked the Defendant if he would be willing to sign a release authorizing Walker to obtain his medicals records, including reports relating to his blood alcohol. The Defendant replied: "I guess. You're going to get them anyway," or words to that effect. Walker responded that it shows that the Defendant is cooperating. With some difficulty due to the medical apparatus

attached to his finger, the Defendant signed the release form, after using the officer's reading glasses to look at it.

The Defendant gave Walker an explanation that was essentially the same as what he had told Trooper DeGroot. When asked if he was going a little fast prior to the accident, he responded: "I'd say 45 mph for my speed."

During the course of this interview, DeGroot came back into the room. Each officer was unaware of the other's presence at the hospital until that moment. Once again, the tone and tenor of the interview with Deputy Walker was non-confrontational, non-aggressive, low-key and cooperative. Although tired and in some pain, particularly in his eyes, the Defendant was lucid, appropriately responsive and aware of his surroundings.

Both officers, DeGroot and Walker, acknowledged that they did not consult with any medical personnel at the hospital to determine whether the Defendant was capable of being interviewed. Dr. Maresh, the emergency room doctor who treated the Defendant, testified that the Defendant's Glasgow Coma Scale was 15, the highest possible, and that the Defendant did not exhibit any signs of impairment to his cognitive functioning. He acknowledged that a person can have a 15 on the Glasgow Coma Scale and still be suffering from a concussion. The medical records also indicated that the Defendant had been administered 100 mg of the narcotic, Fentanyl.

On March 24, 2016 Deputy Spear applied for two search warrants. One was directed at the Central Maine Medical Center and sought the Defendant's medical records during his stay there on March 18-19, 2016, "to include the results of blood and/or urine tests, the name of the person who drew the blood, and its chain of custody." The second warrant was for the truck tractor and flatbed trailer and sought authority to conduct an examination (vehicle autopsy) of the vehicle

including any electronic information stored therein. Both warrants were reviewed and issued by a District Court Judge on March 24, 2016.<sup>5</sup>

The vehicle autopsy on the tractor truck and trailer was scheduled to be conducted on March 29, 2016 at a facility (All Directions Towing) that was large enough to allow for such an examination. Prior to that date, however, but presumably after the issuance of the warrant, a specialist was retained to download the “electronic control module” (ECM). The vehicle autopsy itself was performed by Trooper Daniel Russell of the Commercial Vehicle Unit. Trooper Russell testified that in order to conduct a thorough autopsy on the vehicle, including its mechanical and electrical systems, it was necessary to access the so-called “Deutch” port inside the cab of the truck where the operator’s controls are located.

As shown in State’s Exhibits 9 & 10, however, access to the cab was problematic since the cab had been crushed in the accident and the door could not be opened. The driver’s side door was partially peeled back due to the crash and through that opening Deputy Spear could see a purple Crown Royal bag on the floor. (State’s Exhibit 12). The driver’s side door was pried open with a wrecker and Trooper Russell entered the cab. Near the clutch and brake pedals he saw a purple bag with gold cord trim containing a bottle and a Crown Royal glass. Trooper Russell was immediately aware that commercial drivers are prohibited from transporting any alcohol inside the cab of the vehicle.

Russell called Deputy Spear over and the latter took possession of the purple bag which contained a shot glass and a bottle of Crown Royal that was 3/4<sup>th</sup> full. Later in the day on March 29, 2016 Deputy Spear applied for another search

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<sup>5</sup> Deputy Spear testified that his initial request for a warrant to search the vehicle was not approved by the District Court Judge to whom it was presented, and the judge requested further details to be included in the affidavit. After adding additional details to the affidavit, Deputy Spear presented it to a different District Court Judge because the original judge was not available. Spear informed the issuing Judge that a different judge had declined to approve the warrant as originally drafted.

warrant for the truck tractor and/or its cab for any documents or “evidence of drug and/or alcohol use and/or impairment, and to include search of any personal bags and/or belongings found therein for the same.” The affidavit was reviewed and a warrant was issued by a District Court Judge. No evidence was presented at the hearing as to what items, if any, were seized and searched pursuant to this warrant.<sup>6</sup>

In the meantime, acting pursuant to the other search warrant issued on March 24, 2016, Deputy Spear obtained the sample of the Defendant’s blood taken at Central Maine Medical Center while he was hospitalized there, and brought it to the testing laboratory in Augusta. He would later learn that the results of the testing on that blood sample showed a BAC of .07. Subsequently, Deputy Spear drafted an affidavit for a warrant for the Defendant’s arrest.<sup>7</sup>

## DISCUSSION

### A. Motion to Suppress (Statements)

The Defendant has moved to suppress the statements he made to Trooper DeGroot and Deputy Walker on March 18, 2016 while hospitalized at the Central Maine Medical Center. The Defendant contends that the statements were obtained in violation of *Miranda v. Arizona* and were involuntary.

“In order for statements made prior to a *Miranda* warning to be admissible, the State must prove by a preponderance of the evidence, that the statements were made while the person was not in custody, or was not subject to interrogation.”

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<sup>6</sup> The last two warrants issued on April 4 and 6, 2016 respectively were to search the Defendant’s cellphone and to obtain text messages and call history from the Defendant’s cellphone provider. These search warrants are not the subject of any motion to suppress.

<sup>7</sup> The Defendant was originally charged by complaint dated April 29, 2016 with two counts of Manslaughter and two counts of Aggravated Criminal OUI. In an Indictment dated June 8, 2016 he was charged with two counts of Manslaughter, three counts of Aggravated Criminal OUI, two counts of Driving to Endanger and eight counts of Rule Violations.

*State v. Bragg*, 2012 ME. 102, ¶ 8, 48 A.3d 769 quoting *State v. Bridges*, 2003 ME. 103, ¶ 23, 829 A.2d 247. See also *State v. Poblete*, 2010 ME. 37, ¶ 21, 993 A.2d 1104.

The Law Court has stated that the "ultimate inquiry" regarding whether someone is in custody for *Miranda* purposes "is whether a reasonable person in the shoes of [Weddle] would have felt he or she was not at liberty to terminate the interrogation and leave or if there was a restraint on freedom of movement of the degree associated with a formal arrest." *State v. Prescott*, 2012 ME. 96, ¶ 10, 48 A.3d 218 quoting *State v. Poblete*, 2010 ME. 37, ¶ 22, 993 A.3d 1104.

The test is "purely objective" and a variety of factors must be considered in their "totality, not in isolation." *State v. Prescott*, 2012 ME. 96, ¶ 11; *State v. Dion*, 2007 ME. 87, ¶ 23, 928 A.2d 746. The Law Court has consistently identified the following, non-exhaustive list of factors that are to be considered on the custody issue:

- (1) the locale where the defendant made the statements;
- (2) the party who initiated the contact;
- (3) the existence or non-existence of probable cause to arrest (to the extent communicated to the defendant);
- (4) subjective views, beliefs or intent that the police manifested to the defendant, to the extent they would affect how a reasonable person in the defendant's position would perceive his or her freedom to leave;
- (5) subjective views or beliefs that the defendant manifested to the police, to the extent the officer's response would affect how a reasonable person in the defendant's position would perceive his or her freedom to leave;
- (6) the focus of the investigation (as a reasonable person in the defendant's position would perceive it);
- (7) whether the suspect was questioned in familiar surroundings;

- (8) the number of law enforcement officers present;
- (9) the degree of physical restraint placed upon the suspect; and
- (10) the duration and character of the interrogation.

These factors must be considered “in their totality, not in isolation.” *State v. Jones*, 2012 ME 126, ¶ 22, 55 A.3d 432.

Applying these factors to the circumstances of the interviews of the Defendant on March 18, 2016, the court concludes that he was not in custody for purposes of *Miranda*.

The fact that the Defendant was in the emergency room of a hospital, that he was in some degree of pain, and that he was tired and fatigued from the ordeal he had been through, does not mean that he was in custody. *See State v. Lowe*, 2013 ME 92, ¶ 17, 81 A.3d 360.

The fact that the police initiated the contact may weigh slightly in favor of custody, but not very much as the Defendant clearly must have anticipated that law enforcement would want to discuss with him the circumstances concerning an accident of such magnitude.

The Defendant was told by Deputy Walker that he was not charged with anything and that he was not under arrest and that did not have to talk. Similarly, Trooper DeGroot asked him if minded talking with him. The Defendant was cooperative and expressed a willingness to speak with both of the officers.

The officers placed no physical restraint on the Defendant.

Most importantly, the duration and character of the interviews weighs very heavily against a finding of custody. The interviews were relatively short, each lasting less than an hour. The officers were non-confrontational, non-aggressive, non-accusatory and conversational with the Defendant. They were professional, courteous, respectful and friendly.

Viewing the factors in total, the Defendant was not subjected to custodial interrogation within the meaning of *Miranda v. Arizona*.

The State has the burden of proving beyond a reasonable doubt that a confession or admission was given voluntarily. See *State v. Kittredge*, 2014 ME. 90, ¶ 24. “A confession is voluntary if it results from the free choice of a rational mind, if it not a product of coercive police conduct, and if under all of the circumstances its admission would be fundamentally fair.” *State v. Mikulewicz*, 462 A. 2d 497, 501.

“A statement may be voluntarily made even if the defendant was injured, medicated, or in distress.” *Lowe*, 2013 ME. 92, ¶ 22. For the reasons already given, the court finds that the Defendant’s statements to the officers on March 18, 2016 while at CMMC were voluntarily given. The Defendant spoke willingly to the officers and his decision to speak was a result of the exercise of “his own free will and rational intellect.” *State v. Caouette*, 446 A.2d 1120, 1123 (Me. 1982). Moreover, the officers did not engage in any coercive conduct. Finally, admission of the Defendant’s statements to the officers would be fundamentally fair.

The Motion to Suppress (Statements) is DENIED.

B. Motion to Suppress (Vehicle Search)

The Defendant’s motion to suppress the search of the truck appears to be directed at the seizure of the purple Crown Royal bag from inside the cab, which revealed a bottle of liquor that was approximately 3/4<sup>th</sup> full.

The warrant issued on March 24, 2016 authorized the search and examination of the truck tractor and the flatbed trailer “to gather any and all evidence about the current condition of the vehicle . . . .” Virtually all parts and areas of the vehicle were to be inspected. “Once a search is justified by a warrant or some exception to the warrant requirement, pursuant to the ‘plain view’ doctrine, officers may seize objects that come into their plain view during the

course of a lawful search and whose ‘incriminating character’ is ‘immediately apparent,’ and evidence resulting from that seizure will not be subject to the exclusionary rule.” *State v. McNaughton*, 2017 ME 173, ¶ 42, \_\_\_ A.3d \_\_\_\_.

Pursuant to the warrant authorizing a complete examination (vehicle autopsy) of the truck, Deputy Spear was permitted to look inside the cab, where he saw the purple Crown Royal bag. Trooper Russell was permitted to go inside the cab and see the bag containing the bottle of Crown Royal and the shot glass. The incriminating character of the bottle of liquor inside the cab of the commercial vehicle was readily and immediately apparent to Trooper Russell and the seizure of the bag and bottle are not subject to suppression under the exclusionary rule.

The Motion to Suppress (Vehicle Search) is DENIED.

C. Motion to Dismiss and Suppress (Medical Records)

The Defendant has moved to dismiss the Indictment against him on the ground that the State, by way of a search warrant, was allowed to obtain his medical records in the possession of Central Maine Medical Center pertaining to his treatment there on March 18-19, 2016, including his blood sample. Alternatively, the Defendant seeks suppression of any use of the medical records at trial.<sup>8</sup>

The thrust of the Defendant’s motion is that the State utilized the procedure governing the application for and issuance of a search warrant (15 M.R.S. §55 and Rule 41), when it should have employed “the more protective subpoena procedure” of M.R.U.Crim.P. 17(d) and/or 17A(f). *See State v. Black*, 2014 ME 55, ¶ 5, 90

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\*The Defendant has filed a separate Motion In Limine to exclude the results of the testing of his hospital blood sample on the ground that the circumstances under which it was taken and its chain of custody are not sufficiently reliable to allow admission of the test results into evidence. The Motion In Limine is not before the court for resolution at this time.

A.3d 448.<sup>9</sup> In essence, the Defendant urges the court to sanction the State by dismissing the Indictment for what he has described as its “clear misconduct.” *Defendant’s Motion to Suppress* at 2. The Defendant contends that since his medical records are confidential and privileged (M.R.Evid. 503), the specific procedures in Rules 17(d) and/or 17A(f) pertinent to such material were mandatory. Utilization of those Rules, the Defendant maintains, would have allowed the court to make a preliminary determination of relevancy, admissibility and specificity and thereafter the court could have conducted an *in camera* review of the material before the State came into possession of it.

The court is not persuaded that the State did anything improper or illegal in seeking a search warrant under these circumstances. First, at the time the State applied for the warrant, it was investigating an accident involving two fatalities where the evidence suggested that the Defendant’s vehicle had travelled across the oncoming lane of travel and may have been exceeding the speed limit while carrying a load of lumber. The Defendant had told officers that he had not been feeling well prior to the accident and had taken prescription medications that apparently included an opioid pain reliever. (See ¶¶ 13 & 14 of the Search Warrant). His passenger inside the cab with him told a nurse that the Defendant may have fallen asleep. Given all the circumstances, including that the road and weather conditions were good at the time of the crash, there was probable cause to believe that the Defendant’s medical records immediately following the accident, including his blood sample, would provide evidence as to whether the Defendant had any substances in his system at the time of the crash. The court cannot fault the State for pursuing an investigative method that is sanctioned by state law.

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<sup>9</sup> This issue was presented to the Law Court in *Black*, 2014 ME 55, 90 A.3d 448, but was not resolved because the appeal to the Court was interlocutory. Following the defendant’s conviction and appeal, however, he did not raise the issue again on direct appeal. *State v. Black*, 2016 ME 9, ¶ 9, n. 4, 131 A.3d 371.

Second, no charges had been brought against the Defendant at the time the warrant was sought. Thus, it is questionable as to whether the State could have invoked the provisions of Rules 17(d) and/or 17A(f), both of which refer to a "party or its attorney."

Third, as the affidavit in support of the warrant request made clear, the primary object of the warrant was to obtain the hospital blood/urine samples taken from the Defendant, since the Defendant had already signed a release of his medical records on March 18, 2016 when asked to do so by Deputy Walker. Thus, the claim that the State was able to circumvent the protections for privileged material is undercut by the Defendant's agreement that law enforcement could have access to his medical information. The Defendant's assertion that he did not waive the confidentiality of the medical records is belied by his agreement to sign the release form. Indeed, the Defendant himself assumed out loud that law enforcement would get his medical information anyway.

The Motion to Dismiss and Suppress (Medical Records) is DENIED.

D. Motion to Suppress Evidence (Warrantless Blood Test)

The major point of contention between the parties is whether the taking of the Defendant's blood, without a warrant and without his consent, minutes before he was placed on the life-flight helicopter, must be suppressed. Sgt. Elwell and Deputy Spear both acknowledged that they did not consider seeking a warrant to take a blood sample from the Defendant on March 18, 2016. Rather, they both made reference to the existing state law that required the taking of a blood sample in any accident involving a fatality. The officers, no doubt, had 29-A M.R.S. §2522 in mind. Section 1 provides:

If there is probable cause to believe that death has occurred or will occur as a result of an accident, an operator of a motor vehicle involved in the motor vehicle accident shall submit to a chemical test, as defined in section 2401, subsection 3, to determine an alcohol level

or the presence of a drug or drug metabolite in the same manner as for OUI.

The statute directs that “[t]he investigating law enforcement officer shall cause a blood test to be administered to the operator of the motor vehicle as soon as practicable following the accident . . . .”<sup>10</sup> 29-A M.R.S. §2522(2). Regarding the admissibility of any test results, subsection 3 specifies:

The result of a test is admissible at trial if the court, after reviewing all the evidence, whether gathered prior to, during or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicants at the time of the accident.

29-A M.R.S. §2522(3).

Thus, unlike a “routine” OUI stop or investigation, section 2522 does not require that there be probable cause to believe an operator of a motor vehicle involved in a fatal or likely fatal accident was under the influence of intoxicants in order for the operator to submit to a chemical test. On the contrary, section 2522 mandates the administration of a blood test to the operator “[i]f there is probable cause to believe that death has occurred or will occur,” as a result of the accident. The requirement that there be probable cause to believe the operator “was under the influence of intoxicants at the time of the accident,” must be shown by evidence, independent of the test, but only at the time of trial as a precondition to admissibility.

In short, in enacting a law requiring a blood test (or other chemical test) in fatal and likely fatal motor vehicle accidents, “the Legislature did not intend to treat an operator involved in a motor vehicle fatality in the same fashion as an

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<sup>10</sup> The officer is also authorized to cause a breath test or other chemical test to be administered if the officer determines it to be “appropriate.” The operator is required to “submit to and complete all tests administered.” 29-A M.R.S. §2522(2).

operator involved in a routine OUI stop.” *State v. Bento*, 600 A.2d 1094, 1096 (Me. 1992) (interpreting but declining to address the constitutionality of 29 M.R.S. §1312, the predecessor statute to 29-A M.R.S. §2522).

In *State v. Roche*, 681 A.2d 472 (Me. 1996) the Law Court directly considered the constitutionality of 29 M.R.S. §1312. The law was challenged on the basis that “it mandates testing without probable cause to believe the vehicle operator has been driving while impaired.”<sup>11</sup> *Id.* Relying on *Skinner v. Railway Labor Executives Ass’n*, 489 U.S. 602 (1989), which upheld regulations requiring blood tests of railroad employees after certain major train accidents under a “special needs” exception to the probable cause requirement, the Law Court held that

. . . the statute [29 M.R.S. §1312] contemplates that probable cause is implicated only when admission of the test result is sought *at the trial*. The justification for the search is linked to the gravity of the accident as well as the evanescent nature of evidence of intoxication and the deterrent effect on drunk driving of immediate investigations of fatal accidents. The State, in effect, conditions the privilege of driving on every driver’s willingness to submit to a test, if, and only if, he or she is involved in a fatal or near fatal car accident. In all other OUI scenarios the State may proceed to search an individual only on the basis of probable cause. We believe *Skinner* confirms the permissibility of such a scheme.

681 A.2d at 474 (emphasis in original).

In the Law Court’s view, *Skinner* sanctioned the Legislature’s purpose of addressing the grave danger of vehicular fatalities by regulating the act of driving by requiring that any operators of motor vehicles involved in a fatal or near fatal accident submit to a blood test. In other words, “[d]riving is an activity that is

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<sup>11</sup> In *Roche* the defendant conceded that “exigent circumstances exist in virtually every blood-alcohol testing situation . . . .” 681 A.2d at 473. Recent United States Supreme Court precedent would seem to undermine the correctness of that concession. See *Missouri v. McNeely*, 569 U.S. 141, 133 S.Ct. 1551 (2013), which will be discussed *infra*.

increasingly subject to regulation, and one involved in a fatal accident would ordinarily expect to be subjected to an investigation.” *Id.*

Then in 2007 the Law Court in *State v. Cormier*, 2007 ME 112, 928 A.2d 753 was called upon to decide the constitutional validity of 29-A M.R.S. §2522, the statute we are dealing with in this case. Like this case, *Cormier* involved a double fatality. Also like this case, law enforcement did not have probable cause to believe that the defendant was under the influence at the time of the fatal accident.<sup>12</sup> Nevertheless, acting in accordance with 29-A M.R.S. §2522(1), a detective arranged to have blood drawn from the defendant at the hospital. Like this case as well, the defendant’s consent was not obtained. The superior court granted the defendant’s motion to suppress and the State appealed. The Law Court, with two justices dissenting (Levy and Calkins, JJ.) reversed.

As an initial matter, the Court recognized the unique nature of Maine’s statute. First, it pointed out that mandatory testing in fatal and likely fatal accidents is required “without regard to the possibility that the driver may be prosecuted.” 2007 ME 112, ¶ 8. Second, the Court noted that the statute allows a determination of probable cause, independent of the test, “gathered *after* the test had been taken.” *Id.* at ¶ 10.

The Court began its analysis of the constitutionality of section 2522 by restating the general principle that the Fourth Amendment protects “against unreasonable searches and seizures.” *Id.* at ¶ 14. It also observed that the absence of a warrant or consent does not necessarily “dispose of the question of the

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<sup>12</sup> At the testimonial hearing in this case, two witnesses (Nicholas Ciasullo and Sgt. Elwell) testified that they thought they detected the odor of alcohol coming from the Defendant after he was removed from the cab of the truck tractor. This testimony, however, was quite equivocal and both witnesses were careful to point out that, due to the confusion at the scene, they were not certain the odor was actually coming from the Defendant. The officers involved in this case testified that they did not think they had probable cause to believe the Defendant was under the influence at the time of the crash.

reasonableness of a search,” since there are several well-known exceptions to the warrant requirement. *Id.* at ¶ 15.

The Law Court majority viewed the type of search authorized by section 2522 as a “narrow and distinct” blending of the “inevitable discovery” and “exigent circumstances” exceptions. The Court described it in the following terms:

Through the enactment of section 2522(3), which allows the probable cause determination required for admissibility to be based on evidence gathered before, during, *or after* the test, the Legislature has recognized that exigent circumstances are present at a fatal collision site and has codified a narrow and distinct application of the inevitable discovery exception that applies in the absence of probable cause established before the administration of the test . . . . The statute codifies this narrow application of the inevitable discovery doctrine by requiring officers to collect drug and blood-alcohol content evidence at the scene, but prohibiting the admission of that evidence absent a factual demonstration that, had the exigencies of the fatal collision scene not existed, probable cause to administer the test would have been determined to exist.

*Id.* at ¶ 19 (italics in original)(citations omitted).

The Law Court emphasized that in enacting the statute in the late 1980’s (first 29 M.R.S. §1312 then 29-A M.R.S. §2522), the Legislature was aware of and took into account “the urgent life-and-death nature of an accident scene.” *Id.* at ¶ 21. In particular, the Court described the “obvious exigencies” that existed at a fatal or near fatal motor vehicle crash site.

When a serious collision, likely to involve a fatality, has just occurred, responding officers are, and should be, occupied with potentially life-saving matters that are more urgent than gathering evidence of intoxication to support the probable cause necessary for a blood test. The officers may also be responsible for assuring that the collision scene does not create greater dangers to other motorists who must travel the same road. The Legislature, in attempting to identify drivers involved in deadly accidents while intoxicated, has also taken into account the chaos inherent at the scene of a fatal, or likely fatal

accident. The statute requires immediate testing, in these narrow circumstances, without the ordinary pause to collect evidence relevant to whether alcohol or drugs might have impaired the driver.

*Id.* at ¶ 20.

Ultimately, the Law Court held that in the narrow and grave situation where a fatal or likely fatal accident has occurred, and with the protections built into the statute that allow for admission of the test in limited circumstances, 29-A M.R.S. §2522 did not offend the Fourth Amendment. Specifically, the Court held that “[s]ection 2522(3) allows the admission of the test results, in the absence of consent, a warrant, or the existence of probable cause in advance of the test, only if: (1) the State presents evidence gathered after the fact demonstrating that, but for the exigencies at the scene of the collision, probable cause for the test would have been discovered; and (2) the test would have been administered based on the probable cause established by this independent lawfully obtained information.” *Cormier*, 2007 ME 112, ¶ 26.

On this basis alone, the Court said, it could have ended its analysis. Nevertheless, the Court went further and considered the “special needs” exception. That exception focuses on balancing the privacy interests involved against the governmental interests at stake “to assess the practicality of the warrant and probable cause requirements.” 2007 ME 112, ¶ 29. In engaging in this analysis, the Court considered *Skinner v. Railway Labor Executives Ass’n*, 489 U.S. 602 (1989) and *Ferguson v. City of Charleston*, 532 U.S. 67 (2001).

The Law Court concluded that Maine’s statute was enacted not for the “sole” or “primary” purpose of law enforcement, “but rather a joint concern with that of gathering information for policy development.” 2007 ME 112, ¶ 35. In the Court’s view, section 2522 is more like the regulations upheld in *Skinner* and unlike the hospital policy struck down in *Ferguson* which had, according to the

Law Court, an “immediate objective” of generating “evidence for law enforcement purposes to coerce pregnant women into obtaining substance abuse treatment.” *Id.*

When it came to balancing the privacy interests of drivers involved in fatal accidents against the State’s “compelling need” to obtain information about fatal collisions and intoxicated drivers, the Court concluded that the State’s interest outweighed the privacy interests involved. “The State’s special needs, separate from the general purpose of law enforcement, justify an exception to the warrant requirement in these circumstances.” *Id.* at ¶ 36.

Thus, on March 18, 2016, when the Defendant was involved in a double fatal crash on Route 17 while operating a tractor trailer carrying a load of cut lumber, Maine had in effect a statute that directed the investigating law enforcement officer to “cause a blood test to be administered” to the Defendant “as soon as practicable.” That statute, and its predecessor statute, were challenged as unconstitutional in 2007 and 1996 respectively. On both occasions, the Maine Law Court rejected those constitutional challenges and explicitly held that the statutes did not violate the Fourth Amendment.

Notwithstanding the foregoing, there have been significant changes in Fourth Amendment jurisprudence in the area of warrantless blood tests of motorists, as articulated by the Supreme Court since the Law Court’s decision in *Cormier*. Two cases, one decided in 2013 and the other in 2016, have caused courts and litigants to question previously long-accepted views of what is permissible in the context of OUI related investigations. Those decisions, of course, are *Missouri v. McNeely* 569 U.S. 141, 133 S.Ct. 1552 (2013) and *Birchfield v. North Dakota*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 2160 (2016). The Defendant maintains that these decisions, individually and in combination, have rendered 29-A M.R.S. §2522 unconstitutional.

In *Missouri v. McNeely*, the Court addressed the specific question “whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment’s warrant requirement for nonconsensual blood testing in all drunk-driving cases.” 133 S. Ct. at 1556. The actual holding of *McNeely* is “that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.” *Id.* at 1568. Rather, whether exigent circumstances exist justifying action by law enforcement without a warrant is to be determined by looking at the “totality of the circumstances” with each case of “alleged exigency based ‘on its own facts and circumstances.’” *Id.* at 1559 quoting *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931).

*Missouri v. McNeely* involved what was described as a “routine DWI case,” with no special facts supporting a finding of exigency, other than the natural dissipation of alcohol in the bloodstream. The Supreme Court recognized that other factors, such as the need to investigate an accident (or even the dissipation of alcohol in the body), may justify a warrantless blood test. *Id.* In short, *Missouri v. McNeely* rejected a *per se* rule that a warrantless blood test is always permissible for the sole reason that alcohol naturally dissipates over time in the body.

The Defendant argues that *Missouri v. McNeely* has rendered 29-A M.R.S. §2522 unconstitutional. The court is not completely convinced of that, although this court has noted that *Missouri v. McNeely* “may have significantly undermined the Law Court’s decision in *Cormier*.” See *State v. Dennison*, Wash. Cty. Sup. Ct. Docket No. CR-2015-25 (January 19, 2016). Upon closer examination of *Missouri v. McNeely* the court is less sure that the Supreme Court would reject a narrowly tailored statute such as 29-A M.R.S. §2522 that is designed to deal with actual emergencies involving vehicular death scenes.

The Supreme Court acknowledged those states with laws allowing police to obtain a blood sample without consent in “cases involving accidents resulting in death or serious bodily injury. 133 S.Ct at 1566. Moreover, in support of its ultimate holding, the *McNeely* Court relied heavily on the seminal case of *Schmerber v. California*, 384 U.S. 757 (1966) and emphasized that, in addition to the natural dissipation of alcohol over time, the defendant in that case “had suffered injuries in an automobile accident and was taken to the hospital.” 133 S.Ct. at 1559 *citing* 384 U.S. at 758. The Court in *McNeely* quoted with approval the language from *Schmerber* that the warrantless blood test in that case was “nonetheless permissible because the officer ‘might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence.’” 133 S.Ct. at 1560 *quoting* 384 U.S. at 770 (internal quotations omitted). That same reasoning would seem to apply at least as strongly to an accident scene involving two deaths and a survivor (the Defendant) of the crash who was trapped in the cab of his vehicle for over an hour and, upon being extricated therefrom, was promptly flown to a hospital for medical care and treatment. It is precisely the scenario presented by this case that 29-A M.R.S. §2522 was designed to address.

It should also be noted that the opinion in *Missouri v. McNeely* is a somewhat fractured one, as evidenced by the fact that Justice Kennedy concurred in part and Chief Justice Roberts concurred in part and dissented in part, joined by Justices Breyer and Alito. Justice Thomas dissented. In his concurring opinion, Justice Kennedy pointed out that the Court’s opinion “ought not to be interpreted to indicate this question is not susceptible of rules and guidelines that can give important, practical instruction to arresting officers, instruction that in any number of instances would allow a warrantless blood test in order to preserve the critical evidence.” 133 S.Ct. at 1569. He went further and remarked that “[s]tates and

other governmental entities which enforce the driving laws can adopt rules, procedures, and protocols that meet the reasonableness requirements of the Fourth Amendment and give helpful guidance to law enforcement officials.” *Id.*

Nevertheless, the Defendant contends that the Supreme Court’s decision in *Birchfield v. North Dakota* definitively signals the constitutional demise of section 2522. The question before the Court in *Birchfield* was whether laws that “make it a crime for a motorist to refuse to be tested after being lawfully arrested for driving while impaired . . . violate the Fourth Amendment’s prohibition against unreasonable searches.” 136 S.Ct. at 2166-67. None of the three cases before the Court in *Birchfield* involved an emergency situation of any kind, let alone anything even remotely approaching the double fatal, five-vehicle accident scene on Route 17 on March 18, 2016. Indeed, the “exigent circumstances” exception to the warrant requirement was never considered in *Birchfield*. Rather, the Court in *Birchfield* only addressed “how the search-incident-to-arrest doctrine applies to breath and blood tests incident to such arrests.” *Id.* at 2174.

In that context, the Court examined breath and blood tests and reaffirmed that breath tests do not implicate significant privacy interests, but taking a blood sample by piercing the skin does. 136 S.Ct. at 2177-78. The Court then balanced the privacy interests against the government’s “paramount interest . . . in preserving the safety of . . . public highways.” *Id.* at 2178 quoting *MacKay v. Montrym*, 443 U.S. 1, 17 (1979). Ultimately, the Court held that the Fourth Amendment permits a warrantless breath test incident to an arrest for drunk driving, but not a warrantless blood test. The Court made it clear, however, that the police may rely on the exigent circumstances exception to the warrant requirement, if it applies.

The taking of the Defendant’s blood here was not done pursuant to the search-incident-to arrest doctrine. Rather, it was taken in accordance with the

statutory requirement of 29-A M.R.S. §2522 since the police were confronted with the reality that two people had been killed as a result of the crash that appeared to have been caused by the Defendant while operating a tractor trailer loaded with cut lumber.

It is possible that, in light of *Missouri v. McNeely* and/or *Birchfield v. North Dakota*, the Court would view section 2522 as invalid because it reflects a *per se* legislative declaration of an exigency whenever a fatal or likely fatal accident occurs, whereas *McNeely* requires a case-by-case assessment of the facts surrounding the alleged exigent circumstances.<sup>13</sup> This court, however, is not yet convinced that the narrowly tailored circumstances addressed in 29-A M.R.S. §2522 would be ruled unreasonable and therefore unconstitutional under the Fourth Amendment.

Unlike the cases considered by the Supreme Court in *Birchfield* and *McNeely*, section 2522 addresses only accidents involving a fatality or a likely fatality. Nothing is as grave; nothing is as urgent; nothing presents such critical choices in an emergency setting, as an accident scene where a person has just died or there is reasonable grounds to believe that a person will die. For the Legislature of Maine to determine that such a situation represents an emergency and that in such a limited and exigent situation a blood sample from all involved operators must be taken as soon as practicable is, in this court's opinion, unquestionably reasonable.

Moreover, the Law Court's application of the "special needs" exception in *Cormier* has even more persuasive force in this case that involves the operation of a commercial vehicle. Both the Law Court and the United States Supreme Court

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<sup>13</sup> Cf. *State v. Romano*, 800 S.E.2d 644, 653-54 (N.C. 2017) (statute allowing blood test from person who is unconscious or otherwise incapable of refusing test is unconstitutional as creating a categorical exception to the warrant requirement).

have recognized and emphasized the government's "paramount" interest in the safety of motorists and pedestrians on our roads and highways. The government's interest in the regulation of commercial vehicles and their operators is even greater, given the size and weight of such vehicles and the extraordinarily destructive and deadly consequences that result from a crash involving a tractor trailer, particularly one that is fully loaded. Indeed, the crash scene in this case is a singular example of that. There was clear evidence presented at the testimonial hearing of the extensive regulatory framework to which commercial vehicles and their operators are subject. Thus, as particularly applied to this case and under the "special needs" exception analysis, the court finds section 2522 constitutional.

Even if, however, it is determined that §2522 contravenes *McNeely* because it creates a *per se* rule of emergency, the blood draw from the Defendant in this case was still validly taken because there was, in fact, an actual emergency facing the police on March 18, 2016. The police were responding to and investigating a double fatal accident involving 5 vehicles which closed Route 17 to any further traffic. The scene was chaotic in the extreme. The Defendant was trapped inside the upside-down cab of his tractor truck and was extricated after more than an hour of work by first responders. He was immediately placed on a back-board and brought by ambulance to a waiting helicopter. During all of this time – from about 4:45pm to 6:00pm or later – the police were confronted with overwhelming responsibilities. The fact that law enforcement devoted their entire attention to the deadly accident scene and the victims and survivors, along with their other duties, and did not consider the constitutional nuances of *Missouri v. McNeely* and its impact on the validity of section 2522 and thereby failed to immediately initiate the process for obtaining a warrant, are the very type of exigent circumstances described in and contemplated by *Cormier* and *Roche* and even *McNeely* itself. Under these compelling circumstances, the police could reasonably have believed

that it was not practical to obtain a warrant and that it was necessary to take a blood sample from the Defendant in order to preserve critical information and to avoid its further destruction with the additional passage of time.<sup>14</sup> See *State v. Arndt*, 2016 ME 31, ¶ 9, 133 A.3d 587.

Under such truly exigent circumstances the court further concludes that the Supreme Court would sanction the taking of a blood sample without probable cause *at the time* that the Defendant had been operating under the influence, and would further sanction the unique and narrowly tailored approach adopted by the Legislature in section 2522(3) regarding the admissibility of any blood sample results.

Finally, the court finds that the results of the blood test taken from the Defendant at the accident scene by Advanced EMT Wright, are admissible at trial pursuant to section 2522(3). Independent of the test result, there is probable cause to believe that the Defendant was under the influence at the time of the accident based on the following. Two people testified that they thought they detected the odor of alcohol coming from the Defendant at the accident scene. While both of those witnesses candidly said that they could not be certain the odor was coming from the Defendant, their initial suspicions take on added significance from the fact that a bottle of Crown Royal liquor (3/4<sup>th</sup> full) was found inside the cab of the truck. A hospital blood test showed a BAC of 07. Had the accident in this case not involved fatalities and the exigencies that resulted therefrom, the court has no

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<sup>14</sup> The Defendant faults the police for not using the time he was trapped inside the cab of his truck to apply for a warrant by utilizing the provisions of M.R.U.Crim.P. 41C, allowing an applicant to seek a warrant by telephonic or other electronic means. Such criticism ignores or trivializes the deadly reality the police faced and the multitude of decisions they had to make to take control of and manage the utterly chaotic accident scene along Route 17 during rush hour on March 18, 2016, and reflects an unrealistically calm after-the-fact view of events. See *State v. Arndt*, 2016 ME 31, ¶ 9 quoting *State v. Dunlap*, 395 A.2d 821, 824 (Me. 1978) (“The presence of exigent circumstances ‘is not diminished because in hindsight it appears that a search warrant could have been obtained.’”).

doubt that the police would have discovered probable cause to believe that the Defendant was under the influence. For example, in the absence of the confusion at the fatal scene, it is likely that the two witnesses who detected the odor of alcohol coming from the Defendant may have been more confident in their opinions. Similarly, had the police been able to question the Defendant at the scene about the Crown Royal bag containing prescription bottles and his taking of over-the-counter and other medications, it is likely the police would have developed probable cause. Even more critically, had the exigencies of the scene not been present, the 3/4<sup>th</sup> full bottle of Crown Royal inside the cab of the tractor truck would have been found at the scene and, in all likelihood, a chemical test of the Defendant would have been conducted at that time

In view of the court's conclusion that the taking of the Defendant's blood sample was justified under 29-A M.R.S. §2522, the "special needs" exception and exigent circumstances, the court does not address the applicability of the "good-faith" exception to the warrant requirement. *See State v. Nunez*, 2016 ME 185, ¶ 17, n. 8, 153 A.3d 84.

### CONCLUSION

The entry is:

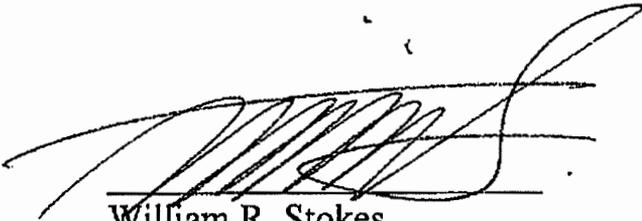
Defendant's Motion to Suppress (Statements) dated May 17, 2017 is DENIED.

Defendant's Motion to Suppress (Vehicle Search) dated May 17, 2017 is DENIED.

Defendant's Motion to Dismiss and Suppress (Medical Records) dated May 17, 2017 is DENIED.

Defendant's Motion to Suppress Warrantless Blood Test) dated May 16, 2017 is DENIED.

Dated: September 11, 2017.

A handwritten signature in black ink, appearing to read 'W. R. Stokes', written over a horizontal line.

William R. Stokes  
Justice, Superior Court

1 THE CLERK: So did you admit both 15 and  
 2 16?  
 3 THE COURT: 15 and 16.  
 4 THE CLERK: Over objection?  
 5 THE COURT: Over objection.  
 6 THE CLERK: 17 and 18?  
 7 THE COURT: Are also in I think over  
 8 objection.

9 All right. And then -- the last issue,  
 10 before the jury comes in, so you know where you  
 11 stand, there was discussion before we left  
 12 yesterday afternoon about State's Exhibit 22,  
 13 then -- which was the truck service invoice  
 14 order, apparently dated the 14th of March, 2016.  
 15 That -- I'm assuming that the state can lay a  
 16 foundation that it was found in the -- in the  
 17 truck that Mr. Weddle was driving.

18 In addition to that, we met in chambers  
 19 to discuss this issue and the motion in limine  
 20 that was filed by the defense. And at that time  
 21 the state also presented me with fuel receipts,  
 22 bills of lading and toll receipts in Maine and  
 23 it looks like Mass -- and in New Hampshire,  
 24 perhaps Massachusetts, I'm not sure, that  
 25 apparently were -- again, I'm assuming they were

1 found in the truck that Mr. Weddle was driving.  
 2 And the issue was whether or not those are  
 3 admissible under the hearsay rule. I don't  
 4 think they're admissible as -- as regularly kept  
 5 records because you don't have any testimony of  
 6 a custodian that gets them in. However, I do  
 7 find that they are statements of a party  
 8 opponent. And I base that on Rule 801, so  
 9 they're not hearsay. They're statements that  
 10 are not hearsay, it's -- the statement is  
 11 offered against a party opponent, which in this  
 12 case it is, and is one the party manifested that  
 13 it adopted or believed to be true. Basically  
 14 what we call those is adoptive admissions.

15 Now, the Law Court in the case that was  
 16 supplied to me, State versus Cornhuskers Motor  
 17 Lines, Inc., and that's found at 2004, Maine  
 18 101, dealt with a similar issue. Now in that  
 19 particular case the driver actually handed the  
 20 documents -- fuel receipts, toll booth receipts,  
 21 to the trooper. And the Court found that those  
 22 were -- that that was a non verbal statement.  
 23 Now, the fact that he handed them certainly was  
 24 a relevant fact, but I don't think it was a

1 and Murray make it clear, that an adoptive  
 2 admission -- an adoption may be manifested by  
 3 silence or by other action. And I find that  
 4 these exhibits having been found in Mr. Weddle's  
 5 car -- not car, commercial vehicle that he was  
 6 driving, there's no dispute, the evidence is  
 7 pretty much overwhelming that he was the driver,  
 8 the receipt pertains to the time period when  
 9 he's operating that commercial vehicle, it -- he  
 10 is required by -- by federal regulation to  
 11 maintain a duty log and supporting documentation  
 12 to support that duty status. These documents  
 13 all are in the same time period when he is  
 14 leaving Virginia and heading north and  
 15 ultimately ends up in Maine. They all pertain  
 16 to -- in some instances his name is on the  
 17 document, in some instances he signed the  
 18 document. In other instances the document is a  
 19 receipt pertaining to the vehicle as it moved  
 20 north into New England.

21 And so by the act of maintaining those,  
 22 acquiring those and keeping those, in my view he  
 23 has manifested his adoption of the truth of  
 24 those statements. It just -- it makes no sense  
 25 that you would maintain records that pertain to

1 a vehicle and not believe -- and not believe  
 2 they were -- and believe they were untrue. You  
 3 keep them because they are supporting documents  
 4 that you're required to keep.

5 So I find that those documents are in  
 6 fact admissible as non hearsay under Rule 801.  
 7 I believe it's (d)(2). So -- just so that's --  
 8 those are my rulings on that.

9 So are we ready, with that in mind, to  
 10 proceed with the examination of -- well, Ms.  
 11 Simone? I'll give you those back.

12 MR. BARODY: Yes, Your Honor, thank you.

13 THE COURT: I think -- were we still in  
 14 the direct?

15 MR. LIBERMAN: Actually I don't have any  
 16 further questions on direct.

17 THE COURT: You're still under oath.

18 A. Yup.

19 THE COURT: Okay. Anything we need to  
 20 address before we bring in the jury?

21 MR. PRATT: No.

22 THE COURT: Let's bring in the jury.

23 (THE JURY RETURNED TO THE COURTROOM AT  
 24 1:32 P.M.)

- 1 Q. Okay. Was this defendant required to have a  
2 logbook?  
3 A. **Yes, he was.**  
4 Q. All right. And who makes entries in the  
5 logbook?  
6 A. **The driver.**  
7 Q. And who is responsible for the accuracy of the  
8 information entered into the logbook?  
9 A. **The driver.**  
10 Q. Now, in this case did you have an opportunity to  
11 review Mr. Weddle's -- the logbook entries?  
12 A. **I did.**  
13 Q. And are those also called the record of duty  
14 status entries?  
15 A. **Correct.**  
16 Q. And I'm going to project on to this screen, I  
17 don't think that one is working now, but do you  
18 recognize what that is?  
19 A. **Yeah, that's Mr. Weddle's logbook sheet from**  
20 **March 14th --**  
21 Q. Okay.  
22 A. **-- of 2016.**  
23 Q. And did you have an opportunity to compare that  
24 to any other kinds of -- of items that you  
25 found?

- 1 A. **Yes, I believe there was a gas receipt.**  
2 MR. BAROODY: First of all, the state  
3 would move to admit into evidence State's  
4 Exhibit 21.  
5 THE COURT: Any objection?  
6 MR. PRATT: No objection.  
7 THE COURT: State's 21 is admitted  
8 without objection.  
9 BY MR. BAROODY:  
10 Q. All right. And actually while -- while that's  
11 up there, can you indicate -- and I think that  
12 there might be -- there is a laser pointer right  
13 here -- can you just indicate what it is about  
14 the different statuses on the logbook and then  
15 how he fills out a logbook with that  
16 information?  
17 A. **Okay. On the very top up here is his off duty**  
18 **status. That is when a driver is doing nothing**  
19 **relating to the truck, meaning they're at home**  
20 **for an extended period of time, they might be**  
21 **taking their required 10 hours off duty and they**  
22 **could be, you know, out having dinner, they**  
23 **could be going to the movies, they could be**  
24 **going to a child's sporting event or something**

- 1 **Sleeper berth is when they are driving**  
2 **say long distances and they're in their truck,**  
3 **that is when they're sleeping in the sleeper**  
4 **berth, which is the sleeping compartment behind**  
5 **the driver's seat. So they are still with the**  
6 **vehicle but they are taking their required time**  
7 **in the sleeper berth.**  
8 **The driving, it's self-explanatory, that**  
9 **means they're behind the wheel physically**  
10 **driving the vehicle down the road.**  
11 **On duty not driving, which is the --**  
12 **which is the bottom part, is where they're still**  
13 **responsible for the truck but the truck is not**  
14 **actually moving. So they could be pulled into a**  
15 **lumberyard somewhere and picking up lumber or**  
16 **getting a load of anything. They could be**  
17 **getting fuel. They could be having maintenance**  
18 **done on the vehicle. So they're still**  
19 **responsible for the vehicle but yet the wheels**  
20 **aren't turning --**  
21 Q. Okay.  
22 A. **-- at that time.**  
23 Q. And is there a -- kind of a bar over here with  
24 numbers in it above those four different  
25 categories?

- 1 A. **Yes.**  
2 Q. And what is that bar all about?  
3 A. **That's -- that's the time of day.**  
4 Q. So each number would correspond to an hour of  
5 the day?  
6 A. **Correct.**  
7 Q. All right. And when are driver's supposed to  
8 update their activities?  
9 A. **Every time they change status.**  
10 Q. All right. So I'm going to now put State's  
11 Exhibit No. 22 on here. And do you recognize  
12 what this is?  
13 A. **Yup, that is a T -- T.A. Truck Service, that was**  
14 **a repair order for an oil change that was done**  
15 **to that vehicle on the same date.**  
16 Q. On March 14th?  
17 A. **Correct.**  
18 Q. All right. And when you had an opportunity  
19 to compare these two, was there anything in  
20 there that lead --  
21 MR. PRATT: Your Honor, can we be seen at  
22 sidebar?  
23 THE COURT: Sure.  
24 (THE FOLLOWING BENCH CONFERENCE TOOK

1 MR. PRATT: I would be objecting to the  
2 truck service form.

3 THE COURT: I'm sorry, what is it?

4 MR. PRATT: The -- the one on the right.

5 THE COURT: That's the oil.

6 MR. PRATT: Yeah, whatever that is, I'm  
7 objecting to it. I think that they need  
8 somebody to show that that's a regularly  
9 conducted business record before that it's  
10 admissible and lay the foundation as to the --  
11 the legitimacy of it before this officer can  
12 testify to anything about it.

13 THE COURT: Do you want to be heard on  
14 that?

15 MR. BAROODY: Well, I think it speaks for  
16 itself as a receipt. I mean I can ask him about  
17 whether or not commercial motor vehicle  
18 drivers -- you know, if this something he sees  
19 frequently in the business and if they rely on  
20 these kind of records as troopers. But as well  
21 it's an admission by a party opponent here as  
22 evidence.

23 THE COURT: Well, what you haven't asked  
24 is you haven't asked where he found it.

25 MR. BAROODY: No, I haven't, and I can do

1 that.

2 THE COURT: I mean -- I don't think he  
3 can -- you know, I think the significance of  
4 this is that it's found in the truck.

5 MR. PRATT: But I don't know that.

6 THE COURT: Well, you're right, that's  
7 what I'm saying.

8 MR. PRATT: He hasn't asked that.

9 THE COURT: If it's found in the truck --

10 MR. PRATT: I would also -- I would say  
11 foundation and hearsay.

12 THE COURT: Well, it's really not  
13 offered -- it's not offered for the truth of the  
14 matter.

15 MR. PRATT: Well, I don't see what else  
16 it would be offered for, because it's --

17 THE COURT: It's offered to show just the  
18 opposite.

19 MR. PRATT: Touche. But I think it's  
20 only -- it can show that -- if in fact it was  
21 truthful, and form has to be accurate.

22 THE COURT: Well, I think ultimately it's  
23 up to the jury to decide whether there's any  
24 false report. And all this person can testify 69

1 he can say that, that this document was found in  
2 the -- in the vehicle, in the cab of the  
3 vehicle, that it's dated such and such and such  
4 and such, and that -- I think he can testify  
5 that if there are any discrepancies, I -- I  
6 don't know what he can say.

7 MR. PRATT: He's already testified that  
8 the documents were found by another trooper,  
9 so --

10 THE COURT: He's not offering it -- it's  
11 not being offered as a business record, it's  
12 being offered because it was found in the  
13 vehicle.

14 MR. PRATT: Well, we don't -- but he says  
15 another trooper gave it to him.

16 THE COURT: Well, that's a different  
17 issue, that's a different objection.

18 MR. PRATT: Well, he's already testified  
19 to that.

20 THE COURT: Yeah. Well, I think you've  
21 got to have some -- some linkage that he --  
22 where did this thing come from.

23 MR. BAROODY: I can ask him.

24 THE COURT: Yeah. I'm not persuaded by  
25 your business record objection. I do believe

1 there's got to be some linkage for where did  
2 this come from.

3 MR. BAROODY: Right.

4 THE COURT: If it was found in the cab of  
5 the -- of Mr. Weddle's truck, that he's driving,  
6 and it's dated, you know, such and such, I think  
7 the jury gets to decide what weight they give it  
8 to. But it's not coming in as a business  
9 record. It's coming in to demonstrate the  
10 falsity of the -- or to show the comparison  
11 between that document that is found in the cab  
12 and the document that has been prepared by Mr.  
13 Weddle that's a daily log that's found in the  
14 cab of the truck.

15 MR. PRATT: I just don't think the jury  
16 can make that conclusion unless they know of the  
17 authenticity of the document. And the state  
18 can't establish the authenticity of the  
19 document.

20 THE COURT: Well, not through this  
21 witness perhaps.

22 MR. PRATT: Right, yes.

23 MR. BAROODY: Well, so I guess -- so --  
24 are you challenging as to the foundation of who

1 it's a legitimate repair bill from a -- from the  
2 shop itself?

3 MR. PRATT: Yes.

4 MR. BAROODY: Okay. Well, your client on  
5 his interviews admitted going and having the  
6 work done.

7 MR. PRATT: Where, when and by whom?

8 THE COURT: See I -- I don't think it's  
9 being offered -- as far as I'm concerned,  
10 whether it's a business record or not from Joe's  
11 Oil Company is not the point -- is not why it's  
12 admissible or relevant. The reason it's  
13 relevant is because this driver has to maintain  
14 a daily log. You've got that and so far it's  
15 been admitted without objection.

16 The second document, which I think you're  
17 trying to get in, is to show that this document  
18 was also found in the cab, it's dated the same  
19 thing. You don't need Joe's Oil Company to  
20 certify this is a real document kept in the  
21 regular course. The value -- the relevance of  
22 it is that it shows that -- presumably it shows  
23 the discrepancy.

24 MR. BAROODY: Yes, that is why it's  
25 relevant.

1 THE COURT: That's what it comes in for.

2 MR. PRATT: I would just disagree,  
3 because one of the things that --

4 THE COURT: Well, I know that, that goes  
5 without saying.

6 MR. PRATT: One of the things they have  
7 to do is maintain the quality of the vehicle,  
8 keep it inspected, keep it up-to-date. So we're  
9 saying that one document should be deemed not  
10 trustworthy based on another document that may  
11 have been generated as well for -- to show --  
12 never mind. I withdraw that argument, it's --

13 THE COURT: All right. This is a false  
14 duty log, that's the evidence -- it's the  
15 gravamen of the allegation. It's where he's  
16 maintained a false duty log.

17 MR. BAROODY: It is, yeah.

18 THE COURT: So -- so I think you've got  
19 to -- we haven't heard any testimony as to where  
20 that document came from.

21 MR. BAROODY: Yeah, I'll ask him.

22 MR. PRATT: I think we have. He said  
23 another trooper gave that to him.

24 THE COURT: Well --

1 THE COURT: -- the duty log.

2 MR. PRATT: I -- okay.

3 THE COURT: I don't what's happening  
4 with --

5 MR. MacLEAN: So the Court is concluding  
6 that this is not hearsay? This document?

7 THE COURT: Yeah, because this is --

8 MR. MacLEAN: This is an out-of-court  
9 written statement by someone who is not here in  
10 court to testify.

11 THE COURT: Well, it almost comes in as  
12 an admission. It almost comes in as an  
13 admission. It's -- it's a document that's found  
14 in this man's vehicle.

15 MR. MacLEAN: But your --

16 THE COURT: The driver on the date that  
17 he's -- that he's also preparing the daily log?

18 MR. MacLEAN: It's only an admission if  
19 the defendant created the document.

20 THE COURT: Well, not necessarily. Not  
21 necessarily. It can be an admission if it's --  
22 if he's purporting to have this as a document  
23 demonstrating that his vehicle had repairs on it  
24 and he's maintaining that record in his car --

25 MR. MacLEAN: He may be. But this is an

1 out-of-court statement created by someone else  
2 who is not here offered for the truth of the  
3 matter in this case.

4 THE COURT: Well --

5 MR. MacLEAN: That's classic hearsay.

6 THE COURT: I'm not so sure it's offered  
7 for the truth of the matter, Chris.

8 MR. MacLEAN: Well, it is, because --

9 THE COURT: It's offered to show that  
10 he's keeping a false log.

11 MR. MacLEAN: That's right. It's being  
12 offered to show that this is true and that the  
13 log is false. So this document is being offered  
14 for the express purpose of proving the truth of  
15 the contents of the document.

16 THE COURT: Well --

17 MR. MacLEAN: And it's an out-of-court  
18 statement.

19 THE COURT: I'll consider that, I guess.  
20 I'll give that some more thought. But it seems  
21 to me the first step we have to go through is  
22 where was this document found and that hasn't  
23 been established yet.

24 MR. BAROODY: Okay.

1 (THE FOLLOWING PROCEEDINGS TOOK PLACE IN  
2 CHAMBERS AT 8:20 A.M.

3 THE COURT: We're in chambers, Eileen,  
4 after everyone had left yesterday, Eileen can  
5 give you more details, but one of the jurors,  
6 juror number 22, came to the window, and you can  
7 tell -- why don't you go ahead, Eileen, since  
8 you spoke to her directly.

9 THE CLERK: Yeah, when -- I guess when  
10 she had left here, she got a call from her  
11 husband, her baby puppy was in emergency  
12 surgery, a little baby lab, so she wasn't sure  
13 whether or not she could come in and finish the  
14 trial because she -- someone would have to take  
15 care of the puppy after the surgery. And then  
16 her husband supposedly has surgery tomorrow in  
17 Portland, which they had already taken care of,  
18 they already had figured how he was going to get  
19 there, she was going to get there, because they  
20 only have one car. And --

21 THE COURT: So that's -- that's been  
22 thrown into --

23 THE CLERK: Thrown in.

24 THE COURT: -- the puppy.

25 THE CLERK: Now you've -- you've got the

1 puppy who is home with -- even though we did  
2 offer five ladies to take care of the puppy all  
3 day, she didn't think that was a good idea.

4 THE COURT: Oh, you said she can bring  
5 him in here.

6 THE CLERK: I said the five ladies said  
7 we'll care of it, you've got five mommies taking  
8 care of the baby, but --

9 THE COURT: So I didn't wanted to let her  
10 go before you people -- so we had her come back  
11 this morning.

12 THE CLERK: Right. She is here.

13 THE COURT: She is here.

14 MR. BAROODY: Which one is she, as far as  
15 she's sitting where.

16 THE COURT: She is sitting in the front  
17 row, if you're looking there, she would be the  
18 second from the far right.

19 MR. BAROODY: Okay.

20 THE COURT: So -- and I understand she  
21 was born in 1949, she's retired, from Camden.

22 THE CLERK: She is here if anybody wants  
23 to talk to her.

24 THE COURT: I don't know if you want to

1 mean I understand people's dogs are -- are like  
2 members of their family.

3 MR. PRATT: The defense would just cut  
4 her loose, if she doesn't want to be here.

5 THE COURT: Well, that's the concern I  
6 have, if her mind is going to be on the puppy  
7 and then her husband, and -- you know, it's  
8 going to be a distraction for her, she's not  
9 going to have her mind focused. So what -- what  
10 do you think.

11 MR. BAROODY: I don't think we're going  
12 to object to that.

13 THE COURT: All right. So why don't you  
14 tell her -- in fact do you mind if I just go  
15 thank her? Where is she?

16 THE CLERK: I'll have her go in the  
17 hallway, unless you want me to bring her in  
18 here.

19 THE COURT: No, I'll just -- if you don't  
20 mind, let me just talk to her, thank her, I'll  
21 tell her she's discharged.

22 THE CLERK: He tells me he has her in the  
23 jury room.

24 THE COURT: Okay. So let me go in and  
25 I'll tell her she's free to leave and --

1 MR. PRATT: Should we stay in here or --  
2 THE COURT: Yeah, we need to deal with  
3 the issue we left the day with yesterday, right?

4 (A SHORT BREAK WAS TAKEN.)

5 THE COURT: We're back on the record. I  
6 read your motion, Laura. This is on the issue  
7 we ended the day with. I can't remember the  
8 exhibit number.

9 MR. BAROODY: It's like in the mid 20s,  
10 21, 22, something like that.

11 THE COURT: It was the service from some  
12 service company in Virginia allegedly dated  
13 March 14th. And Mr. Plourde was on the stand,  
14 Officer Plourde was on the stand, and he did not  
15 find that in the car, I understand -- and I  
16 assume there will be a witness today who will  
17 say that was found in the car. That's not your  
18 point, though, your point is that -- so the  
19 state is offering -- obviously offering it into  
20 evidence and the defense is objecting on the  
21 grounds that it is hearsay.

22 So, I'm going to let -- who is going to  
23 argue the motion? I mean I've read it, I know  
24 what your position is. I understand it.

1 much more to say about it, but --

2 THE COURT: Yeah, I understand what  
3 you're saying. Jeff, do you want to be heard?

4 MR. BAROODY: Well, yeah, Your Honor. I  
5 guess I would start just by giving the Court a  
6 copy of this decision --

7 THE COURT: By the way, I don't know that  
8 I can rule on anything other than that document,  
9 just -- I haven't seen any other documents.

10 MR. LIBERMAN: Right.

11 MS. SHAW: Right.

12 MR. BAROODY: So this -- so this stands  
13 for the general proposition, Your Honor, Corn --

14 THE COURT: This is State versus  
15 Cornhuskers.

16 MR. BAROODY: Yes. So -- so there is a  
17 hearsay objection in this. This is a similar  
18 situation, Your Honor, where the -- the police  
19 asked the commercial motor vehicle to hand over  
20 toll receipts, essentially is what it was. And  
21 the Court in this case determined that handing  
22 over logbooks and supporting documents, such as  
23 toll and fuel reports, is a task that drivers  
24 are required to provide as part of their  
25 employment pursuant to the Federal Motor Carrier

1 Safety Regulations. And so -- and so basically  
2 the Court held here that it was a business  
3 record in the scope of -- it was done in the  
4 scope of employment.

5 I think that's borne out further, that  
6 this is a hearsay exception because it's a  
7 regularly conducted business activity based on  
8 the -- the general facts. The -- the defendant  
9 is an employee for a trucking company, we have  
10 evidence about that. And I think the Court  
11 can -- you know, I think he's keeping this to be  
12 reimbursed for it, this will go for the fuel  
13 receipts and the toll receipts the state intends  
14 on introducing later as well. And he is not  
15 just keeping these because he didn't throw them  
16 out, he's keeping them so he can submit them for  
17 reimbursement later. They are something that he  
18 has to keep as well to support his hours and in  
19 his logbook, so that he can have documents to  
20 support where he was and when he was. And he --  
21 and so, therefore, they are regularly conducted  
22 activity because he's keeping them as part of  
23 his business, he keeps all of his receipts. And  
24 I think that there's like a seven-day period he 72

1 yeah, that's essentially the state's argument as  
2 far as that's concerned. As well it's a  
3 statement by a party opponent.

4 MR. SHAW: Well --

5 MR. BAROODY: And I think that that was  
6 another proposition in the Cornhuskers case.

7 MS. SHAW: Yeah, I think the difference  
8 here is that in this case the driver has  
9 actually been asked to hand over his receipts  
10 and logbooks in the course of his employment and  
11 here they were just found in his vehicle. There  
12 hasn't been any testimony about what these  
13 receipts actually were, where they came from.  
14 There hasn't been any testimony about the  
15 records themselves or any -- there's no  
16 witness -- no qualified witness to actually  
17 testify to any of those issues.

18 So I -- I don't -- I understand there are  
19 some similar issues involved, but I don't think  
20 the case is completely on point.

21 MR. PRATT: I think really the key fact  
22 is the handing them over, because he is taking  
23 ownership and saying -- is somewhat  
24 authenticating by handing over the documents.  
25 Merely being near an object does not make you in

1 ownership of that object. There is plenty of  
2 case law that talks about mere proximity to  
3 something does not make you the owner of that  
4 thing.

5 And that's what the state is essentially  
6 saying here. And I really don't know how to  
7 respond to the idea of admission by party  
8 opponent because that just makes no sense in  
9 this situation given the fact that he did not  
10 have the documents nor handed the document to  
11 the officer.

12 MR. LIBERMAN: Your Honor, I think in  
13 this case what we would present is  
14 circumstantial evidence to support the argument  
15 that this is an admission by a party opponent.  
16 This is him -- he as a trucker -- as required by  
17 federal regulations is required to maintain  
18 these documents. As a long haul trucker he has  
19 a pretty close connection to his truck. He has  
20 to sleep it in at times. He is the one  
21 responsible for that truck. He is in control of  
22 it. So if there is testimony that a law  
23 enforcement officer who searches that truck  
24 finds these documents that he is lawfully

1 the business records exception and also that it  
2 would qualify as an admission by party opponent.

3 THE COURT: Can you get the document --  
4 can you get the exhibit.

5 MR. PRATT: The problem with that  
6 argument, Your Honor, is the state is trying to  
7 have it both ways. They're saying that because  
8 he has a legal obligation to do something, a  
9 federal obligation to do something, it should be  
10 deemed valid in a certain way. But at the same  
11 time, they're trying to say he failed to do  
12 something else that is also a federal  
13 regulation. They want it -- saying he broke a  
14 federal law and he abided by a federal law and  
15 both things happened in this particular case.

16 THE COURT: I just want to get the  
17 document. As I said, that's the only -- the  
18 only document that is in front of me is that  
19 one. So I can't make a ruling in terms of some  
20 other document I haven't seen yet.

21 MR. BAROODY: Well, Your Honor, I guess I  
22 would refer the Court to -- it's the federal --  
23 it's part of 49 of the CFR, 395.8(k)(1), it's  
24 called retention of driver's duty -- record of  
25 duty status and supporting documents. And it

1 says essentially a motor carrier shall retain  
2 records of duty status and supporting documents  
3 required under this part for each of its drivers  
4 for a period of not less than six months from  
5 the date of the receipt. And the driver, in sub  
6 two, the driver shall retain a copy of each  
7 record of duty status for the previous seven  
8 days which shall be in his slash her possession  
9 and available for inspection while on duty.  
10 And --

11 MR. LIBERMAN: And I should also say,  
12 Your Honor, that -- I realize that we're  
13 bringing everyone's attention to a new case, and  
14 also some regulations -- some federal regulation  
15 that none of us deal with pretty regularly, but  
16 just the state's plan for today, we're starting  
17 our day with the toxicology witnesses, so if the  
18 Court does need more time to decide on this  
19 issue, it won't be until this afternoon that the  
20 state revisits this issue with its case in  
21 chief.

22 THE COURT: Well -- yeah, I'd like to do  
23 a little bit more research on it. I've quickly  
24 read through Cornhuskers, but I'd like to -- I'd

1 Now, I do have some timing issues today.  
2 At noontime I have a bail hearing -- are you  
3 doing that, Jeremy?

4 MR. PRATT: Yes.

5 THE COURT: Okay. And I have no idea --  
6 I mean basically the most I can give you is an  
7 hour.

8 MR. PRATT: I understand.

9 THE COURT: So we're going to do that I  
10 think in courtroom two.

11 THE JUDICIAL MARSHAL: Yes.

12 THE COURT: And I don't know what the  
13 state is going to put on or whether the state is  
14 going to put on anything or whether it's just  
15 going to be argument or not, so I -- but from  
16 noon to -- for the lunch hour I'll be doing  
17 that, so -- but I do want a chance just to look  
18 at this -- this document a little bit closer.

19 MR. BAROODY: And may we be heard on  
20 scheduling, Your Honor?

21 THE COURT: Sure.

22 MR. BAROODY: So I think the state has  
23 three witnesses this morning, we want to try to  
24 put through the toxicology, I think that would  
25 leave five total witnesses left for the case. I

1 don't think we'll have any problem getting the  
2 case done by Friday, I think we're going to have  
3 most of it done today and maybe a little spill  
4 over tomorrow. So -- and I understand the  
5 defense isn't starting their case until Monday,  
6 so I don't think time, unless something goes  
7 haywire today, should be really a huge concern  
8 at this point.

9 THE COURT: All right.

10 MR. PRATT: In -- since we have a little  
11 bit of time, some practical issues.

12 THE COURT: Yes.

13 MR. PRATT: In regards to the jury  
14 instructions --

15 THE COURT: Yes.

16 MR. PRATT: I was hoping we could ideally  
17 finalize them before Friday, because I would  
18 like to work on my closing and incorporate some  
19 elements of the jury instructions.

20 THE COURT: Sure. I can get you a set  
21 of -- I've made the changes you requested, in  
22 terms of not making in reference to any  
23 certificate, I think you persuaded me that  
24 you're right.

1 (THE FOLLOWING PROCEEDINGS TOOK PLACE IN  
 2 CHAMBERS AT 9:29 A.M.)  
 3 THE COURT: Good morning everyone, please  
 4 be seated.  
 5 And we are back on the record in the  
 6 matter of State versus Randall Weddle, docket  
 7 number 16-474. Mr. Weddle is present in the  
 8 courtroom with his counsel and the state is  
 9 represented by counsel as well.  
 10 When we left on Friday I believe the  
 11 state had not rested yet but my -- my  
 12 understanding was that the state was preparing  
 13 to rest this morning; is that correct?  
 14 MR. LIBERMAN: That's correct, Your  
 15 Honor.  
 16 THE COURT: And at that point the defense  
 17 would start. Now, before we bring the jury in,  
 18 are we going to need any time for motions?  
 19 MR. MacLEAN: Yes.  
 20 MR. PRATT: Yes. Once the state rests we  
 21 will have a motion.  
 22 THE COURT: So how do you want to do  
 23 that -- you want to make your motions. Do you  
 24 want to make your motions now, instead of me  
 25 bringing the jury in and bringing the jury out.

1 MR. PRATT: I'm fine with that as long as  
 2 the state then doesn't call additional  
 3 witnesses.  
 4 THE COURT: Yes, I understand that.  
 5 MR. LIBERMAN: That's correct, Your  
 6 Honor, we would --  
 7 THE COURT: I understand you want to rest  
 8 in the front of the jury.  
 9 MR. LIBERMAN: Yes, we would.  
 10 THE COURT: Assuming you're going to do  
 11 that, subject to that.  
 12 MR. LIBERMAN: Yes, we're okay with that  
 13 approach.  
 14 THE COURT: Okay. So with that, Mr.  
 15 Pratt, why don't you go ahead. And I apologize  
 16 for my cold. I hope it's just a cold.  
 17 MR. PRATT: Your Honor, we would formally  
 18 move for a judgment of acquittal on four of the  
 19 counts.  
 20 THE COURT: All right.  
 21 MR. PRATT: I would like to begin with  
 22 Count 11.  
 23 THE COURT: Let me just get the  
 24 indictment.

1 state alleges that while on duty or operating a  
 2 commercial motor vehicle, Randall Weddle did  
 3 possess distilled spirits.  
 4 There's two reasons for the judgment --  
 5 motion for judgment of acquittal. One, the  
 6 contents of the bottle that was submitted into  
 7 evidence was never tested, so we don't even know  
 8 what it contains. The second part of that,  
 9 there's been no testimony that what -- even if  
 10 it is what the state purports it to be based on  
 11 the bottle, that that qualifies as a distilled  
 12 spirits.  
 13 According to the jury instructions  
 14 provided by Your Honor, and I think it was  
 15 suggested by the DA's office, distilled spirits  
 16 means that substance known as ethyl alcohol,  
 17 ethanol or spirits of wine in any form,  
 18 including all dilutions and mixtures thereof  
 19 from whatever source or by whatever process  
 20 produced.  
 21 There was no testimony that even if  
 22 what's in that bottled is in fact Crown Royal  
 23 that would qualify as an ethyl, alcohol, ethanol  
 24 or spirit of wine in any form. There has been  
 25 zero evidence of that. I would suggest as a

1 matter of law that the Court would have to  
 2 find -- grant the judgment of acquittal on Count  
 3 11.  
 4 The additional counts that we are asking  
 5 for judgment of acquittal on are Counts 12, 13  
 6 and 14. Those are the false record of duty  
 7 status.  
 8 THE COURT: Right.  
 9 MR. PRATT: I'll be honest, the testimony  
 10 was so convoluted that it's not clear what was  
 11 Mr. Weddle's duty and what wasn't his duty. I  
 12 believe, at least on Count 13, the basis for it  
 13 is a receipt from Virginia that was entered into  
 14 evidence of getting gas on March 15, 2016.  
 15 What makes that particularly I think ripe  
 16 for judgment of acquittal, Count 13, is the  
 17 witness who testified that -- I think that the  
 18 state's arguments based on the convoluted  
 19 testimony is that he was off duty and couldn't  
 20 get gas. But the officer who testified said,  
 21 well, they don't usually do that. And then when  
 22 pressed on cross-examination, he said it wasn't  
 23 against the rules to get gas off duty.  
 24 So if that's the testimony, even in the

1 should be dismissed. That's for the specific  
2 relating to that receipt.  
3 In regards to Counts 12 and 14, I would  
4 say it's not clear what the state was trying to  
5 prove or what evidence came in. And because  
6 it's unclear, even in the light most favorable,  
7 when it's still completely opaque, even in the  
8 light most favorable it's still opaque, and  
9 therefore I think four, Counts 11, 12, 13 and  
10 14, should be granted in the form of a judgment  
11 of acquittal.

12 THE COURT: Thank you, Mr. Pratt. Mr.  
13 Baroody or Mr. Liberman?

14 MR. BAROODY: Your Honor, I can respond.

15 As far as Count 11 is concerned, there  
16 was testimony that it smelled like whiskey and  
17 it was clearly labeled as whiskey and appeared  
18 consistent with whiskey. And the jury I think  
19 can be absolutely entitled to look at that  
20 themselves.

21 I think the Court has to look at this in  
22 the light most favorable to the state, including  
23 any and all inferences that are permissible  
24 therein. And when the Court applies that  
25 standard, this -- there is certainly sufficient

1 evidence in Count 11 to make it to the jury.  
2 There is really nothing inconsistent with it  
3 being anything other than alcohol at this point,  
4 Your Honor, so therefore that count ought to  
5 continue.

6 MR. PRATT: May I --

7 THE COURT: Let him finish.

8 MR. PRATT: The pause I misinterpreted, I  
9 apologize.

10 MR. BAROODY: And as well, Your Honor,  
11 there is testimony about the defendant drinking  
12 in the cab and there is -- the Court has the  
13 test result of .09 in the truck and a .07 later.

14 So the state has proven that there is  
15 definitely alcohol in play here both by the  
16 defendant's admissions, the actual test results  
17 and then finding this substance that smells like  
18 alcohol, it looks like alcohol, it's packaged in  
19 an alcohol container and there's been no  
20 evidence that it's not alcohol.

21 THE COURT: And as to -- do you want to  
22 respond to 12 --

23 MR. BAROODY: Yeah, I would like to do  
24 everything. I don't know if Mr. Pratt would 75

1 THE COURT: Well, why don't you finish.

2 MR. BAROODY: As far as the three -- or  
3 the other four commercial motor vehicle  
4 violations, Your Honor, on Count 12 the evidence  
5 that was that the defendant was writing that  
6 he was off duty, but the repair order showed him  
7 in a different town in Virginia getting his  
8 brakes -- the testimony was that if you're doing  
9 that kind of activity you need to be on duty to  
10 get that done.

11 And Count 13, that was the one where he  
12 wrote he was off duty but the receipt showed a  
13 fuel purchase in a different town of Virginia.  
14 That was the one where there was a little bit  
15 confusing evidence on exactly what you could and  
16 couldn't do when you were off duty as far as  
17 getting fuel is concerned, but I believe that  
18 the officer did say that there are situations  
19 when you couldn't get fuel when you were off  
20 duty. And I think when the Court looks at it in  
21 the light most favorable to the state, the  
22 evidence, and draws a reasonable inference  
23 therein, that he was a long haul trucker doing  
24 work when he got that fuel.

25 Especially in light of the next day,

1 where -- that's Count 14, and the violation  
2 there is that he wrote he was off duty. But in  
3 the hospital interview with Jeff DeGroot, he  
4 admitted picking up the fencing in Tennessee and  
5 driving it to Virginia, so that's a violation in  
6 that count. And then 15 --

7 THE COURT: I don't think they're making  
8 a claim.

9 MR. BAROODY: They're not, okay, I'm  
10 sorry, gotcha. So those are -- that's the  
11 state's response, Your Honor.

12 THE COURT: Mr. Pratt?

13 MR. PRATT: Very briefly. The issue  
14 is -- Mr. Baroody is focusing on the notion in  
15 Count 11 alcohol. That's not what he has been  
16 charged with. He has been charged with  
17 possession of distilled spirits. There has been  
18 no testimony that the Crown Royal qualifies as  
19 distilled spirits. I have no idea what a  
20 distilled spirit is, even based on that  
21 definition. And to suggest that the jury to  
22 draw any conclusions based on the testimony that  
23 Crown Royal constitutes distilled spirits I  
24 think is requiring them to bring in information

1 In regards to Count 13, just briefly, I  
2 would disagree with the state's characterization  
3 of the testimony. And I will leave it to the  
4 Court's memory. According to my notes and my  
5 memory, the officer testified that you can get  
6 gas when off duty. And if that's the case, then  
7 he -- the judgment of acquittal should be  
8 granted in regards to Count 13.

9 But again, with regards to Count 11, it's  
10 not alcohol that's at issue, it's distilled  
11 spirits.

12 MR. BAROODY: Your Honor, I think the  
13 distilled, one of the definitions Mr. Pratt read  
14 was ethyl alcohol. And there was testimony from  
15 the state's experts about ethyl alcohol and  
16 alcohol being part of that. So I think the  
17 state has proven that point, Your Honor.

18 THE COURT: I thought ethyl alcohol was  
19 drinking alcohol.

20 MR. BAROODY: That's -- the state  
21 believes we have evidence and the record is  
22 sufficient.

23 THE COURT: I have to view the evidence  
24 in the light most favorable to the state. As to  
25 Count 11, I think the jury can use its common

1 sense and use its right to make inferences.  
2 There's a liquid substance in a Crown Royal  
3 bottle and the Crown Royal bottle is 3/4 to 1/2  
4 full, it's inside the cab. There was testimony,  
5 at least in one of his statements, that Mr.  
6 Weddle acknowledged taking drinks in the cab.  
7 There are the tests, of course, that show his  
8 blood alcohol level at various times and at the  
9 time of the blood sample at the scene and then  
10 at the hospital. So I think the jury can make a  
11 reasonable inference as to the substance in the  
12 bottle is in fact a distilled spirit, which  
13 included ethyl alcohol.

14 As to the false record of duty, the  
15 obligation, as I understand it, under the  
16 regulations, the federal regulations that have  
17 been adopted by the state, is that you can't  
18 make a false record of duty status, you have to  
19 accurately put in what duty status you're on. I  
20 found the testimony a little bit confusing, I do  
21 acknowledge, as to, you know, what the driver is  
22 supposed to do with respect to filling out the  
23 duty status log.

24 There are four options, as I read the 76

1 sleeper berth, off duty and then on duty but not  
2 driving. Those are the four options, as I  
3 understand it. And you're apparently required  
4 to put in the correct duty status for any time  
5 that you change duty status. While I thought  
6 the testimony was somewhat convoluted and  
7 confusing, I think it's ultimately a jury  
8 question. Given the exhibits that have been  
9 offered into evidence, there is sufficient  
10 evidence from which the jury could find that the  
11 duty status was false.

12 So viewing the evidence in the light most  
13 favorable to the state, I have to deny your  
14 motions, Mr. Pratt.

15 So with that I -- I take it that you're  
16 going to rest in front of the jury and then the  
17 is the defense prepared to present its  
18 witnesses?

19 MR. MacLEAN: Yes, Your Honor.

20 THE COURT: All right. Anything further  
21 we need to do before we bring in the jury?

22 MR. MacLEAN: No.

23 MR. LIBERMAN: Your Honor, I do -- I do  
24 think there is.

25 THE COURT: Hold on.

1 MR. LIBERMAN: There is one area that I  
2 would like to discuss with respect to Dr. JoAnn  
3 Samson's testimony.

4 THE COURT: All right.

5 MR. LIBERMAN: As the Court recalls, the  
6 Court did limit Dr. Simone's testimony, where  
7 she was not allowed to testify or form an -- or  
8 testify about her opinion on whether or not this  
9 defendant was likely under the influence of  
10 alcohol or drugs or a combination thereof.

11 THE COURT: Impaired. I forget what the  
12 word was.

13 MR. LIBERMAN: Impaired, yes. And I am  
14 asking the Court to extend the same ruling to  
15 Dr. Samson's testimony, based on the same  
16 reasons that would have justified the Court's  
17 ruling with Dr. Simone. I think the same  
18 reasoning supports such a ruling with Dr.  
19 Samson.

20 THE COURT: Mr. MacLean, do you want to  
21 be heard on that?

22 MR. MacLEAN: I mean I guess it depends  
23 on how the testimony comes out. I mean she is  
24 going to talk about the medical records and

STATE OF MAINE  
KNOX, ss

UNIFIED CRIMINAL COURT  
LOCATION: ROCKLAND  
DOCKET NO: CR-16-474

STATE OF MAINE

**INDICTMENT**

v.

**RANDALL JUNIOR WEDDLE**

DOB:5/9/1962

SIN:

3540 Blue Springs Parkway

Greeneville, TN 37743

G: Male Ht: 6' 1" Wt: 165 H: Brown

E: Blue R: White

**COUNT 1: MANSLAUGHTER**

**COUNT 2: MANSLAUGHTER**

**COUNT 3: AGGRAVATED CRIMINAL OUI**

**COUNT 4: AGGRAVATED CRIMINAL OUI**

**COUNT 5: AGGRAVATED CRIMINAL OUI**

**COUNT 6: DRIVING TO ENDANGER**

**COUNT 7: DRIVING TO ENDANGER**

**COUNT 8: RULE VIOLATION: FALSE**

**RECORD OF DUTY STATUS**

**COUNT 9: RULE VIOLATION: ILL OR**

**FATIGUED OPERATOR**

**COUNT 10: RULE VIOLATION: USE OF**

**ALCOHOL WHILE ON DUTY**

**COUNT 11: RULE VIOLATION: POSSESSION**

**OF ALCOHOL WHILE ON DUTY**

**COUNT 12: RULE VIOLATION: FALSE**

**RECORD OF DUTY STATUS**

**COUNT 13: RULE VIOLATION: FALSE**

**RECORD OF DUTY STATUS**

**COUNT 14: RULE VIOLATION: FALSE**

**RECORD OF DUTY STATUS**

**COUNT 15: RULE VIOLATION: FALSE**

**RECORD OF DUTY STATUS**

**THE GRAND JURY CHARGES:**

**COUNT 1:**

**17-A M.R.S.A. §203(1)(A)**

**Seq No: 4248**

**MANSLAUGHTER**

**CLASS A**

**ATNCTN 174150B001**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did recklessly, or with criminal negligence, cause the death of another human being, Paul Fowles.

**COUNT 2:**

**17-A M.R.S.A. §203(1)(A)  
Seq No: 4248  
MANSLAUGHTER  
CLASS A  
ATNCTN 174150B002**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did recklessly, or with criminal negligence, cause the death of another human being, Christina Torres-York.

**COUNT 3:**

**29-A M.R.S.A. §2411(1-A)(D)(1-A)  
Seq No: 12960  
AGGRAVATED CRIMINAL OUI  
CLASS B  
ATNCTN 174150B003**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE**, did operate a motor vehicle while under the influence of intoxicants or while having an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. **RANDALL JUNIOR WEDDLE** in fact caused the death of Paul Fowles.

**COUNT 4:**

**29-A M.R.S.A. §2411(1-A)(D)(1-A)  
Seq No: 12960  
AGGRAVATED CRIMINAL OUI  
CLASS B  
ATNCTN 174150B004**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE**, did operate a motor vehicle while under the influence of intoxicants or while having an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. **RANDALL JUNIOR WEDDLE** in fact caused the death of Christina Torres-York.

**COUNT 5:**

**29-A M.R.S.A. §2411(1-A)(D)(1)  
Seq No: 12958  
AGGRAVATED CRIMINAL OUI  
CLASS C  
ATNCTN 174150B005**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE**, did operate a motor vehicle while under the influence of intoxicants or while having an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. **RANDALL JUNIOR WEDDLE** in fact caused serious bodily injury to Tracy Cook.

**COUNT 6:**

**29-A M.R.S.A. §2413(1-A)  
Seq No: 11122  
DRIVING TO ENDANGER  
CLASS C  
ATNCTN 174150B006**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE**, did with criminal negligence, drive a motor vehicle in any place in a manner that endangered the property of another or a person, including the operator or passenger in the motor vehicle being driven and caused serious bodily injury to Tracy Cook.

**COUNT 7:**

**29-A M.R.S.A. §2413(1)  
Seq No: 1232  
DRIVING TO ENDANGER  
CLASS E  
ATNCTN 174150B007**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did, with criminal negligence, drive a motor vehicle in any place in a manner that endangered the property of another or a person, Tracy Morgan and/or Lowell Babb, including the operator or passenger in the motor vehicle being driven.

**COUNT 8:**

**29-A M.R.S.A. §558-A(1)(A)  
Seq No: 12906  
RULE VIOLATION: FALSE RECORD OF DUTY  
STATUS  
CLASS E  
ATNCTN 174150B008**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did make a false report in connection with a duty status, regarding an entry dated March 18, 2016.

**COUNT 9:**

**29-A M.R.S.A. §558-A(1)(A)  
Seq No: 12923  
RULE VIOLATION: ILL OR FATIGUED  
OPERATOR  
CLASS E  
ATNCTN 174150B009**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE**, did operate a commercial motor vehicle while his ability or alertness was so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him to begin or continue to operate the commercial motor vehicle.

**COUNT 10:**

**29-A M.R.S.A. §558-A(1)(A)  
Seq No: 12914  
RULE VIOLATION: USE OF ALCOHOL  
WHILE ON DUTY  
CLASS E  
ATNCTN 174150B010**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did use alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle.

**COUNT 11:**

**29-A M.R.S.A. §558-A(1)(A)  
Seq No: 12913  
RULE VIOLATION: POSSESSION OF  
ALCOHOL WHILE ON DUTY  
CLASS E  
ATNCTN 174150B011**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE**, while on duty or operating a commercial motor vehicle, did possess distilled spirits.

**COUNT 12:**

**29-A M.R.S.A. §558-A(1)(A)  
Seq No: 12906  
RULE VIOLATION: FALSE RECORD OF DUTY  
STATUS  
CLASS E  
ATNCTN 174150B012**

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did make

COUNT 13:

29-A M.R.S.A. §558-A(1)(A)  
Seq No: 12906  
RULE VIOLATION: FALSE RECORD OF DUTY  
STATUS  
CLASS E  
ATNCTN 174150B013

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did make a false report in connection with a duty status, regarding an entry dated March 15, 2016.

COUNT 14:

29-A M.R.S.A. §558-A(1)(A)  
Seq No: 12906  
RULE VIOLATION: FALSE RECORD OF DUTY  
STATUS  
CLASS E  
ATNCTN 174150B014

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did make a false report in connection with a duty status, regarding an entry dated March 16, 2016.

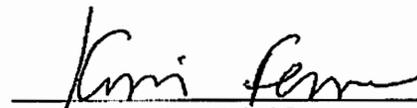
COUNT 15:

29-A M.R.S.A. §558-A(1)(A)  
Seq No: 12906  
RULE VIOLATION: FALSE RECORD OF DUTY  
STATUS  
CLASS E  
ATNCTN 174150B015

On or about March 18, 2016, in Washington, Knox County, Maine, **RANDALL JUNIOR WEDDLE** did make a false report in connection with a duty status, regarding an entry dated March 17, 2016.

DATED: 6-8-16.

A TRUE BILL

  
FOREMAN

OFFICER: Paul Spear  
DEPT: Knox County Sheriff's Dept.

STATE OF MAINE  
KNOX, SS

KNOX CRIMINAL DOCKET  
LOCATED IN ROCKLAND  
Docket No. KNOCD-CR-2016-474

STATE OF MAINE )  
 )  
v. )  
 )  
RANDALL WEDDLE )  
 )  
Defendant )

**MOTION TO SUPPRESS EVIDENCE  
(WARRANTLESS BLOOD TEST)**

**NOW COMES** the Defendant, Randall Weddle, by and through his undersigned counsel, and moves this Court pursuant to M.R.U.Crim.P. 41A, to suppress any evidence obtained as the result of a warrantless seizure of Defendant's blood, including any test results, for the following reasons:

1. On or about March 18, 2016, Defendant was involved in a motor vehicle accident on Route 17 in Washington, Maine.
2. On March 18, 2016, law enforcement officers required Defendant to submit to a blood draw for the purpose of determining Defendant's blood alcohol level.
3. Law enforcement officers lacked probable cause to require Defendant to submit to a blood draw.
4. Defendant did not consent to the blood draw; and to the extent the state argues that consent was given, any consent could not be considered knowing, intelligent, and voluntary under the circumstances.

5. The United States Supreme Court has recently held that warrantless searches of a suspect's blood constitute a violation of the Fourth Amendment of the Federal Constitution. *Birchfield v. North Dakota*, 136 S. Ct. 2160; 579 U.S. \_\_\_\_ (2016).

6. Law enforcement officers did not first obtain a warrant before seizing Defendant's blood.

7. Under the circumstances set forth herein, the seizure of Defendant's blood on March 18, 2016 constituted a violation of Defendant's rights protected by the Fourth Amendment of the Federal Constitution and similar protections contained in the Constitution of the State of Maine. In addition, the seizure and use of blood collected from Defendant under the circumstances of this case would constitute a violation of Defendant's due process protections contained in the Fourth Amendment of the Federal Constitution and similar protections contained in the Constitution of the State of Maine.

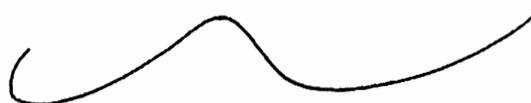
**WHEREFORE**, Defendant respectfully requests that any and all evidence derived from the drawing of his blood on March 18, 2016, including any test results, be suppressed, and that this Honorable Court issue any further orders that it deems just and proper.

Dated: 5/16/17

  
\_\_\_\_\_  
Christopher K. MacLean, Esq.  
Attorney for Defendant  
ELLIOTT, MACLEAN, GILBERT & COURSEY, LLP  
20 Mechanic Street  
Camden, Maine 04843  
(207) 236-8836  
Maine Bar Number 8350

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16 day of May, 2017, a copy of the foregoing Motion to Suppress Evidence (Warrantless Blood Test) was mailed by first class mail, originating in Camden, Maine, postage prepaid to Jeffrey Baroody, Assistant District Attorney, 62 Union Street, Rockland, Maine 04841.



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Christopher K. MacLean, Esq.

STATE OF MAINE  
KNOX, SS

KNOX CRIMINAL DOCKET  
LOCATED IN ROCKLAND  
Docket No. KNOCD-CR-2016-474

STATE OF MAINE	)	
	)	
v.	)	<b>MOTION IN LIMINE TO</b>
	)	<b>EXCLUDE HEARSAY EVIDENCE</b>
RANDALL WEDDLE	)	<b>WITH INCORPORATED</b>
	)	<b>MEMORANDUM OF LAW</b>
	)	
Defendant	)	

**NOW COMES** the Defendant, Randall Weddle, by and through his undersigned counsel, Laura P. Shaw, Esq., and moves this Court, *in limine*, to exclude hearsay documents offered by the State.

**FACTS**

The Defendant in this case has been charged with and indicted on fifteen criminal counts, including multiple counts of False Record of Duty Status (Class E), 29-A M.R.S. § 558-A(1)(A).

Through the discovery process, the State has provided Defendant with several documents that were purportedly found in Defendant's truck. During the trial, the State introduced into evidence Defendant's logbook, which was been admitted. At the trial, the State plans to introduce other various documents purportedly found in Defendant's truck into evidence in order to prove that Defendant inaccurately recorded entries into his logbook. In other words, by offering both the logbook and the other documents into evidence, the State

intends to argue that *the other documents are true and the logbook is not.*

### **ANALYSIS**

“Hearsay’ means a statement that (1) The declarant does not make while testifying at the current trial or hearing; and (2) A party offers in evidence to prove the truth of the matter asserted in the statement.” M.R. Evid. 801. Hearsay is not admissible unless authorized by a particular rule or statute. M.R. Evid. 802.

It is clear that the documents in question contain statements that were made outside of the current trial or hearing. The documents purportedly found in the Defendant’s vehicle that the State intends to introduce into evidence for the truth of the matter asserted are generally receipts or statements generated by businesses in March 2016.

In addition, there is no question that the State intends to introduce these documents to prove that the contents of the documents – particularly, that the date and time the Defendant was in a particular location or acting in a certain manner – are true. The State has admitted that the purpose in using the documents is to show that the logbook entries must be false, because the information contained in these documents is true.

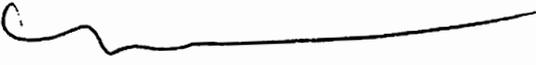
As such, the documents can only come into evidence if they fall within a specific exception. The documents could potentially be admitted into evidence under the business records exception to the hearsay rule – M.R. Evid. 803(6). However, to do so, the state would need to introduce the documents through a

custodian or qualified witness, or by certification. M.R. Evid. 803(6)(D). The custodian or qualified witness must be able to testify that the record was made by someone with knowledge; was kept in the course of a regularly conducted activity of a business; and making the record was a regular practice of that activity. M.R. Evid. 803(6)(A)-(C). A custodian or other qualified witness is one “who was intimately involved in the daily operation of the business and whose testimony show[s] the firsthand nature of his or her knowledge.” *Bank of America, N.A. v. Greenleaf*, 2014 ME 89, ¶ 25, 96 A.3d 700.

No other exceptions listed by rule or by statute could apply to allow the hearsay statements contained in the documents to be admitted into evidence.

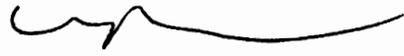
**WHEREFORE**, for the reasons set forth above, Defendant requests that, unless the State can lay a proper foundation with a qualified witness, this Court exclude any business records offered to prove the truth of the matter asserted and order any further and additional relief this Honorable Court deems just and proper.

Dated: 1/25/18

  
\_\_\_\_\_  
Laura P. Shaw, Esq.  
Attorney for Defendant  
CAMDEN LAW LLP  
20 Mechanic Street  
Camden, Maine 04843  
(207) 236-8836  
Maine Bar Number 5631

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of January, 2018, a copy of the foregoing Motion *in Limine* to Exclude Hearsay Evidence with Incorporated Memorandum of Law was mailed by first class mail, originating in Camden, Maine, postage prepaid to Jeffrey Baroody, Assistant District Attorney, 62 Union Street, Rockland, Maine 04841.



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Laura P. Shaw, Esq.

STATE OF MAINE  
KNOX, ss.

UNIFIED CRIMINAL COURT  
ROCKLAND  
DOCKET NO. CR-16-474

STATE OF MAINE

v.

VERDICT FORM

RANDALL J. WEDDLE

COUNT 1

On the charge of Manslaughter (Paul Fowles) as alleged in Count 1 of the Indictment, the jury finds the Defendant:

GUILTY X

NOT GUILTY \_\_\_\_\_

COUNT 2

On the charge of Manslaughter (Christina Torres-York) as alleged in Count 2 of the Indictment, the jury finds the Defendant:

GUILTY X

NOT GUILTY \_\_\_\_\_

COUNT 3

On the charge of Aggravated Operating Under the Influence (Paul Fowles) as alleged in Count 3 of the Indictment, the jury finds the Defendant:

GUILTY X

NOT GUILTY \_\_\_\_\_

COUNT 4

On the charge of Aggravated Operating Under the Influence (Christina Torres-York) as alleged in Count 4 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 5

On the charge of Aggravated Operating Under the Influence (Tracy Cook) as alleged in Count 5 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 6

On the charge of Driving to Endanger (Tracy Cook) as alleged in Count 6 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 7

On the charge of Driving to Endanger (Tracy Morgan and /or Lowell Babb) as alleged in Count 7 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 8

On the charge of False Record of Duty Status (March 18, 2016) as alleged in Count 8 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 9

On the charge of Ill or Fatigued Operator as alleged in Count 9 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 10

On the charge of Use of Alcohol While On Duty as alleged in Count 10 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 11

On the charge of Possession of Alcohol While On Duty as alleged in Count 11 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 12

On the charge of False Record of Duty Status (March 14, 2016) as alleged in Count 12 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 13

On the charge of False Report of Duty Status (March 15, 2016) as alleged in Count 13 of the Indictment, the jury finds the Defendant:

GUILTY   X   NOT GUILTY \_\_\_\_\_

COUNT 14

On the charge of False record of Duty Status (March 16, 2016) as alleged in Count 14 of the Indictment, the jury finds the Defendant:

GUILTY   X  

NOT GUILTY \_\_\_\_\_

COUNT 15

On the charge False report of Duty Status (March 17, 2016) as alleged in Count 15 of the Indictment, the jury finds the Defendant:

GUILTY   X  

NOT GUILTY \_\_\_\_\_

Dated:   1-30-18  

  #227    
Foreman (Juror # ONLY)

STATE OF MAINE  
KNOX, SS

KNOX CRIMINAL DOCKET  
LOCATED IN ROCKLAND  
Docket No. KNOCD-CR-2016-474

STATE OF MAINE )  
 )  
v. )  
 )  
RANDALL WEDDLE )  
 )  
Defendant )

**MEMORANDUM IN SUPPORT OF  
MOTION TO SUPPRESS EVIDENCE  
(WARRANTLESS BLOOD TEST)**

**NOW COMES** the Defendant, Randall Weddle, by and through his undersigned counsel, and submits this post-hearing memorandum in support of his motion, pursuant to M.R.U.C.P. 41A, to suppress any evidence obtained as the result of a warrantless seizure of Defendant's blood, including any test results.

**I. FACTS**

The following facts are supported by the testimony and evidence presented at the hearing the motion to suppress. On or about March 18, 2016, Defendant was involved in a motor vehicle accident on Route 17 in Washington, Maine. At the time, Defendant held a commercial license and was operating a tractor trailer.

Following the accident, several emergency and police personnel responded to the scene. When they arrived, Defendant's tractor trailer was resting in a ditch and Defendant was trapped inside. EMT Nicholas Ciasullo made contact with Defendant

and attempted to extricate him from the cab of the vehicle. Almost immediately after arriving at the scene, Deputy Spear decided to request that a blood sample be taken from Defendant. At some point, a decision was made to send Defendant via air ambulance to Lewiston to be treated for his injuries. Approximately one hour after the accident took place, Defendant had been successfully extricated from his vehicle. The transportation to Lewiston was delayed to allow the blood sample to be taken in an ambulance on the scene.

At the hearing, no evidence was presented to demonstrate that probable cause existed to take Defendant's blood at the time it was taken. In fact, Deputy Spear himself testified that he did not believe probable cause existed when he ordered the blood draw on the scene. Nicholas Ciasullo did mention detecting an odor of alcohol in the cab; however, he testified that he could not discern exactly where the smell was coming from. No one on the scene noticed slurred speech, impaired mobility, or anything else indicating that the Defendant was impaired.

Furthermore, no evidence was presented that would show that Defendant consented to the blood draw, or that anyone tried to obtain his consent. In addition, there was no testimony that would suggest that the officials that ordered the blood kit were doing so in relation to the fact that Defendant was operating with a commercial license.

Instead, Deputy Spear testified that he believed he could order the blood draw without a warrant, consent, or even probable cause simply because a fatality had resulted from the accident. Therefore, before Deputy Spear ordered the blood draw, no investigation into the warrant process was done and no attempts to obtain a warrant were made. In addition, because the Deputy believed he did not need a warrant to take the blood test, no analysis was conducted regarding whether exigent circumstances and probable cause existed to take the blood test without a warrant. Finally, Deputy Spear did not suggest in any way that his belief about the ability to take the blood under such circumstances was related to the fact that Defendant had a commercial license.

Based on the above facts, to determine whether the blood test results must be suppressed, the relevant questions for the court to consider are as follows:

1. Whether Maine's Statute, 29-A M.R.S. 2522 (2016) which authorizes a blood draw under certain circumstances in the absence of consent, probable cause, or exigent circumstances at the time a blood draw is taken is constitutional; and
2. Whether, despite the fact that the blood draw was ordered in reliance on that statute, another exception to the warrant requirement of the Fourth Amendment applies to validate the search.

This memo will address each question in turn.

## II. ANALYSIS

1. **29-A M.R.S. § 2522 is unconstitutional on its face and as applied to the**

## **blood draw**

The Fourth Amendment prohibits “unreasonable searches,” and it is well-established that the taking of a blood sample is a search. *Birchfield v. North Dakota*, 579 U.S. \_\_\_\_; 136 S. Ct. 2160, 2173 (2016). Generally, for a search to be reasonable, a warrant must be obtained. *Kentucky v. King*, 563 U.S. 452, 459, (2011). “Blood tests are significantly more intrusive [than breath tests], and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test.” *Birchfield*, 579 U.S. \_\_\_, 136 S. Ct. 2160, 2184 (2016). Furthermore, if a blood sample is taken without a warrant, a specific exception must apply in order for the search to be reasonable. *See Birchfield*, 579 U.S. \_\_\_, 136 S. Ct. 2160 (2016). Recognized exceptions that may apply when a blood test has been taken without a warrant are consent and exigent circumstances. *See Birchfield*, 136 S. Ct. 2160; 579 U.S. \_\_\_\_ (2016); *Missouri v. McNeely*, 569 U.S. \_\_\_, 133 S. Ct. 1552 (2013); *Schmerber v. California*; 384 U.S. 757 (1966).

The Maine statute in question, entitled “Accidents,” states as follows:

**1. Mandatory submission to test.** If there is probable cause to believe that death has occurred or will occur as a result of an accident, an operator of a motor vehicle involved in the motor vehicle accident shall submit to a chemical test, as defined in section 2401, subsection 3, to determine an alcohol level or the presence of a drug or drug metabolite in the same manner as for OUI.

...

2. **Admissibility of test results.** The result of a test is admissible at trial if the court, after reviewing all the evidence, whether gathered prior to, during or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicants at the time of the accident.

29-A M.R.S. § 2522 (2016).

The Maine Law Court last analyzed the constitutionality of this statute in 2007 in *State v. Cormier*, 2007 ME 112, 928 A.2d 753. In that opinion, the Law Court recognized that the Maine statute is not supported by any one recognized exception to the warrant requirement. *Id.* ¶ 18. Instead, *Cormier* relied on a combination of three constitutional doctrines to uphold the statute: the inevitable discovery doctrine, exigent circumstances, and “special needs.” *Id.* ¶ 15.

In its analysis, the Law Court first applied the inevitable discovery doctrine – a doctrine relating to the exclusionary rule – to uphold the statute. Second, the Law Court applied the exclusionary rule to the statute. It applied the exclusionary rule in a *per se* manner, relying on the assumption that exigent circumstances are *always* present at a crash scene involving fatalities, and did not require the presence of probable cause at the time of the search in relation to its exigent circumstances analysis. *Id.* ¶¶ 18-19. Finally, it applied the “special needs” exception to the statute, an exception which is reserved for searches that are conducted for non-law enforcement purposes. *Id.* ¶¶ 28-37. Despite recognizing that it was using a combination of exceptions to create a

whole new exception to the warrant requirement, the Law Court upheld the statute, referencing the “compelling need” to address the rate of fatalities in automobile accidents involving alcohol. *Id.* ¶ 30.

It is now blatantly clear that this statute and the analysis undertaken in *Cormier* cannot withstand Fourth Amendment scrutiny under post-*Cormier* U.S. Supreme Court caselaw, including *Mcneely* and *Birchfield*. In *McNeely*, the Court discussed the exigent circumstances exception to the warrant requirement in the context of blood draws. The Court rejected the creation of a *per se* rule, stating that “in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.” 569 U.S. \_\_\_, 133 S. Ct. 1552, 1568 (2013). Instead, a fact-intensive, totality of the circumstances approach *must* be taken to determine if an exigency exists. *Id.* at 1559. *Cormier* on the other hand, as stated above, upheld the statute by assuming that in the case of a fatal accident, exigent circumstances *always* exist to justify the warrantless taking of a blood sample to investigate drunk driving. See *Cormier*, 2007 ME 112, ¶¶ 18-20, 928 A.2d 753. Therefore, the statute and the Law Court’s analysis of it as it relates to exigent circumstances is in direct conflict with *McNeely* and can no longer stand. Compare *McNeely*, 569 U.S. \_\_\_, 133 S. Ct. 1552, 1568 (2013), with *Cormier*, 2007 ME 112, ¶¶ 18-19, 928 A.2d 753.

Furthermore, even if the statute was able to survive *McNeely*, it has been invalidated by the U.S. Supreme Court's recent *Birchfield* decision. The U.S. Supreme Court has stated that a warrantless blood draw is reasonable "*only if it falls within a recognized exception.*" *McNeely*, 569 U.S. \_\_\_, 133 S. Ct. 1552, 1554 (2013) (emphasis added). In *Birchfield*, the U.S. Supreme Court clarified which exceptions could apply to the taking of a blood test to investigate drunk driving. *Birchfield*, 579 U.S. \_\_\_, 136 S. Ct. 2160 (2016). Specifically, *Birchfield* stated that the only exceptions which may validly apply to a warrantless blood draw in the law enforcement context are consent and exigent circumstances. *Id.* Furthermore, *Birchfield* specifically rejected the application of the search incident to arrest exception to a warrantless blood search in light of its categorical rather than fact-driven nature. *Id.* 1559. In contrast, *Cormier* relied on a combination of the inevitable discovery doctrine, a *per se* exigent circumstances rule, and "special needs" to create its own categorical statutory exception. This type of exception has not only never been recognized by the U.S. Supreme Court, it has been flatly rejected by language in *Birchfield*. Therefore, after *Birchfield*, it is abundantly clear that the statute is no longer valid.

In sum, 29-A M.R.S. § 2522 permits the taking of a blood sample without a warrant, consent, exigent circumstances, or probable cause. The Law Court has upheld

this statute by relying on a combination of constitutional doctrines to create a categorical, unrecognized exception, including an incorrect application of the exigent circumstances exception. The U.S. Supreme Court has rejected the exigent circumstances analysis used by the Law Court to uphold this statute in *McNeely*. Furthermore, the U.S. Supreme Court in *Birchfield* clearly stated that only recognized exceptions can uphold a blood draw taken without a warrant, has spelled out what those exceptions are in detail, and has rejected the idea that a categorical rule could permit a blood draw without a warrant. Therefore, based on the U.S. Supreme Court's holdings in *McNeely* and *Birchfield*, 29-A M.R.S. § 2522 and the Law Court's analysis of this statute in *Cormier* no longer pass constitutional muster. The blood draw taken at the scene of the accident in this case cannot be upheld based on application of 29-A M.R.S. § 2522 and must be suppressed.

## **2. No other exception to the warrant requirement applies**

The blood draw in this case cannot be upheld because it was not taken in accordance with any other exception to the warrant requirement. Nonetheless, this memorandum will analyze two possible theories the State may argue could support a blood draw under the circumstances: exigent circumstances and special needs.

### **(a) Exigent Circumstances**

One well-recognized exception to the warrant requirement "applies when the

exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.” *King*, 563 U.S. 452, 460 (2011). Under this exception, in some cases, a warrantless blood test may be permissible if the officer “might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened ‘the destruction of evidence.’” *Schmerber v. California*, 384 U.S. 757, 770 (1966). In addition, under this exception, probable cause to take the blood test must exist. *Id.* at 768. Whether a warrantless blood test is permissible under these circumstances is based on an evaluation of the totality of the circumstances. *McNeely*, 569 U.S. \_\_\_, 133 S. Ct. 1552, 1568 (2013). The burden is on the State to prove 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.

The U.S. Supreme Court decision exemplifying this doctrine is *Schmerber*. 384 U.S. 757 (1966). In *Schmerber*, the defendant was in a motor vehicle accident. *Id.* at 768. The officer that reported to the scene noticed signs of intoxication at the scene of the accident. *Id.* at 768-69. The defendant was taken to the hospital, where approximately two hours after the accident took place, a warrantless blood draw was ordered. *Id.* at 769. The blood draw was upheld in that case in part because by the time the blood draw was ordered, time had been taken to “bring the accused to a

hospital and to investigate the scene of the accident, [and] there was no time to seek out a magistrate and secure a warrant.” *Id.*

In addition, the Law Court has recently addressed this exception in *Arndt*, 2016 ME 31, 133 A.3d 587. In that case, a police officer transported a defendant to a police station to administer a breath test. He attempted to administer the breath test four times, but the machine was not working. At that point, one and a half hours had passed from the time of arrest. The officer decided to administer a warrantless blood test at that station rather than transporting the defendant to another station to attempt a fifth breath test. The Law Court upheld the warrantless blood test under those circumstances where efforts had been made to administer a breath test and significant time had already passed.

In both cases, the officers had to deal with external factors that prevented them from being able to apply for a warrant. While they were dealing with these external factors, time was passing. By the time they would have been able to *start* the warrant process in both cases, one and a half to two hours of time had passed. Furthermore, the reasonableness of *Schmerber* must be considered in light of available technology at the time it was decided in 1966.

The facts in this case are not analogous to *Schmerber* or *Arndt*. Here, Deputy Spear testified that although he made the decision to order a blood draw shortly after

arriving on the scene, he made no attempt to secure a warrant because he believed that he did not need one. Further, he admitted that he is wholly unfamiliar with the procedures involved in obtaining a warrant because he has only done so a handful of times throughout his career.

In reality, pursuant to M.R.U.C.P. 41C, a warrant could have been obtained very quickly in this case – most likely in under an hour. As soon as Deputy Spear arrived on the scene and made the decision to order a blood draw, he could have typed an affidavit and search warrant on the laptop he stated he had in his vehicle; sent both documents to one of the many justices of the peace in the area; sworn to the contents of the affidavit over the phone; and sent another officer to retrieve the signed search warrant from the home of the justice of the peace. This accident took place at approximately 4:30 p.m. on a Friday noon; the likelihood that at least one of the several justices of the peace in the area was available is high. Furthermore, Deputy Spear testified that although he made the decision to take the Defendant's blood almost immediately after arriving at the scene, because the Defendant had to be extricated from his vehicle, the blood draw did not happen until nearly an hour after the accident occurred. Based on the procedure spelled out above, had Deputy Spear attempted to secure a warrant, he likely could have secured a warrant and taken the blood test at the same time the blood test was actually taken without a warrant in this case.

The fact that the Defendant had a commercial license does not play into the exigent circumstances analysis. As demonstrated by other case law involving allegations of operating under the influence, the exigent circumstances exception in those cases serves to prevent the destruction of evidence of a defendant's blood-alcohol level due to the passing of time. It applies when, due to circumstances beyond an officer's control, an officer has not initiated the warrant process; time has passed; and at that point, starting the process of obtaining a warrant will be time consuming and likely result in the destruction of evidence. Whether the driver of a vehicle has a commercial license or not does not change the rate at which the evidence is destroyed, and therefore does not play into the analysis at all. In short, the exigent circumstances exception to the warrant requirement does not apply in this case and cannot serve to uphold the search.

**(b) Special Needs**

The United States Supreme Court has recognized that warrantless searches may be upheld "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602, 619 (1989) (quotation marks omitted). Under a special needs analysis, the court must balance the privacy interests of the individual against the governmental interests at stake to assess the practicality of the warrant and probable

cause requirements. *See, e.g., Griffin v. Wisconsin*, 483 U.S. 868 (1987).

In *Skinner*, the U.S. Supreme Court analyzed the constitutionality of under the Fourth Amendment of a Federal Railroad Administration regulation requiring federal employees to provide blood and urine samples after certain train accidents. *See Skinner*, 489 U.S. 602 (1989). More specifically, the regulation mandated suspicionless testing of *employees* by his or her *employer* after an accident had occurred in order to deter the use of alcohol and drugs by railroad employees while the employee was working. While the regulation, upheld by the court, permitted the use of the test results in *disciplinary* proceedings, the regulation did not permit the use of such results in *criminal* proceedings.

On the other hand, the U.S. Supreme Court analyzed another statute under the special needs exception in *Ferguson v. City of Charleston*, 532 U.S. 67 (2001). In that case, a State hospital implemented a policy setting forth procedures to be followed by hospital staff to identify pregnant patients suspected of drug abuse. *Id.* at 71. Patients who met certain criteria were tested for illegal drug use. *Id.* If those tests came back positive, the results were provided to law enforcement for use in prosecution of the patients. *Id.* at 72. The U.S. Supreme Court struck down the statute in *Ferguson*, stating that the warrantless drug testing procedure did not meet the special needs exception to the warrant requirement. *Id.* at 86. The Court distinguished the policy in

*Ferguson* from the regulation in *Skinner* by stating that in *Skinner*, “the ‘special need’ that was advanced as a justification for the absence of a warrant or individualized suspicion was one divorced from the State’s general interest in law enforcement.” In other words, because the tests in *Ferguson* were being administered with the primary purpose of law enforcement, the “special needs” exception to the warrant requirement did not apply to uphold the policy.

Here, the State may argue that certain federal regulations would allow agencies, such as the Department of Transportation, to take the blood of a driver operating under a commercial license without a warrant under a *Skinner* analysis and use the results of those tests in administrative, disciplinary proceedings. However, that is not what happened in this case. In this case, a Deputy ordered the blood sample to be taken in furtherance of a criminal investigation without consideration of Defendant’s commercial license or the regulations that may apply to it. Furthermore, the evidence that was obtained is being introduced against Defendant in criminal, not administrative or disciplinary proceedings. As such, the facts in this case are not analogous to *Skinner* and the special needs exception cannot justify the warrantless search that took place.

### III. CONCLUSION

Generally, a warrant must be obtained before a search can be conducted. A blood draw is an example of a particularly intrusive search. Warrantless blood draws

can be reasonable, but only pursuant to certain, well-recognized exceptions, including consent and exigent circumstances. Because Maine's statute does not fall within any recognized exception to the warrant requirement, it is unconstitutional, and the search in this case cannot be upheld based on that statute. Furthermore, the facts of this case do not support application of either consent or exigent circumstances to uphold the warrantless search. Finally, sometimes warrantless blood draws will be upheld if they are conducted based on the government's "special needs" that are separate from law enforcement purposes. Because the facts of this case do not support the contention that the search was conducted based on the government's "special needs" to monitor commercial drivers, the search does not fall within the special needs exception either. In short, because the warrantless search is not supported by any exception to the warrant requirement, the search was unreasonable and any evidence procured through the search must be suppressed.

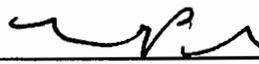
**WHEREFORE**, Defendant respectfully requests that any and all evidence derived from the drawing of his blood on March 18, 2016, including any test results, be suppressed, and that this Honorable Court issue any further orders that it deems just and proper.

Dated: 8/16/17

  
\_\_\_\_\_  
Christopher K. MacLean, Esq.

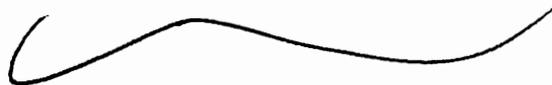
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16 day of August, 2017, a copy of the foregoing Memorandum in Support of Motion to Suppress Evidence (Warrantless Blood Test) was mailed by first class mail, originating in Camden, Maine, postage prepaid to Jeffrey Baroody, Assistant District Attorney, 62 Union Street, Rockland, Maine 04841.

  
\_\_\_\_\_  
Christopher K. MacLean, Esq.

STATE OF MAINE  
KNOX, ss

UNIFIED CRIMINAL DOCKET  
DOCKET NO. CR-16-474

STATE OF MAINE

COPY

v.

**LEGAL MEMORANDUM IN  
RESPONSE TO DEFENDANT'S  
MOTION TO SUPPRESS**

**RANDALL JUNIOR WEDDLE**

### STATEMENT OF FACTS

On March 18, 2016 at approximately 4:45 pm, a tractor-trailer truck carrying lumber was travelling on Augusta Road in Washington. The weather was clear and the sun was out. Witnesses who saw the truck stated that it was travelling at a high rate of speed, too fast for the road. As the truck began to round a curve, it veered into the opposite lane, causing a head-on crash with several vehicles. This crash resulted in several serious injuries and two deaths to occupants in the other vehicles that were struck. The truck was driven by the Defendant, Randall Weddle.

Multiple law enforcement officers responded to the scene of the crash and assisted in the investigation, including officers from the Knox County Sheriff's Department and the Maine State Police Commercial Vehicle Enforcement Unit. The scene of the crash was described as chaotic, requiring the assistance of many officers as well as first responders from local fire departments and emergency medical services. Nick Ciasullo, a first responder from a local fire department, made contact with the Defendant as he was trapped in the cab of his truck. The Defendant identified himself as the driver of the truck. After some time, the

Defendant was extricated from the truck. Mr. Ciasullo noticed the smell of alcoholic beverages on the Defendant's breath as the Defendant laid on a stretcher.

Knox County Sheriff's Deputy Paul Spear was one of the law enforcement officers who responded to the scene. From his observations of the scene, it appeared that the truck had caused the accident by going into the opposite lane. At the scene, another officer brought Deputy Spear a duffel bag located in the cab of the truck, which was open on each end, which contained a purple Crown Royal Whiskey bag, with prescription bottles inside. It was known to law enforcement officers at the scene that this was a fatal crash, and Knox County Sheriff's Sergeant Matt Elwell learned that the Defendant was going to be life-flighted to a hospital as soon as possible.

It was Sergeant Elwell's understanding that the Defendant was not going to be taken to a nearby hospital, and that if there was to be a blood draw, it needed to happen quickly, before the Defendant was placed on the Lifeflight helicopter-ambulance. Sergeant Elwell was also aware that alcohol concentration diminishes in the blood after drinking is over, and was aware that the Defendant's subsequent medical treatment could involve the introduction of drugs to his system. This would potentially impact any blood samples taken from this Defendant later in the day. Heather Dyer, a chemist with the Maine Department of Health and Human Services (DHHS) Health and Environmental Testing Laboratory (HETL), testified at the suppression hearing regarding the natural absorption and elimination rate of alcohol in the human body, and testified that a subject's alcohol concentration begins to diminish shortly after drinking stops. She further testified that alcohol concentration can sometimes be determined through a process called "retrograde extrapolation," but only if certain information is provided, including a subject's drink history. This information is not automatically available in every OUI investigation.

Brian Wright, an advanced EMT working with Union Ambulance, agreed to perform a blood draw from the Defendant. This was after he was asked to do so by a member of law enforcement. As an advanced EMT, Mr. Wright regularly drew blood in the course of his profession. Describing the general procedure, he stated that it was quick, involving little pain and a small amount of blood being taken. Mr. Wright drew blood from the Defendant as he was being treated in the ambulance and being prepared for helicopter transport. Mr. Wright did not ask the Defendant for consent, and was under the mistaken belief that the Defendant had consented to the draw.

After the Defendant was taken to a hospital, he was interviewed by a Maine State Trooper with the Commercial Trucking Unit, Jeff Degroot. At the hearing, Trooper Degroot testified that the inspection of commercial motor vehicles is frequently done at inspection checkpoints; however, this is also done by randomly pulling the vehicles over during their travel on public ways. He also testified that commercial truckers are required to be medically qualified, and regularly provide a report on medications they take. Commercial Motor Vehicle Inspector Dan Russell also testified at the suppression hearing. He testified that commercial truckers are subject to the Federal Motor Carrier Safety Regulations. He discussed some of those regulations. He testified regarding Part 382, the portion of these regulations related to controlled substances and alcohol use and testing. Pursuant to that part, employers of commercial motor vehicle truckers are required to have a random drug and alcohol testing program in effect for their drivers (typically urinalysis). He testified that tests for controlled substances and alcohol were mandatory after fatal accidents, and that this would include the results of blood or breath tests taken by state officials in the course of an investigation. For the Court's reference, Part 382 of the Federal Motor Carrier Safety Regulations are attached. §§382.211, 382.301, and 382.303 are the sections on point.

While at the hospital, the Defendant's blood was drawn as part of his medical treatment. That blood sample was later analyzed at the DHHS HETL, and the alcohol concentration was a .07. The blood sample drawn from the Defendant at the scene of the crash was analyzed as well, revealing a .09 alcohol concentration. As part of Deputy Spear's follow-up investigation, he executed a search warrant on the cab of the Defendant's truck, which revealed bottle of Crown Royal Whiskey.

## LAW AND ARGUMENT

1. The procedures outlined in 29-A M.R.S. § 2522 contain *Fourth Amendment* protections, and the statute meets the "special needs" warrants exception; therefore, these procedures do not violate the *Fourth Amendment* and the test results of the Defendant's blood drawn at the scene of the crash should be admissible in Court.

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

When a motor vehicle collision is so severe that people are killed or may die, Maine law requires law enforcement officials to test the blood of all drivers for intoxicants.

**Mandatory submission to test.** If there is probable cause to believe that death has occurred or will occur as a result of an accident, an operator of a motor

vehicle involved in the motor vehicle accident shall submit to a chemical test . . . to determine an alcohol level or the presence of a drug or drug metabolite . . .

**Admissibility of test results.** The result of a test is admissible at trial if the court, after reviewing all the evidence, whether gathered prior to, during or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicants at the time of the accident.

29-A M.R.S. § 2522(1),(3). Subsection 3 allows the admission of the test results, absent consent, a warrant, or the existence of probable cause in advance of the test, only if: (1) the State presents evidence gathered after the fact demonstrating that, but for the exigencies at the scene of the collision, probable cause for the test would have been discovered; and (2) the test would have been administered based on the probable cause established by this information. *See State v. Cormier*, 2007 ME 112, ¶26, 928 A.2d 753, 761.

In *Cormier*, the defendant was driving a car involved in a collision which resulted in the deaths of two occupants of another vehicle. *Id.* at 755. No one at the scene observed any indication of alcohol use at the scene, and the defendant was transported to the hospital by ambulance. *Id.* Acting in accordance with 29-A M.R.S. § 2522(1), a state phlebotomist drew the defendant's blood without consent, which later revealed a blood alcohol content of .08. *Id.* The defendant was indicted for criminal charges including manslaughter, and moved to suppress the results of the blood test. *Id.* at 755 – 56. The motion court found that the result was inadmissible, and the state appealed. *Id.* The Law Court acknowledged that there was “no dispute that the test results were obtained through a search conducted without [the defendant's] consent, without a warrant, and without a determination of probable cause *before* the test was administered.” *Id.* at 757. Nevertheless, the Law Court concluded that the admission of the test results *did* violate the *Fourth Amendment* because of the “protections drawn from [the

amendment's] accepted jurisprudence built into the statute," such as the requirement that the court determines probable cause after the crash before the results are admissible. *Id.*

Furthermore, the Law Court found that the statute met the "special needs" exception to the warrant requirement. *Id.* at 763 – 64. In doing so, the Law Court balanced the compelling need of the State to obtain information about the intoxication of drivers involved in fatal, or likely fatal, collisions against the privacy interest of drivers, who are prohibited by law from driving while intoxicated, in the level of alcohol or other intoxicants in their blood. *Id.* at 763. That Court concluded that the State's interest outweighed the privacy interest of drivers in the content of their blood, and that the State's special needs, separate from the general purpose of law enforcement, justified an exception to the warrant requirement under these circumstances. *Id.*

The case at bar involves the exact same balancing of special needs. Furthermore, the evidence in this case clearly indicated exigency at the scene of a very serious crash which killed two people and injured several others. The investigation in the aftermath of the crash revealed erratic and reckless operation by the truck driver which caused the crash, the odor of alcohol from the truck driver's breath, the presence of alcohol in the cab of his truck, and a .07 alcohol level in the blood that was drawn from him at the hospital through his medical treatment. In other words, independent probable cause has been established to show that the Defendant was OUI; therefore, the results of the forensic blood draw conducted at the scene of the crash should be admissible under 29-A M.R.S. § 2522, and such admission does not violate the *Fourth Amendment*.

2. The officers were acting in good-faith reliance on 29-A M.R.S. § 2522, a statute which was lawfully in effect at the time and still is to this day; therefore, the

*Fourth Amendment* was not violated and exclusion of evidence is not an appropriate remedy.

Police are charged to enforce laws until and unless they are declared unconstitutional. *Michigan v. DeFillippo*, 443 U.S. 31, 38, 99 S. Ct. 2627, 61 L. Ed. 2d 343 (1979). The enactment of a law forecloses speculation by enforcement officers concerning its constitutionality – with the possible exception of a law so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws. *Id.* “The purpose of the exclusionary rule is to deter unlawful police action . . . To deter police from enforcing a presumptively valid statute was never remotely in the contemplation of even the most zealous advocate of the exclusionary rule.” *Id.* at FN 3.

“The [Fourth] Amendment says nothing about suppressing evidence obtained in violation of this command.” *Davis v. United States*, 564 U.S. 229, 236; 131 S. Ct. 2419, 2426 (2011). “Exclusion is not a personal constitutional right nor is it designed to redress the injury occasioned by an unconstitutional search . . . The rule’s sole purpose, we have repeatedly held, is to deter future *Fourth Amendment* violations.” *Id.* “Exclusion exacts a heavy toll . . . It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence.” *Id.* at 237, quoting *United States v. Leon*, 368 U.S. 897, 907, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984).

In “27 years of practice under *Leon*’s good-faith exception, [the Supreme Court has] never applied the exclusionary rule to suppress evidence obtained as a result of nonculpable, innocent police conduct.” *Davis, supra* at 240. In applying the exclusionary rule, the Supreme Court has abandoned the old, reflexive application of the doctrine, and imposed a more rigorous weighing of its costs and deterrence benefits. *Id.*, at 238. That court has also recalibrated its cost-benefit

analysis in exclusion cases to focus the inquiry on the flagrancy of the police misconduct at issue. *Id.* When the police act with an objectively reasonable good faith belief that their conduct is lawful, deterrence rationale loses much of its force. *Id.*

In *Davis*, the Supreme Court was asked to decide whether to apply the exclusionary rule when police conducted a search in objectively reasonable reliance on binding judicial precedent. *Id.* at 239. In that case, police officers stopped a vehicle which eventually resulted in the arrests of the driver and passenger, who were both handcuffed and placed in the back of separate patrol cars. *Id.* at 235. The passenger compartment was searched, which resulted in the discovery of a handgun in the passenger's jacket pocket. *Id.* The passenger was charged with possession of a firearm by a felon. *Id.* The actions of the officers would have been permissible by many courts at the time. *Id.* at 233. However, while the *Davis* appeal was pending, the Supreme Court decided *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), in which it adopted a new rule which would have invalidated the search conducted by the officers in *Davis*. *Id.* at 235 – 36. Nevertheless, the *Davis* court declined to impose the exclusionary rule, finding that it does not apply when the police conduct a search in objectively reasonable reliance on binding appellate precedent. *Id.* at 250.

Similar to the officers in *Davis*, the officers in the case at bar were relying on valid law when causing blood to be drawn from the Defendant. In particular, they were relying 29-A M.R.S. § 2522(1). The Supreme Court had not yet decided *Birchfield*. Furthermore, even after the *Birchfield* decision, 29-A M.R.S. § 2522 is still binding law. The officers in this case were objectively reasonable in their reliance on a law which had been duly passed by the legislature and which was in full effect on March 18, 2016, and which continues to be in effect to this day. Exclusion of evidence in this case would have no deterrent value because there was

no misconduct to deter. The perceived need to deter any of the officers' conduct is substantially outweighed by the heavy toll of requiring this Court to ignore reliable, trustworthy evidence bearing on this Defendant's guilt.

In *DeFillippo*, officers arrested a subject for violation of an ordinance, searched him, and discovered controlled substances in his possession which resulted in criminal charges. *DeFillippo, supra* at 34. The trial court denied the motion to suppress, and the Michigan Court of Appeals reversed that decision, finding that the ordinance was unconstitutional and that the results of the search should be suppressed. *Id.* The Supreme Court reversed, finding that the subsequently determined invalidity of the ordinance did not undermine the validity of the arrest made for violation of that ordinance, and the evidence should not have been suppressed. *Id.* at 40. The Court reasoned that the police were acting lawfully, pursuant to a properly enacted ordinance. *Id.* at 38 -39.

Similar to *DeFillippo*, the officers in this case were reasonably relying on a statute which was in full effect at the time of their investigation. The law in this case was not so flagrantly unconstitutional as to impose on these officers a responsibility to do otherwise.

In contrast, the Supreme Court held invalid a search pursuant to a federal statute which authorized the Border Patrol to search any vehicle within a reasonable distance, or 100 miles, of the border without warrant or probable cause and excluded the results of the search. *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973). However, the present case is distinguishable from *Almeida-Sanchez*. For one, the present case involves a professional truck driver who is engaged in a federally regulated enterprise. "[B]usinessmen engaged in such federally licensed and regulated enterprises accept the burdens as well as the benefits of their trade . . . The businessman in a regulated industry in effect consents to the restrictions placed upon him." *Id.* at 271. Furthermore, the present case is a statute closely

aimed the prevention of fatal crashes caused by impaired driving. The statute in *Almeida-Sanchez* authorized a random search of any vehicle within a "reasonable distance" from the border, which was construed by the Attorney General to mean within 100 miles from the border.

3. Because the Defendant was operating a commercial truck on a public way in the course of his employment at the time of the crash, the drawing of the Defendant's blood was not an "unreasonable" search or seizure; therefore, it did not violate the *Fourth Amendment*

The *Birchfield* decision should not be misinterpreted to stand for the proposition that all warrantless blood draws violate the *Fourth Amendment*. The question before the *Birchfield* Court was whether certain warrantless searches, especially searches incident to lawful arrest, were reasonable. See *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2173. *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 103 L. Ed. 2d 639, 109 S. Ct. 1402 (1989) resolves any doubt that a blood test in certain limited circumstances may be conducted on less than probable cause and, indeed, on less than individualized suspicion. *State v. Roche*, 681 A.2d 472, 474 (Me. 1996). The justification for such a search is popularly known as the "special needs" exception to probable cause. *Id.*

In *Skinner* the Federal Railroad Administration promulgated regulations that required certain employees to be tested for the presence of drugs or alcohol following certain major train accidents. These regulations did not constitute an unreasonable search and seizure, in part because the testing posed only a limited threat to the employees' justifiable privacy expectation, especially because they participate in an industry subject to pervasive safety regulation. *Id.*

The case at bar is factually similar to *Roche*, where the defendant was a commercial trucker hauling logs and caused a fatal crash. *Id.* at 473. A blood test was ordered, and the defendant was ultimately charged with manslaughter. *Id.* The results of the blood test were used as evidence against the defendant, after independent evidence established probable cause that he was OUI after the crash. *Id.* This was done pursuant to 29 M.R.S. § 1312, a similar statute to 29-A M.R.S. § 2522. In ruling that the blood draw in *Roche* did not violate the *Fourth Amendment*, the Law Court noted that such a testing procedure met the “special needs” exception to the warrant requirement. *Id.* The Court also noted that, like the railroad workers in *Skinner*, the defendant in *Roche* participated in an industry subject to pervasive safety regulation. *Id.* at 474. “Driving is an activity that is increasingly subject to regulation, and one involved in a fatal accident would ordinarily expect to be subjected to an investigation.” *Id.* at 475.

Not only was the Defendant in this case driving on a public way, he was doing so as a commercial trucker. He was subject to extensive regulations through the Federal Motor Carrier Safety Regulations. He was subject to random testing for controlled substances by his employer. Such tests were mandatory after any fatal accident. He was subject to regulations that had heightened oversight of his medical treatment and medications, and was subject to frequent random inspection by commercial trucking inspectors whenever he was travelling on public roads. In other words, he did not have a reasonable expectation of privacy that was violated when his blood was drawn at the scene of the crash.

WHEREFORE, the State asks this Court to deny the Defendant’s motion to suppress the test results of the blood that was drawn from the Defendant at the scene of the crash on March 18, 2016.

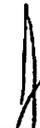
Dated: August 18, 2017

  
ADA FOR  
\_\_\_\_\_  
Jonathan Liberman  
District Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date forwarded a copy of the foregoing brief to Jeremy Pratt and Chris MacLean, attorneys for the defendant, by sending it by electronic mail or by sending it by U.S. Mail to P.O. Box 335, Camden, Maine 04841.

Dated: August 18, 2017

  
\_\_\_\_\_  
Jeffrey Baroody  
Assistant District Attorney

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## Subpart A - General

### §382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

### §382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to: [§382.103(a)]

- (1) *The commercial driver's license* requirements of part 383 of this subchapter; [§382.103(a)(1)]
- (2) *The Licencia Federal de Conductor* (Mexico) requirements; or [§382.103(a)(2)]
- (3) *The commercial drivers license* requirements of the Canadian National Safety Code. [§382.103(a)(3)]

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool. [§382.103(b)]

(c) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) of this subchapter must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section. [§382.103(c)]

(d) Exceptions. This part shall not apply to employers and their drivers: [§382.103(d)]

- (1) *Required to comply with the alcohol and/or controlled substances testing requirements of part 655 of this title* (Federal Transit Administration alcohol and controlled substances testing regulations); or [§382.103(d)(1)]
- (2) *Who a State must waive from the requirements of part 383 of this subchapter.* These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel; or [§382.103(d)(2)]
- (3) *Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter.* These individuals may be: [§382.103(d)(3)]
  - (i) *Operators of a farm vehicle which is:* [§382.103(d)(3)(i)]
    - [A] *Controlled and operated by a farmer;* [§382.103(d)(3)(i)(A)]
    - [B] *Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;* [§382.103(d)(3)(i)(B)]
    - [C] *Not used in the operations of a common or contract motor carrier; and* [§382.103(d)(3)(i)(C)]
    - [D] *Used within 241 kilometers (150 miles) of the farmer's farm.* [§382.103(d)(3)(i)(D)]
  - (ii) *Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.* [§382.103(d)(3)(ii)]

### §382.103 DOT Interpretations

**Question 1:** Are intrastate drivers of CMVs, who are required to obtain a CDL, required to be alcohol and drug tested by their employer?

**Guidance:** Yes. The definition of commerce in §382.107 is taken from 49 U.S.C. §31301 which encompasses interstate, intrastate, and foreign commerce.

**Question 2:** Are students who will be trained to be motor vehicle operators subject to alcohol and drug testing? Are they required to obtain a CDL in order to operate training vehicles provided by the school?

**Guidance:** Yes. §382.107 includes the following definition:

**Employer** means any person (including the United States, a State, District of Columbia, or a political subdivision of a State) who owns or leases a CMV or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives.

**Driver** means any person who operates a CMV.

Truck and bus driver training schools meet the definition of an employer because they own or lease CMVs and assign students to operate them at appropriate points in their training. Similarly, students who actually operate CMVs to complete their course work qualify as drivers.

The CDL regulations provide that "no person shall operate a CMV before passing the written and driving tests required for that vehicle" (49 CFR 383.23(a)(1)). Virtually all of the vehicles used for training purposes meet the definition of a CMV, and student drivers must therefore obtain a CDL.

**Question 3:** Are Part 382 alcohol and drug testing requirements applicable to firefighters in a State which gives them the option of obtaining a CDL or a non-commercial Class A or B license restricted to operating fire equipment only?

**Guidance:** No. The applicability of Part 382 is coextensive with Part 383—the general CDL requirements. Only those persons required to obtain a CDL under Federal law and who actually perform safety-sensitive duties are required to be tested for drugs and alcohol.

The FHWA, exercising its waiver authority, granted the States the option of waiving firefighters from CDL requirements. A State which gives firefighters the choice of obtaining either a CDL or a non-commercial license has exercised the option not to require CDLs. Therefore, because a CDL is not required, by extension Part 382 is not applicable.

A firefighter in the State would not be required under Federal law to be tested for drugs and alcohol regardless of the type of license which the employer required as a condition of employment or the driver actually obtained. It is the Federal requirement to obtain a CDL, nonexistent in the State, that entails drug and alcohol testing, not the fact of actually holding a CDL.

**Question 4:** An employer or State government agency requires CDLs for drivers of motor vehicles: (1) with a GVWR of 26,000 pounds or less; (2) with a GVWR of 26,000 pounds or less inclusive of a towed unit with a GVWR of 10,000 pounds or less; (3) designed to transport 15 or less passengers, including the driver; or (4) which transport HM, but are not required to be placarded under 49 CFR Part 172, Subpart F. Are such drivers required by Part 382 to be tested for the use of alcohol or controlled substances?

**Guidance:** No. Part 382 requires or authorizes drug and alcohol testing only of those drivers required by Part 383 to obtain a CDL. Since the vehicles described above do not meet the definition of a CMV in Part 383, their drivers are not required by Federal regulations to have a CDL.

**Question 5:** Are Alaskan drivers with a CDL who operate CMVs and have been waived from certain CDL requirements subject to controlled substances and alcohol testing?

**Guidance:** Yes. Alaskan drivers with a CDL who operate CMVs are subject to controlled substances and alcohol testing because they have licenses marked either "commercial driver's license" or "CDL." The waived drivers are only exempted from the knowledge and skills tests and the photograph on license requirements.

**Question 6:** Do the FHWA's alcohol and controlled substances testing regulations apply to employers and drivers in U.S. territories or possessions such as Puerto Rico and Guam?

**Guidance:** No. The rule by definition applies only to employers and drivers domiciled in the 50 states and the District of Columbia.

**Question 7:** Which drivers are to be included in an alcohol and controlled substances testing program under the FHWA's rule?

**Guidance:** Any person who operates a CMV as defined in §382.107 in intrastate or interstate commerce and is subject to the CDL requirement of 49 CFR Part 383.

**Question 8:** Is a foreign resident driver operating between the U.S. and a foreign country from a U.S. terminal for a U.S.-based employer subject to the FHWA's alcohol and controlled substances testing regulations?

**Guidance:** Yes. A driver operating for a U.S.-based employer is subject to Part 382.

**Question 9:** What alcohol and drug testing provisions apply to foreign drivers employed by foreign motor carriers?

**Guidance:** Foreign employers are subject to the alcohol and drug testing requirements in Part 382 (see §382.103). All provisions of the rules will be applicable while drivers are operating in the U.S. Foreign drivers may also be subject to State laws, such as probable cause testing by law enforcement officers.

**Question 10:** Are volunteer drivers subject to alcohol and drug testing?

**Guidance:** Yes. The applicability of Part 382 is coextensive with Part 383. The definition of "driver" in §382.107 and the definition of "employee" in §383.5 both include "any operator of person who operates a commercial motor vehicle." There is no exception for volunteer drivers. They are included in the scope and intent of the definition of "commerce" in both §382.107 and §383.5, because their functions "affect trade, traffic, and transportation." The question of whether or not they are compensated is irrelevant.

**§382.105 Testing procedures.**

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

**§382.105.DOT Interpretations**

**Question 1:** What does a BAT do when a test involves an independent self-employed owner-operator with a confirmed alcohol concentration of 0.02 or greater to notify a company representative as required by §40.65(f)?

**Guidance:** The independent, self-employed owner-operator will be notified by the BAT immediately and the owner-operator's certification in Step 4 notes that the self-employed owner-operator has been notified. No further notification is necessary. The BAT will provide copies 1 and 2 to the self-employed owner-operator directly.

**Question 2:** A driver does not have a photo identification card. Must an employer representative identify the driver in the presence of the BAT/urine specimen collector or may the employer representative identify the driver via a telephone conversation?

**Guidance:** Those subject to Part 382 are subject first, generally, to Part 383. Part 383 requires all States, with an exception in Alaska for

a very small group of individuals, to provide a CDL document to the individual that includes, among other things, the full name, signature, and mailing address of the person to whom such license is issued, physical and other information to identify and describe the person, including date of birth (month, day, and year), sex, and height, and a color photograph of the person. Except in these rare Alaskan instances, the FHWA fully expects most employers to require the driver to present the CDL document to the BAT or urine collector.

A driver subject to alcohol and drug testing should be able to provide the CDL document. In those rare instances that the CDL or other form of photo identification is not produced for verification, an employer representative must be contacted and must provide identification. The FHWA will allow employer representatives to identify drivers in any way that the employer believes will positively identify the driver.

**Question 3:** Will foreign drug testing laboratories need to be certified by the National Institute on Drug Abuse (NIDA)? Will they need to be certified by the Department of Health and Human Services (DHHS)?

**Guidance:** The NIDA, an agency of the DHHS, no longer administers the workplace drug testing laboratory certification program. This program is now administered by the DHHS Substance Abuse and Mental Health Services Administration. All motor carriers are required to use DHHS-certified laboratories for analysis of alcohol and controlled substances tests as neither Mexico nor Canada has an equivalent laboratory certification program.

**Question 4:** Particularly in light of the coverage of Canadian and Mexican employees, how should MROs deal in the verification process with claims of the use of foreign prescriptions or over-the-counter medication?

**Guidance:** Possession or use of controlled substances are prohibited when operating a CMV under the FHWA regulations, regardless of the source of the substance. A limited exception exists for a substance's use in accordance with instructions provided by a licensed medical practitioner who knows that the individual is a CMV driver who operates CMVs in a safety-sensitive job and has provided instructions to the CMV driver that the use of the substance will not affect the CMV driver's ability to safely operate a CMV (see §§382.213, 391.41(b)(2), and 392.4(g)). Individuals entering the United States must properly declare controlled substances with the U.S. Customs Service, 24 CFR 1311.27.

The FHWA expects MROs to properly investigate the facts concerning a CMV driver's claim that a positive controlled substance test result was caused by a prescription written by a knowledgeable, licensed medical practitioner or the use of an over-the-counter substance that was obtained in a foreign country without a prescription. This investigation should be documented in the MRO's files.

If the CMV driver lawfully obtained a substance in a foreign country without a prescription which is a controlled substance in the United States, the MRO must also investigate whether a knowledgeable, licensed medical practitioner provided instructions to the CMV driver that the use of the over-the-counter substance would not affect the driver's ability to safely operate a CMV.

Potential violations of §392.4 must be investigated by the law enforcement officer at the time possession or use is discovered to determine whether the exception applies.

**§382.107 Definitions.**

Words or phrases used in this part are defined in §§386.2 and 390.5 of this subchapter, and Sec. 40.3 of this title, except as provided in this section —

**Actual knowledge** for the purpose of subpart B of this part, means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in Sec. 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under Sec. 382.307.

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

**Alcohol concentration (or content)** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

**Alcohol use** means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

**Commerce** means:

- (1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and
- (2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

**Commercial motor vehicle** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle

- (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
- (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

**Confirmation (or confirmatory) drug test** means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

**Confirmation (or confirmatory) validity test** means a second test performed on a urine specimen to further support a validity test result.

**Confirmed drug test** means a confirmation test result received by an MRO from a laboratory.

**Consortium/Third party administrator (C/TPA)** means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this part.

**Controlled substances** mean those substances identified in Sec. 40.85 of this title.

**Designated employer representative (DER)** is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

**Disabling damage** means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) Exclusions.

(i) *Damage which can be remedied temporarily at the scene of the accident without special tools or parts.*

(ii) *Tire disablement without other damage even if no spare tire is available.*

(iii) *Headlight or taillight damage.*

(iv) *Damage to turn signals, horn, or windshield wipers which make them inoperative.*

**DOT Agency** means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655), in accordance with part 40 of this title.

**Driver** means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

**Employer** means a person or entity employing one or more employ

DOT agency regulations requiring compliance with this part. The term, as used in this part, means the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers for the purposes of this part.

**Licensed medical practitioner** means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

**Performing (a safety-sensitive function)** means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**Positive rate for random drug testing** means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

**Refuse to submit (to an alcohol or controlled substances test)** means that a driver:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see Sec. 40.61(a) of this title);

(2) Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see Sec. 40.63(c) of this title) a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see Sec. 40.63(c) of this title) for a pre-employment test is not deemed to have refused to test;

(4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen (see §§40.67(l) and 40.69(g) of this title);

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see Sec. 40.193(d)(2) of this title);

(6) Fail or declines to take a second test the employer or collector has directed the driver to take;

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under Sec. 40.193(d) of this title. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;

(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or

(9) Is reported by the MRO as having a verified adulterated or substituted test result.

**Safety-sensitive function** means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76 of this subchapter);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

- (1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.
- (2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

[68 FR 43103, Aug. 17, 2001, as amended at 68 FR 75458, Dec. 31, 2003; 77 FR 59825, Oct. 1, 2012]

**§382.107 DOT Interpretations**

*Question 1:* What is an owner-operator?

*Guidance:* The FHWA neither defines the term "owner-operator" nor uses it in regulations. The FHWA regulates employers and drivers. An owner-operator may act as both an employer and a driver at certain times, or as a driver for another employer at other times, depending on contractual arrangements and operational structure.

**§382.109 Preemption of State and local laws.**

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that: [§382.109(a)]

- (1) Compliance with both the State or local requirement in this part is not possible; or [§382.109(a)(1)]
- (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part. [§382.109(a)(2)]

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public. [§382.109(b)]

**§382.109 DOT Interpretations**

*Question 1:* An employer is required by State or local law to regulate, or order to bargain with unionized employees over discretionary elements of the DOT alcohol and drug testing regulations (e.g., selection of DHHS-approved laboratories or MROs). May the employer defer the 1995 or 1996 implementation dates for testing employees until the collective bargaining process has produced an agreement on these discretionary elements, or must the employer implement testing as required by Part 382?

*Guidance:* The FMCSA provided large employers 45 weeks and small employers 97 weeks collectively to bargain the discretionary elements of the Part 382 testing program. An employer must implement alcohol and controlled substances testing in accordance with the schedule in §382.115. If observance of the collective bargaining process would make it impossible for the employer to comply with these deadlines, §382.109(a)(1) preempts the State or local bargaining requirement to the extent needed to meet the implementation date.

**§382.111 Other requirements imposed by employers.**

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

**§382.113 Requirement for notice.**

Before performing each alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

**§382.113 DOT Interpretations**

*Question 1:* Must a notice be given before each test or will a general notice given to drivers suffice?

*Guidance:* A driver must be notified before submitting to each test that it is required by Part 382. This notification can be provided to the driver either verbally or in writing. In addition, the FHWA (Federal

Highway Administration) believes that the use of the DOT (U.S. Department of Transportation) Breath Alcohol Testing Form (OMB No. 2105-0529) and the Drug Testing Custody and Control Form (49 CFR Part 40, Appendix A) will support the verbal or written notice that the test is being conducted in accordance with Part 382.

**§382.115 Starting date for testing programs.**

- (a) All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations. [§382.115(a)]
- (b) All foreign-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States. [§382.115(b)]

**§382.115 DOT Interpretations**

*Question 1:* In a governmental entity structured into various subunits, such as departments, divisions, and offices, how is the number of an employer's drivers determined for purposes of the implementation date of controlled substances and alcohol testing?

*Guidance:* Part 382 testing applies to governmental entities, including those of the Federal government, the States, and political subdivisions of the States. An employer is defined as any person that owns or leases CMVs or assigns drivers to operate them. Therefore, any governmental entity, or a subunit of it that controls CMVs and the day-to-day operations of its drivers, may be considered the employer for purposes of Part 382. For example, a city government divided into various departments, such as parks and public works, could consider the departments as separate employers if the CMV operations are separately controlled. The city also has the option of deeming the city as the employer of all of the drivers of the various departments.

**§382.117 Public interest exclusion.**

No employer shall use the services of a service agent who is subject to public interest exclusion in accordance with 49 CFR part 40, Subpart R.

**§382.119 Stand-down waiver provision.**

- (a) Employers are prohibited from standing employees down, except consistent with a waiver from the Federal Motor Carrier Safety Administration as required under this section. [§382.119(a)]
- (b) An employer subject to this part who seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures in 49 CFR 40.21. The employer must send a written request, which includes all of the information required by that section to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. [§382.119(b)]
- (c) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee. [§382.119(c)]
- (d) After a decision is signed by the Administrator or the Administrator's designee, the employer will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver. [§382.119(d)]
- (e) Questions regarding waiver applications should be directed to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001. [§382.119(e)]

[68 FR 43103, Aug. 17, 2001, as amended at 72 FR 55700, Oct. 1, 2007]

**§382.121 Employee admission of alcohol and controlled substances use.**

- (a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this part and part 40 of this title, provided that: [§382.121(a)]
  - (1) The admission is in accordance with a written employer-established voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section; [§382.121(a)(1)]
  - (2) The driver does not self-identify in order to avoid testing under the requirements of this part; [§382.121(a)(2)]
  - (3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and [§382.121(a)(3)]
  - (4) The driver does not perform a safety sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines. [§382.121(a)(4)]

- (b) A qualified voluntary self-identification program or policy must contain the following elements: [§382.121(b)]
- (1) It must prohibit the employer from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section; [§382.121(b)(1)]
  - (2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem; [§382.121(b)(2)]
  - (3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor; [§382.121(b)(3)]
  - (4) It must ensure that: [§382.121(b)(4)]
    - (i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or [§382.121(b)(4)(i)]
    - (ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and [§382.121(b)(4)(ii)]
  - (5) It may incorporate employee monitoring and include non-DOT follow-up testing. [§382.121(b)(5)]

**§382.121 DOT Interpretations**  
**Question 1:** If an employee admits to alcohol misuse, or drug use, when is it appropriate for the employer to apply the exception in §382.121?  
**Guidance:** In order for the exception in §382.121 to be used, all the provisions and conditions of this section must be met. In this instance, none of the consequences of prohibited conduct would apply, and the employer would not report the admission to any subsequent employers. However, if any of the conditions in §382.121 is absent (for example, if the employer has no existing written policy or if the driver fails to follow the employer's treatment program), then the exception may not be used, and the driver would be fully subject to all the consequences of prohibited conduct, including referral and treatment in accordance with Part 40, Subpart O, and reporting to subsequent employers in accordance with §40.25 and §391.23(e).

**Subpart B - Prohibitions**

**§382.201 Alcohol concentration.**

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

**§382.205 On-duty use.**

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

**§382.205 DOT Interpretations**  
**Question 1:** What is meant by the terms "use alcohol" or "alcohol use"? Is observation of use sufficient or is an alcohol test result required?  
**Guidance:** The term "alcohol use" is defined in §382.107. The employer is prohibited in §382.205 from permitting a driver to drive when the employer has actual knowledge of the driver's use of alcohol, regardless of the level of alcohol in the driver's body. The form of knowledge is not specified. It may be obtained through observation or other method.

**§382.207 Pre-duty use.**

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a

driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

**§382.209 Use following an accident.**

No driver required to take a post-accident alcohol test under Sec. 382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

**§382.211 Refusal to submit to a required alcohol or controlled substances test.**

No driver shall refuse to submit to a pre-employment controlled substance test required under Sec. 382.301, a post-accident alcohol or controlled substance test required under Sec. 382.303, a random alcohol or controlled substances test required under Sec. 382.305, a reasonable suspicion alcohol or controlled substance test required under Sec. 382.307, a return-to-duty alcohol or controlled substances test required under Sec. 382.309, or a follow-up alcohol or controlled substance test required under Sec. 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

[77 FR 4483, Jan. 30, 2012]

**§382.213 Controlled substance use.**

- (a) No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions when the driver uses any drug or substance identified in 21 CFR 1308.11 Schedule I. [§382.213(a)]
- (b) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in Sec. 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. [§382.213(b)]
- (c) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function. [§382.213(c)]
- (d) An employer may require a driver to inform the employer of any therapeutic drug use. [§382.213(d)]

[77 FR 4483, Jan. 30, 2012]

**§382.213 DOT Interpretations**  
**Question 1:** Must a physician specifically advise that substances in a prescription will not adversely affect the driver's ability to safely operate a CMV or may a pharmacist's advice or precautions printed on a container suffice for the advice?  
**Guidance:** A physician must specifically advise the driver that the substances in a prescription will not adversely affect the driver's ability to safely operate a CMV.

**§382.215 Controlled substances testing.**

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

[65 FR 43103, Aug. 17, 2001, as amended at 77 FR 4483, Jan. 30, 2012]

**Subpart B - General**  
**Question 1:** If a urine specimen is collected during a given calendar year (e.g., December 30) and the medical review officer (MRO) makes the final determination the following calendar year (e.g., January 3) for which year is the test result considered to be complete?  
**Guidance:** The Federal Highway Administration considers test results to be complete for the calendar year in which the MRO makes a final determination of the test results, regardless of the date the specimen was collected.

**Subpart B - Prohibitions**  
**Question 1:** Does the term "actual knowledge" used in the various prohibitions in Subpart B of Part 382, require direct observation by a supervisor or is it more general?  
**Guidance:** The form of actual knowledge is not specified, but may result from the employer's direct observation of the employee, the driver's previous employer(s), the employee's admission of alcohol use, or other occurrence. (59 FR 7320, February 15, 1994)

1. This Interpretation was issued after the interpretations were published in the Federal Register in April 1997.

Subpart C - Tests Required

§382.301 Pre-employment testing.

- (a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in paragraph (b) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver. [§382.301(a)]
- (b) An employer is not required to administer a controlled substances test required by paragraph (a) of this section if: [§382.301(b)]
  - (1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and [§382.301(b)(1)]
  - (2) While participating in that program, either: [§382.301(b)(2)]
    - (i) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or [§382.301(b)(2)(i)]
    - (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and [§382.301(b)(2)(ii)]
  - (3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months. [§382.301(b)(3)]
- (c) (1) An employer who exercises the exception in paragraph (b) of this section shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information: [§382.301(c)(1)]
  - (i) Name(s) and address(es) of the program(s). [§382.301(c)(1)(i)]
  - (ii) Verification that the driver participates or participated in the program(s). [§382.301(c)(1)(ii)]
  - (iii) Verification that the program(s) conforms to part 40 of this title. [§382.301(c)(1)(iii)]
  - (iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances. [§382.301(c)(1)(iv)]
  - (v) The date the driver was last tested for controlled substances. [§382.301(c)(1)(v)]
  - (vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part. [§382.301(c)(1)(vi)]
- (2) An employer who uses, but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with Sec. 382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40 of this title, the employer shall conduct a pre-employment controlled substances test. [§382.301(c)(2)]
- (d) An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, it must comply with the following requirements: [§382.301(d)]
  - (1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions). [§382.301(d)(1)]
  - (2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others). [§382.301(d)(2)]
  - (3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test. [§382.301(d)(3)]
  - (4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of this title. [§382.301(d)(4)]

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04. [§382.301(d)(5)]

§382.301 DOT Interpretations

**Question 1:** What is meant by the phrase, "an employer who uses, but does not employ a driver"? Describe a situation to which the phrase would apply.

**Guidance:** This exception was contained in the original drug testing rules and was generally applied to "trip lease" drivers involved in interstate commerce. A "trip lease" driver is generally a driver employed by one motor carrier, but who is temporarily leased to another motor carrier for one or more trips generally for a time period less than 30 days. The phrase would also apply to volunteer organizations that use leased drivers.

**Question 2:** Must school bus drivers be pre-employment tested after they return to work after summer vacation in each year in which they do not drive for 30 consecutive days?

**Guidance:** A school bus driver whom the employer expects to return to duty the next school year does not have to be pre-employment tested so long as the driver has remained in the random selection pool over the summer. There is deemed to be no break in employment if the driver is expected to return in the fall.

On the other hand, if the driver is taken out of all DOT random pools for more than 30 days, the exception to pre-employment drug testing in §382.301 would be unavailable and a drug test would have to be administered after the summer vacation.

**Question 3:** Is a pre-employment controlled substances test required if a driver returns to a previous employer after his/her employment had been terminated?

**Guidance:** Yes. A controlled substances test must be administered if the employment has been terminated for more than 30 days and the exceptions under §382.301(c) were not met.

**Question 4:** Must all drivers who do not work for an extended period of time (such as layoffs over the winter or summer months) be pre-employment drug tested each season when they return to work?

**Guidance:** If the driver is considered to be an employee of the company during the extended (layoff) period, a pre-employment test would not be required so long as the driver has been included in the company's random testing program during the layoff period. However, if the driver was not considered to be an employee of the company at any point during the layoff period, or was not covered by a program or was not covered for more than 30 days, then a pre-employment test would be required.

**Question 5:** What must an employer do to avail itself of the exceptions to pre-employment testing listed under §382.301(c)?

**Guidance:** An employer must meet all requirements in §382.301(c) and (d) including maintaining all required documents. An employer must produce the required documents at the time of the Compliance Review for the exception to apply.

**Question 6:** May a CDL driving skills test examiner conduct a driving skills test administered in accordance with 49 CFR Part 383 before a person subject to Part 382 is tested for alcohol and controlled substances?

**Guidance:** Yes. A CDL driving skills test examiner, including a third party CDL driving skills test examiner, may administer a driving skills test to a person subject to Part 382 without first testing him/her for alcohol and controlled substances. The intent of the CDL driving skills test is to assess a person's ability to operate a commercial motor vehicle during an official government test of their driving skills. However, this guidance does not allow an employer (including a truck or bus driver training school) to use a person as a current company lease or student driver prior to obtaining a verified negative test result. An employer must obtain a verified negative controlled substance test result prior to dispatching a driver on his/her first trip.

**Question 7:** A driver has tested positive and completed the referral and evaluation process up to the point of being released by the SAP for a return-to-duty test. The driver no longer works for the employer where he/she tested positive. The driver applies for work with a new employer. Must the new employer conduct two separate controlled substances tests (one pre-employment and one return-to-duty), or will one test suffice for both purposes?

**Guidance:** An individual who has complied with the education/treatment process as required under 49 CFR Part 40, Subpart O, but has not submitted to a return-to-duty test and is seeking employment with a new employer, a single test will suffice to meet the requirements of §§382.301 and §382.309 only when the new employer

would be required to conduct both tests on the same day.

**Question 8:** May an employer conduct a road test administered in accordance with 49 CFR §391.31 prior to driver applicant subject to 49 CFR 382 submit to a pre-employment controlled substances test?

**Guidance:** Yes. An employer may administer a road test to a prospective driver subject to Part 382 without first testing him/her for controlled substances. The intent of the road test is to effectively evaluate the driver's ability to operate a commercial motor vehicle (CMV). This guidance does not allow the motor carrier to dispatch the prospective driver on his/her first trip prior to obtaining a verified negative test result.

**§382.303 Post-accident testing.**

- (a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers: [§382.303(a)]
  - (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or [§382.303(a)(1)]
  - (2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved: [§382.303(a)(2)]
    - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or [§382.303(a)(2)(i)]
    - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. [§382.303(a)(2)(ii)]
- (b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers: [§382.303(b)]
  - (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or [§382.303(b)(1)]
  - (2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved: [§382.303(b)(2)]
    - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or [§382.303(b)(2)(i)]
    - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. [§382.303(b)(2)(ii)]
- (c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section: [§382.303(c)]

Table for Sec. 382.303(a) and (b)

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES NO	YES YES
ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

- (d) (1) **Alcohol tests.** If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request. [§382.303(d)(1)]
- (2) **Controlled substance tests.** If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating

- the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request. [§382.303(d)(2)]
- (e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. [§382.303(e)]
- (f) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section. [§382.303(f)]
- (g) (1) *The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.* [§382.303(g)(1)]
  - (2) *The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.* [§382.303(g)(2)]
- (h) **Exception.** This section does not apply to: [§382.303(h)]
  - (1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or [§382.303(h)(1)]
  - (2) An occurrence involving only the loading or unloading of cargo; or [§382.303(h)(2)]
  - (3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in §571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with Sec. 177.823 of this title. [§382.303(h)(3)]

**§382.303 DOT Interpretations**

**Question 1:** Why does the FHWA allow post-accident tests done by Federal, State or local law enforcement agencies to substitute for a §382.303 test even though the FHWA does not allow a Federal, State or local law enforcement agency test to substitute for a pre-employment, random, reasonable suspicion, return-to-duty or follow-up test? Will such substitutions be allowed in the future?

**Guidance:** A highway accident is generally investigated by a Federal, State or local law enforcement agency that may determine that probable cause exists to conduct alcohol or controlled substances testing of a surviving driver. The FHWA believes that testing done by such agencies will be done to document an investigation for a charge of driving under the influence of a substance and should be allowed to substitute for a FHWA required test. The FHWA expects this provision to be used rarely.

The FHWA is required by statute to provide certain protection for drivers who are tested for alcohol and controlled substances. The FHWA believes that law enforcement agencies investigating accidents will provide similar protection based on the local court's prior action in such types of testing.

The FHWA will not allow a similar approach for law enforcement agencies to conduct testing for the other types of testing. A law enforcement agency however, may act as a consortium to provide any testing in accordance with Parts 40 and 382.

**Question 2:** May an employer allow a driver, subject to post-accident controlled substances testing, to continue to drive pending receipt of the results of the controlled substances test?

**Guidance:** Yes. A driver may continue to drive so long as no other restrictions are imposed by §382.307 or by law enforcement officials.

**Question 3:** A commercial motor vehicle operator is involved in an accident in which an individual is injured but does not die from the injuries until a later date. The commercial motor vehicle driver does not receive a citation under State or local law for a moving traffic violation arising from the accident. How long after the accident is the employer required to attempt to have the driver subjected to post-accident testing?

1. This interpretation was issued after the interpretations were published in the Federal Register in April 1997.

**Guidance:** Each employer is required to test each surviving driver for alcohol and controlled substances as soon as practicable following an accident as required by §382.303. However, if an alcohol test is not administered within 8 hours following the accident or if a controlled substance test is not administered within 32 hours following the accident, the employer must cease attempts to administer that test. In both cases, the employer must prepare and maintain a record stating the reason(s) the test(s) were not promptly administered. If the fatality occurs following the accident and within the time limits for the required tests, the employer shall attempt to conduct the tests until the respective time limits are reached. The employer is not required to conduct any tests for cases in which the fatality occurs outside of the 8 and 32-hour time limits.

**Question 4:** What post-accident alcohol and drug testing requirements are there for U.S. employers' drivers involved in an accident occurring outside the U.S.?

**Guidance:** U.S. employer(s) are responsible for ensuring that drivers who have an accident (as defined in §390.5) in a foreign country are post-accident alcohol and drug tested in conformance with the requirements of 49 CFR Parts 40 and 382. If the test(s) cannot be administered within the required 8- or 32-hour time limit, the employer shall prepare and maintain a record stating the reason(s) the test(s) was not administered (see §382.303(b)(1) and (b)(4)).

**Question 5:** What post-accident alcohol and drug testing requirements are there for foreign drivers involved in accidents occurring outside the United States?

**Guidance:** Post-accident alcohol and drug testing is required for CMV accidents occurring within the U.S. and on segments of interstate movements into Canada between the U.S.-Canadian border and the first physical delivery location of a Canadian consignee. The FHWA further believes its regulations require testing for segments of interstate movements out of Canada between the last physical pickup location of a Canadian consignor and the U.S.-Canadian border. The same would be true for movements between the U.S.-Mexican border and a point in Mexico.

For example, a motor carrier has two shipments on a CMV from a shipper in Chicago, Illinois. The first shipment will be delivered to Winnipeg, Manitoba, and the second to Lloydminster, Saskatchewan. A driver is required to be post-accident tested for any CMV accident that meets the requirements to conduct 49 CFR 382.303. Post-accident testing that occurs between Chicago, Illinois and Winnipeg, Manitoba (the first delivery point). The FHWA would not require a foreign motor carrier to conduct testing of foreign drivers for any accidents between Winnipeg and Lloydminster.

The FHWA does not believe it has authority over Canadian and Mexican motor carriers that operate within their own countries where the movement does not involve movements into or out of the United States. For example, the FHWA does not believe it has authority to require testing of transportation of freight from Prince George, British Columbia to Red Deer, Alberta that does not traverse the United States.

If the driver is not tested for alcohol and drugs as required by §382.303 and the motor carrier operates in the U.S. during a four-month period of time after the event that triggered the requirement for such a test, the motor carrier will be in violation of Part 382 and may be subject to penalties under §382.507.

### §382.305 Random testing.

- (a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section. [§382.305(a)]
- (b) (1) *Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.* [§382.305(b)(1)]
- (2) *Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.* [§382.305(b)(2)]
- (c) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by Sec. 382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain records from employers, and may make

FMCSA Administrator will publish in the Federal Register the new minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication in the Federal Register. [§382.305(c)]

- (d) (1) *When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FMCSA Administrator may lower this rate to 10 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of Sec. 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.* [§382.305(d)(1)]
- (2) *When the minimum annual percentage rate for random alcohol testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of Sec. 382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.* [§382.305(d)(2)]
- (e) (1) *When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of Sec. 382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all driver positions.* [§382.305(e)(1)]
- (2) *When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of Sec. 382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all driver positions.* [§382.305(e)(2)]
- (f) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by Sec. 382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the Federal Register the new minimum annual percentage rate for controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication in the Federal Register. [§382.305(f)]
- (g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of Sec. 382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. [§382.305(g)]
- (h) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of Sec. 382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions. [§382.305(h)]
- (i) (1) *The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.* [§382.305(i)(1)]
- (2) *Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.* [§382.305(i)(2)]
- (3) *Each driver selected for testing shall be tested during the selection period.* [§382.305(i)(3)]
- (j) (1) *To calculate the total number of covered drivers eligible for random testing throughout the year, as an employer, you must add*

the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered drivers must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., daily, weekly, bi-weekly) you do not need to compute this total number of covered drivers rate more than on a once per month basis. [§382.305(j)(1)]

- (2) As an employer, you may use a service agent (e.g., a C/TPA) to perform random selections for you, and your covered drivers may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool. [§382.305(j)(2)]
- (k) (1) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced. [§382.305(k)(1)]
- (2) Each employer shall ensure that the dates for administering random alcohol and controlled substances tests conducted under this part are spread reasonably throughout the calendar year. [§382.305(k)(2)]
- (l) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible. [§382.305(l)]
- (m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions. [§382.305(m)]
- (n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function. [§382.305(n)]
- (o) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may — [§382.305(o)]
  - (1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or [§382.305(o)(1)]
  - (2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject. [§382.305(o)(2)]

66 FR 43103, Aug. 17, 2001, as amended at 67 FR 61821, Oct. 2, 2002; 68 FR 75459, Dec. 31, 2003

**§382.305 DOT Interpretations**

**Question 1:** Is a driver who is on duty, but has not been assigned a driving task, considered to be ready to perform a safety sensitive function as defined in §382.107, subjecting the driver to random alcohol testing?

**Guidance:** A driver must be about to perform, or immediately available to perform, a safety sensitive function to be considered subject to random alcohol testing. A supervisor, mechanic, or clerk, etc., who is on call to perform safety sensitive functions may be tested at any time they are on call, ready to be dispatched while on duty.

**Question 2:** What are the employer's obligations in terms of random testing with regard to an employee who does not drive as part of the employee's usual job functions, but who holds a CDL and may be called upon at any time, on an occasional or emergency basis, to drive?

**Guidance:** Such an employee must be in a random testing pool at all times, like a full-time driver. A drug test must be administered each time the employee's name is selected from the pool.

Alcohol testing, however, may only be conducted just before, during, or just after the performance of safety sensitive functions. A safety sensitive function as defined in §382.107 means any of those on duty functions set forth in §395.2 On-duty time paragraphs (1) through (7), (generally driving and related activities) if the employee's name is selected, the employer must wait until the next time the employee is performing safety sensitive functions just before the employee is to perform a safety sensitive function, or just after the employee has ceased performing such

functions to administer the alcohol test. If a random selection period expires before the employee performs a safety sensitive function, no alcohol test should be given, the employee's name should be returned to the pool, and the number of employees subsequently selected should be adjusted accordingly to achieve the required rate.

**Question 3:** How should a random testing program be structured to account for the schedules of school bus or other drivers employed on a seasonal basis?

**Guidance:** If no school bus drivers from an employer's random testing pool are used to perform safety sensitive functions during the summer, the employer could choose to make random selections only during the school year. If the employer nevertheless chooses to make selections in the summer, tests may only be administered when the drivers return to duty.

If some drivers continue to perform safety sensitive functions during the summer, such as driving buses for summer school, an employer could not choose to forego all random selections each summer. Such a practice would compromise the random, unannounced nature of the random testing program. The employer would test all selected drivers actually driving in the summer. With regard to testing drivers not driving during the summer, the employer has two options. One, names of drivers selected who are on summer vacation may be returned to the pool, and another selection made. Two, the selected names could be held by the employer and all the drivers return to perform safety sensitive functions before the next random selection, the test administered upon the drivers' return.

Finally, it should be noted that reductions in the number of drivers during summer vacations reduces the average number of driving positions over the course of the year, and thus the number of tests which must be administered to meet the minimum random testing rate.

**Question 4:** Are driver positions that are vacant for a testing cycle to be included in the determination of how many random tests must be conducted?

**Guidance:** No. The FHWA random testing program tests employed or utilized drivers, not positions that are vacant.

**Question 5:** May an employer use the results of another program in which a driver participates to satisfy random testing requirements if the driver is used by the employer only occasionally?

**Guidance:** The rules establish an employer-based testing program. Employers remain responsible at all times for ensuring compliance with all of the rules, including random testing, for all drivers which they use, regardless of any utilization of third parties to administer parts of the program. Therefore, to use another's program, an employer must make the other program, by contract, consortium, agreement, or other arrangement, the employer's own program. This would entail, among other things, being held responsible for the other program's compliance, having records forwarded to the employer's principal place of business on 2 days notice, and being notified of and acting upon positive test results.

**Question 6:** Once an employee is randomly tested during a calendar year, is his/her name removed from the pool of names for the calendar year?

**Guidance:** No, the names of those tested earlier in the year must be returned to the pool for each new selection. Each driver must be subject to an equal chance of being tested during each selection process.

**Question 7:** Is it permissible to make random selections by terminals?

**Guidance:** Yes. If random selection is done based on locations or terminals, a two-stage selection process must be utilized. The first selection would be made by the locations and the second selection would be of those employees at the location(s) selected. The selections must ensure that each employee in the pool has an equal chance of being selected and tested, no matter where the employee is located.

**Question 8:** When a driver works for two or more employers, in whose random pool must the driver be included?

**Guidance:** The driver must be in the pool of each employer for which the driver works.

**Question 9:** After what period of time may an employer remove a casual driver from a random pool?

**Guidance:** An employer may remove a casual driver, who is not used by the employer, from its random pool when it no longer expects the driver to be used.

**Question 10:** If an employee is off work due to temporary lay-off, illness, injury, or vacation, should that individual's name be removed from the random pool?

**Guidance:** No. The individual's name should not be removed from the random pool so long as there is a reasonable expectation of the employee's return.

**Question 11:** Is it necessary for an owner-operator, who is not leased to a motor carrier, to belong to a consortium for random testing purposes?

**Guidance:** Yes.

**Question 12:** If an employer joins a consortium, and the consortium is randomly testing at the appropriate rates, will these rates meet the requirements of the alcohol and controlled substances testing for the employer, even though the required percent of the employer's drivers were not randomly tested?

**Guidance:** Yes.

**Question 13:** Is it permissible to combine the drivers from the subsidiaries of a parent employer into one pool, with the parent employer acting as a consortium?

**Guidance:** Yes.

**Question 14:** How should an employer compute the number of random tests to be given to ensure that the appropriate testing rate is achieved given the fluctuations in driver populations and the high turnover rate of drivers?

**Guidance:** An employer should take into account fluctuations by estimating the number of random tests needed to be performed over the course of the year. If the carrier's driver workforce is expected to be relatively constant (i.e., the total number of driver positions is approximately the same) then the number of tests to be performed in any given year could be determined by multiplying the average number of driver positions by the testing rate.

If there are large fluctuations in the number of driver positions throughout the year without any clear indication of the average number of driver positions, the employer should make a reasonable estimate of the number of positions. After making the estimate, the employer should then be able to determine the number of tests necessary.

**Question 15:** May an employer or consortium include non-DOT-covered employees in a random pool with DOT-covered employees?

**Guidance:** No.

**Question 16:** Canadians believe that their laws require employer actions be tied to the nature of the job and the associated safety risk. Canadian employers believe they will have to issue alcohol and drug testing policies that deal with all drivers in an identical manner, not just drivers that cross the border into the United States. If a motor carrier wanted to add cross-border work to an intra-Canadian driver's duties, and the driver was otherwise qualified under the FHWA rules, may the pre-employment test be waived?

**Guidance:** The FHWA has long required, since the beginning of the drug testing program in 1988, that transferring from intrastate work to interstate work requires a "pre-employment" test regardless of what type of testing a State might have required under intrastate laws. This policy also applied to motor carriers that had a pre-employment testing program similar to the FHWA requirement. The FHWA believes it is reasonable to apply this same interpretation to the first time a Canadian or Mexican driver enters the United States.

This policy was delineated in the Federal Register of February 15, 1994 (59 FR 7302 at 422). The FHWA believes motor carriers should separate drivers into intra-Canadian and inter-state groups for their policies and random selection pools. If a driver in the intra-Canadian group (including the random selection pool) were to take on driving duties into the United States, the driver would be subject to a pre-employment test to take on this driving task. Although the circumstance is not actually a first employment with the motor carrier, such a test would be required because it would be the first time the driver would be subject to Part 382.

**Question 17:** May an employer notify a driver of his/her selection for a random controlled substances test while the driver is in an off-duty status?

**Guidance:** Yes. Part 382 does not prohibit an employer from notifying a driver of his/her selection for a random controlled substances test while the driver is in an off-duty status.

If an employer selects a driver for a random controlled substances test while the driver is in an off-duty status, and then chooses to notify the driver that he/she has been selected while the driver is still off-duty, the employer must ensure that the driver proceeds immediately to a collection site. Immediately in this context means that all the driver's actions, after notification, lead to an immediate specimen collection. If the employer's policy or practice is to notify drivers while they are in an off-duty status, the employer should make that policy clear to all drivers so that they are fully informed of their obligation to proceed immediately to a collection site.

If an employer does not want to notify the driver that he/she has been selected for a random controlled substances test while the driver is in an off-duty status, the employer could set aside the driver's name for notification until the driver returns to work, as long as the driver returns to work before the next selection for random testing is made. Employers should note that regardless of when a driver is notified, the

time the driver spends traveling to and from the collection site, and all time associated with providing the specimen, must be recorded as on-duty time for purposes of compliance with the hours-of-service rules.

**Question 18:** Is it permissible to select alternates for the purpose of complying with the Random Testing regulations?

**Guidance:** Yes, it is permissible to select alternates. However, it is only permissible if the primary driver selected will not be available for testing during the selection period because of long-term absence due to layoff, illness, injury, vacation or other circumstances. In the event the initial driver selected is not available for testing, the employer and/or C/TPA must document the reason why an alternate driver was tested. The documentation must be maintained and readily available when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

**Question 19:** A motor carrier uses a consortium/third party administrator (C/TPA) to conduct its random selection of driver names. The C/TPA has many motor carriers in its random selection pool. The C/TPA has set up its random selection program to pick driver names and notifies the motor carrier whose driver the C/TPA has selected. The motor carrier notifies the C/TPA the driver is presently on long-term absence due to layoff, illness, injury, or vacation. The motor carrier also notifies the C/TPA it does not expect the driver to return to duty before the C/TPA's next selection of driver names. The C/TPA then randomly orders and selects a driver's name from the motor carrier that employs the driver who is unavailable rather than selecting the next name on the random selection list. Is this a scientifically valid and impartial method for selecting drivers for random testing in a motor carrier's program?

**Guidance:** This procedure is a scientifically valid method for selecting driver names. This method is similar to methods used by organizations, including the Department of Labor's Bureau of Labor Statistics, to randomly order, select, and substitute names for sampling with replacement of groups of individual and companies. This procedure has a small degree of theoretical bias for a simple random sampling selection procedure. The theoretical bias, though, is so minimal the FMCSA does not believe the agency should prohibit its use.

This method is useful for operational settings, such as FMCSA's motor carrier random testing program. The method is less impartial toward drivers than other theoretical methods, but maintains a deterrent effect for both motor carriers and drivers. This method should deter motor carriers from claiming drivers are unavailable each time the C/TPA selects one of its drivers, thereby never having its drivers subject to actual random tests.

In addition, employers and C/TPAs should establish operational procedures that will ensure, to the greatest extent possible, that the primary selections for random testing are tested. The operational procedures should include procedures that will ensure the random selection lists are updated in a timely manner. The updates will ensure that drivers who are no longer available to an employer will not be counted in the random selection lists. The operational procedures should also outline the measures for selecting alternates, including documenting the reasons for using an alternate.

**Question 20:** If an employer is subject to random testing for only a partial calendar year, how should the employer determine the number of random tests required during the year to achieve the appropriate testing rate? (Examples: new employers that begin operating midway through the calendar year; employers which merge or split midway through the calendar year; Canadian or Mexican carriers that begin U.S. operations midway through the calendar year.)

**Response:** The number of random tests required can be computed in the same manner as for any employer that has large fluctuations in the number of driver positions during the year. Use the formulas  $T = 50\% \times D/P$  for controlled-substance testing and  $T = 10\% \times D/P$  for alcohol testing, where T is the number of tests required; D is the total number of drivers subject to testing; and P is the number of selection periods in a full calendar year. For any selection period during which the carrier was not subject to §382.305, simply enter a zero in the driver calculations. Example: A carrier starts operating in August and decides to test quarterly (P = 4). It has 16 drivers subject to testing in the third quarter and only 12 drivers subject to testing in the fourth quarter.  $D = 0 + 0 + 16 + 12 = 28$ .  $D/P = 28/4 = 7$ .  $T = 50\%$  of 7, or 3.5, which must be rounded up to 4. The carrier must test 4 drivers for controlled substances between its first day of operation in August and the end of the year. Following the requirement to spread testing reasonably throughout the year, two drivers should be tested during the third quarter and two during the fourth quarter.

## Subpart C - Tests Required

**Question 21:** If a driver has been notified of his/her selection of random drug and/or alcohol testing and the testing cannot be completed because of "unforeseeable obstacles" at the collection site (e.g., collection site closed, collector unavailable when driver shows up, emergency such as a fire, natural disaster, etc.), what is the carrier's responsibility?

**Response:** In accordance with §§382.305(i)(3) and 382.305(i), each driver selected for testing shall be tested during the selection period, and upon notification of selection for random alcohol and/or drug testing proceed to the collection site immediately. In instances of "unforeseeable obstacles" the driver shall immediately contact the employer's DER for instructions to an alternative collection site. These "unforeseeable obstacles" do not negate the employer's responsibility of ensuring that the required test be administered.

### §382.307 Reasonable suspicion testing.

- a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. [§382.307(a)]
- b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances. [§382.307(b)]
- c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with Sec. 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver. [§382.307(c)]
- d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions. [§382.307(d)]
- e) (1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. [§382.307(e)(1)]
- (2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until: [§382.307(e)(2)]
  - (i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or [§382.307(e)(2)(i)]
  - (ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol. [§382.307(e)(2)(ii)]
- (3) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver

based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law. [§382.307(e)(3)]

- (f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier. [§382.307(f)]

### §382.307 DOT Interpretations

**Question 1:** May a reasonable suspicion alcohol test be based upon any information or observations of alcohol use or possession other than a supervisor's actual knowledge?

**Guidance:** No. Information conveyed by third parties of a driver's alcohol use may not be the only determining factor used to conduct a reasonable suspicion test. A reasonable suspicion test may only be conducted when a trained supervisor has observed specific, contemporaneous, articulable appearance, speech, body odor, or behavior indicators of alcohol use.

**Question 2:** Why does §382.307(b) allow an employer to use indicators of chronic and withdrawal effects of controlled substances in the observations to conduct a controlled substances reasonable suspicion test, but does not allow similar effects of alcohol use to be used for an alcohol reasonable suspicion test?

**Guidance:** The use of controlled substances by drivers is strictly prohibited. Because controlled substances remain present in the body for a relatively long period, withdrawal effects may indicate that the driver has used drugs in violation of the regulations, and therefore must be given a reasonable suspicion drug test.

Alcohol is generally a legal substance. Only its use or presence in sufficient concentrations while operating a CMV is a violation of FHWA regulation. Alcohol withdrawal effects, standing alone, do not, therefore, indicate that a driver has used alcohol in violation of the regulations, and would not constitute reasonable suspicion to believe so.

**Question 3:** A consignee, consignor, or other party is a motor carrier employer for purposes of 49 CFR Parts 382 through 399. They have trained their supervisors in accordance with 49 CFR 382.603 to conduct reasonable suspicion training on their own drivers. A driver for another motor carrier employer delivers, picks up, or has some contact with the consignee's, consignor's, or other party's trained supervisor. This supervisor believes there is reasonable suspicion based on their training that the driver may have used a controlled substance or alcohol in violation of the regulations. May this trained consignee, consignor, or other party's supervisor order a reasonable suspicion test of a driver the supervisor does not supervise for the employing/using motor carrier employer?

**Guidance:** No, the trained supervisor may not order a reasonable suspicion test of a driver the supervisor does not supervise for the employing/using motor carrier employer. Motor carrier employers may not conduct reasonable suspicion testing based on reports of a third person who has made the observations, because of that person's possible credibility problems or lack of appropriate training.

The trained supervisor for the consignee, consignor, or other party may, however, choose to do things not required by regulation, but encouraged by the FHWA. They may inform the driver that they believe the driver may have violated Federal, State, or local regulations and advise them not to perform additional safety-sensitive work. They may contact the employing/using motor carrier employer to alert them of their reasonable suspicion and request the employing/using motor carrier employer take appropriate action. In addition, they may contact the police to request appropriate action.

**Question 4:** Are the reasonable suspicion testing and training requirements of §§382.307 and 382.603 applicable to an owner-operator who is both an employer and the only employee?

**Guidance:** No. The requirements of §§382.307 and 382.603 are not applicable to owner-operators in non-supervisory positions. §382.307 requires employers to have a driver submit to an alcohol and/or controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of Subpart B of Part 382. Applying §382.307, Reasonable Suspicion Testing, to an owner-operator who is an employer and the only employee contradicts both "reason" and "suspicion" implicit in the title and the purpose of §382.307. A driver who has self-knowledge that he/she has violated the prohibitions of Subpart B of Part 382 is beyond mere suspicion. Furthermore, §382.603 requires "all persons designated to supervise drivers" to receive training that will enable him/her to determine whether reasonable

1. This interpretation was issued after the interpretations were published in the Federal Register in April 1997.

suspicion exists to require a driver to undergo testing under §382.307. An owner-operator who does not hire or supervise other drivers is not in a supervisory position, nor are they subject to the testing requirements of §382.307. Therefore, such an owner-operator would not be subject to the training requirements of §382.603.

§382.309 Return-to-duty testing.

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, subpart O.

§382.309 DOT Interpretations

Question 1: A driver has tested positive and completed the referral and evaluation process up to the point of being released by the SAP for a return-to-duty test. The driver no longer works for the employer where he/she tested positive. The driver applies for work with a new employer. Must the new employer conduct two separate controlled substances tests (one pre-employment and one return-to-duty) or will one test suffice for both purposes?

Guidance: An individual who has complied with the education/treatment process as required under 49 CFR Part 40, Subpart O, but has not submitted to a return-to-duty test, and is seeking employment with a new employer, a single test will suffice to meet the requirements of §§382.301 and 382.309 only when the new employer would be required to conduct both tests on the same day.

§382.311 Follow-up testing.

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, subpart O.

Subpart D - Handling of Test Results, Records Retention, and Confidentiality

§382.401 Retention of records.

(a) General requirement. Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access. [§382.401(a)]

(b) Period of retention. Each employer shall maintain the records in accordance with the following schedule: [§382.401(b)]

(1) Five years. The following records shall be maintained for a minimum of five years: [§382.401(b)(1)]

(i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater. [§382.401(b)(1)(i)]

(ii) Records of driver verified positive controlled substances test results. [§382.401(b)(1)(ii)]

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests. [§382.401(b)(1)(iii)]

(iv) Driver evaluation and referrals. [§382.401(b)(1)(iv)]

(v) Calibration documentation. [§382.401(b)(1)(v)]

(vi) Records related to the administration of the alcohol and controlled substances testing programs, and [§382.401(b)(1)(vi)]

(vii) A copy of each annual calendar year summary required by Sec. 382.403. [§382.401(b)(1)(vii)]

(2) Two years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices). [§382.401(b)(2)]

(3) One year. Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year. [§382.401(b)(3)]

(4) Indefinite period. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions. [§382.401(b)(4)]

(c) Types of records. The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this part. If the record is required to be maintained. [§382.401(c)]

(iii) Calibration documentation for evidential breath testing devices; [§382.401(c)(1)(iii)]

(iv) Documentation of breath alcohol technician training; [§382.401(c)(1)(iv)]

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests; [§382.401(c)(1)(v)]

(vi) Documents generated in connection with decisions on post-accident tests; [§382.401(c)(1)(vi)]

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and [§382.401(c)(1)(vii)]

(viii) A copy of each annual calendar year summary as required by Sec. 382.403. [§382.401(c)(1)(viii)]

(2) Records related to a driver's test results. [§382.401(c)(2)]

(i) The employer's copy of the alcohol test form, including the results of the test; [§382.401(c)(2)(i)]

(ii) The employer's copy of the controlled substances test chain of custody and control form; [§382.401(c)(2)(ii)]

(iii) Documents sent by the MRO to the employer, including those required by part 40, subpart G, of this title; [§382.401(c)(2)(iii)]

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part; [§382.401(c)(2)(iv)]

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part; and [§382.401(c)(2)(v)]

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer; [§382.401(c)(2)(vi)]

[A] Must obtain in connection with the exception contained in Sec. 382.301, and [§382.401(c)(2)(vi)(A)]

[B] Must obtain as required by Sec. 382.413. [§382.401(c)(2)(vi)(B)]

(3) Records related to other violations of this part. [§382.401(c)(3)]

(4) Records related to evaluations. [§382.401(c)(4)]

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and [§382.401(c)(4)(i)]

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional. [§382.401(c)(4)(ii)]

(5) Records related to education and training. [§382.401(c)(5)]

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use; [§382.401(c)(5)(i)]

(ii) Documentation of compliance with the requirements of Sec. 382.601, including the driver's signed receipt of education materials; [§382.401(c)(5)(ii)]

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion; [§382.401(c)(5)(iii)]

(iv) Documentation of training for breath alcohol technicians as required by Sec. 40.213(a) of this title; and [§382.401(c)(5)(iv)]

(v) Certification that any training conducted under this part complies with the requirements for such training. [§382.401(c)(5)(v)]

(6) Administrative records related to alcohol and controlled substances testing. [§382.401(c)(6)]

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers; [§382.401(c)(6)(i)]

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s); [§382.401(c)(6)(ii)]

(iii) Semi-annual laboratory statistical summaries of urinalysis required by Sec. 40.111(a) of this title; and [§382.401(c)(6)(iii)]

(iv) The employer's alcohol and controlled substances testing policy and procedures. [§382.401(c)(6)(iv)]

Retention of records. All records required by this part shall be maintained in accordance with the retention schedule in subchapter and shall be made

STATE OF MAINE  
KNOX, SS

KNOX CRIMINAL DOCKET  
LOCATED IN ROCKLAND  
Docket No. KNOCD-CR-2016-474

STATE OF MAINE )  
 )  
v. )  
 )  
RANDALL WEDDLE )  
 )  
Defendant )

**MOTION TO RECONSIDER ORDER ON  
MOTION TO SUPPRESS EVIDENCE  
(WARRANTLESS BLOOD TEST)**

**NOW COMES** the Defendant, Randall Weddle, by and through his undersigned counsel, and moves this Court to reconsider its order declining to suppress any evidence obtained as the result of a warrantless seizure of Defendant's blood, including any test results, for the following reasons:

1. On May 16, 2017, the Defendant filed a motion to suppress evidence obtained as a result of the warrantless seizure of Defendant's blood on March 18, 2016.

2. A testimonial hearing was held on the motion on July 24 and 25, 2017. After the testimonial hearing, the court found that the Defendant was never asked for, and never gave, consent for the taking of a sample of his blood. Order on Mot. to Suppress 9/11/2017 at 4. The Court also specifically found that the blood draw was conducted in reliance on Maine's statute requiring the taking of a blood sample in any accident involving a fatality, 29-A M.R.S. § 2522.

3. This Court issued an order denying Defendant's motion on September 11, 2017. This Court held that the search was valid under Maine's statute, 29-A M.R.S. § 2522.

4. The Law Court case to most recently analyze 29-A M.R.S. § 2522 is *State v. Cormier*, 2007 ME 112, 928 A.2d 753. Under *Cormier*, the Law Court set forth two possible constitutional bases to uphold the statute – (1) a combination of the exigent circumstances exception and the inevitable discovery doctrines and (2) the “special needs” exception.

5. In its order denying the motion to suppress in this case, this Court indicated that it was not persuaded that the exigent circumstances/inevitable discovery doctrine combination set out in *State v. Cormier*, 2007 ME 112, 928 A.2d 753 to uphold the statute had survived the U.S. Supreme Court decision *Missouri v. McNeely*, 569 U.S. 141 (2013). Order on Mot. to Suppress 9/11/2017 at 26.<sup>1</sup>

6. Thus, this Court relied heavily on the “special needs” exception to the warrant requirement to uphold the search under the statute, 29-A M.R.S. § 2522. Order on Mot. to Suppress 9/11/2017 at 26.

7. However, the recent U.S. District Court case *United States v. Hutchison*, No. 2:16-CR-168-DBH (D. Me. Jan. 11, 2018) (attached) points out that this reliance is misguided. Specifically, the Maine District Court in *Hutchison* found that the types of regulations upheld by the seminal “special needs” exception case *Skinner v. Railway Labor Execs. Assoc.*, 489 U.S. 602 (1989) “do not authorize compelled testing . . . .” *Hutchison* at 12. As such, the court held that in that case, because the blood draw was compelled, there was no basis to conclude that the blood draw had been conducted pursuant to federal regulation rather than as part of a criminal investigation, and the “special needs” exception could not justify the warrantless search. *Id.*

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<sup>1</sup> This Court did find that exigent circumstances existed at the time the blood was drawn; however, the exigent circumstances exception to the warrant requirement cannot uphold the search in this case unless the statute is upheld because there was no probable cause to take the blood at the time it was taken.

8. Similarly, here, Maine's statute authorizes a compelled blood test, and the blood test in this case was in fact compelled. Therefore, the "special needs" exception cannot justify searches conducted pursuant to the statute, because compelled testing is not authorized by the confines of the "special needs" exception as set out in *Skinner*.

9. Because the court already indicated that this blood draw was taken pursuant to the statute, and the only other purported basis for the statute has been overruled by *McNeely*, without the "special needs" exception, the blood draw taken in this case has no constitutional basis and cannot be upheld.

**WHEREFORE**, Defendant respectfully requests that this court reconsider its order denying Defendant's motion to suppress any and all evidence derived from the drawing of his blood on March 18, 2016, including any test results, that this Court grant Defendant's motion instead, and that this Honorable Court issue any further orders that it deems just and proper.

Dated: 1/22/2018



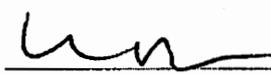
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22 day of January, 2018, a copy of the foregoing Motion to Suppress Evidence (Warrantless Blood Test) was mailed by first class mail, originating in Camden, Maine, postage prepaid to Jeffrey Baroody, Assistant District Attorney, 62 Union Street, Rockland, Maine 04841.

  
Laura Shaw  
Bar # 5631 for  
Christopher K. MacLean, Esq.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
	)	
<b>v.</b>	)	<b>CRIMINAL No. 2:16-CR-168-DBH</b>
	)	
<b>CHRISTOPHER A. HUTCHINSON,</b>	)	
	)	
<b>DEFENDANT</b>	)	

**DECISION AND ORDER ON MOTION TO SUPPRESS**

This criminal negligence case arises out of a tragic event at sea off the Maine coast on Saturday, November 1, 2014. Around 1 a.m. that morning, the *No Limits* put out to sea from Tenants Harbor with its owner/captain, the defendant Christopher Hutchinson, and two crew members, Tyler Sawyer and Thomas Hammond, to pull lobster traps on 11-Mile Ridge. The weather and seas turned very bad, and the *No Limits* headed back toward port mid-morning. It capsized en route. Hutchinson, although injured, made it to a life raft. The Coast Guard rescued him around 4 p.m. and took him to Maine Medical Center where he was treated for facial contusions and lacerations and hypothermia. The two crew members were lost at sea. Around 9 p.m. that evening in the trauma room of Maine Medical Center, law enforcement drew a blood sample from Hutchinson without obtaining a warrant and under contested circumstances. Now facing federal prosecution for seaman’s manslaughter, the defendant Hutchinson has moved to suppress the results of the blood test and

any later statements he made to law enforcement that were based upon the test results.<sup>1</sup>

I conducted an evidentiary hearing on December 18 and 20, 2017. I find the facts that follow, based on the testimony and exhibits.<sup>2</sup> I conclude that Coast Guard regulations do not compel a seaman to submit to a blood draw (although there are negative consequences if he refuses), that the “consent” obtained from the defendant was not voluntary, and that law enforcement did not obtain a warrant, had no basis for believing that exigent circumstances prevented them from doing so, and did not have probable cause for the blood draw. As a result, I **GRANT IN PART AND DENY IN PART** the motion to suppress.

#### **UNCONTESTED FACTS**

Richard Yazbek, a marine investigator for the United States Coast Guard, was the duty marine investigator for Portland on Saturday November 1, 2014. He had never previously conducted a blood draw and generally asked a seaman’s employer to obtain a blood draw when it was needed. But he knew that other investigators had sent mariners to Pen Bay Medical Center in Rockport to have blood drawn there.

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<sup>1</sup> The defendant consented to the admission of some government exhibits (3, 6, 8, 10, 12-19, 24, 25, 32, and 33), but I admitted all over objection.

<sup>2</sup> I rely primarily on the testimony of those who were directly involved in the events of November 1. Those are USCG Marine Investigator Yazbek; USCG Petty Officer Lotz; Gorham Police Officer Hannon; and the defendant’s mother Tina Hutchinson. I heard no testimony from Yazbek’s supervisor who ordered the test and there was no evidence about what she knew at the time of ordering the test or thereafter. The government began its case with the testimony of a USCG criminal investigator who first became involved on November 12, 2014, when the drug test results were received. He took numerous statements from various people thereafter. But his initial testimony recounting the events of November 1 ultimately was unsupported in important respects (*e.g.*, whether anyone in the Coast Guard was aware before the blood draw that a drug dealer had told a crew member’s father that he had sold oxycodone to the defendant, and whether there was a then available Facebook post on the same topic).

Yazbek was at home in West Bath when he received a phone call from the USCG Sector Northern New England Command Center around 6 or 6:30 p.m. about the accident, informing him that a vessel had sunk, two crew members were missing, and one was being taken to Maine Medical Center in Portland. Yazbek gathered his investigative bag and started driving to Maine Medical Center to investigate. During the drive he spoke by phone to his supervisor Lieutenant Janna Ott. The supervisor told Yazbek he needed to do drug and alcohol testing. Yazbek later told investigator Volk that at the time he believed he had 32 hours to have the drug test done. Def. Ex. 6. He also told investigator Volk that if he had been unable to get the blood drawn Saturday, he would have asked the defendant to go to Pen Bay Medical Center Sunday in Rockport. Id. Yazbek called the Command Center and asked the Command Center to arrange for Coast Guard personnel at the South Portland Coast Guard station who were qualified to do breathalyzer tests to meet him at Maine Medical Center. Yazbek also called Maine Medical Center and spoke to the emergency room doctor who told him that Maine Medical Center would not do a blood draw for a drug test. After trying various law enforcement agencies, Yazbek eventually spoke to a Maine State Police dispatcher who told him a qualified police officer would meet him at the hospital to do the blood draw. Yazbek believed the accident had occurred about 9 hours before he was called. Yazbek also learned that the father of one of the missing crew members asked to have the defendant tested for drugs and alcohol.

Yazbek arrived at the hospital around 7:30 p.m., about the same time as two USCG uniformed Petty Officers arrived from the South Portland Coast Guard station. The defendant was in a trauma room at Maine Medical Center.

When Yazbek and the two Coast Guard officers entered the defendant's hospital room, the defendant was wrapped in a "bear hugger" heat blanket. Yazbek told the defendant he was going to do an alcohol breath test, the lead petty officer described the procedure, and the defendant agreed to the test. The test result was negative for alcohol, and the two petty officers left.

Yazbek then waited for the police officer he believed the Maine State Police was sending to do the blood draw for drug testing. During that time, he was in and out of the hospital room but mostly out. At some point the defendant's mother asked him if the blood test could be delayed because the defendant had had a long day. Yazbek told her that it was required by law and regulation, that there were mandatory time limits, that it was supposed to be done as soon as possible, and that "we have to do this now." Yazbek was thinking to himself that it might be difficult to find a facility to do a drug test the next day, Sunday, since the defendant was going home to Port Clyde. Yazbek also asked hospital personnel if they could delay discharging the defendant for a short amount of time until the person who would administer the drug test arrived. Hospital personnel treated the defendant's facial lacerations with stitches between 8 and 8:30 p.m. About 15 minutes after Yazbek's request that discharge be delayed, Gorham Police Officer Dean Hannon arrived to perform the blood test with a standard kit that the Maine Department of Health & Human Services provides for police officers to use in the State of Maine. Officer Hannon drew the

defendant's blood at 9 p.m., using the I-V apparatus already in the defendant's arm without inserting a new needle. Whether the defendant actually consented to the blood draw is hotly disputed as I describe below. Yazbek believed that the defendant had to submit to the test. Hannon then and later completed certain documents that stated that the defendant had verbally consented to the blood draw, that the blood test was "mandated," and that Yazbek witnessed the blood draw. He gave the completed kit to Yazbek. Yazbek delayed an interview of the defendant until the next day because he thought the defendant was in no condition to be interviewed.

About 15 minutes after the blood draw, Maine Medical Center discharged the defendant.

In summary, soon after 6 or 6:30 p.m., Yazbek and his supervisor made the decision to have the defendant's blood drawn, knowing only that the *No Limits* had capsized and that two crew members were missing. Yazbek and Hannon conducted the draw believing that the defendant was required by law to submit to the blood draw. As appears below, the law upon which they were relying did not require the defendant to submit to the test (although it provided negative consequences for failing to do so). The government argues that I should nevertheless not suppress the test results, because the defendant voluntarily consented to the blood draw on the evening of November 1, and that even if he didn't, the blood draw was proper because the Coast Guard had probable cause to believe illegal substances were involved and had no time to seek a warrant permitting the blood draw. The government is entitled to advance those alternate arguments and I consider them carefully. The issues are more difficult than the

run-of-the-mill case, however, because the officers were not thinking in terms of probable cause, a warrant, or exigent circumstances, and the assessment is therefore a hypothetical construct. The parties also disagree vehemently over whether I can consider certain information or inferences gathered in the days, weeks, and months after November 1, 2014.

The blood test ultimately revealed that the defendant had ingested marijuana and oxycodone. Gov't Ex. 29.

### **ANALYSIS**

#### ***Fourth Amendment Background***

It has been clear since at least 1966 that compulsory blood draws are “intrusions into the human body” subject to the Fourth Amendment’s prohibition on unreasonable searches and seizures. Schmerber v. California, 384 U.S. 757, 769-70 (1966). In Schmerber, the Supreme Court stated:

The interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions on the mere chance that desired evidence might be obtained. In the absence of a clear indication that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may disappear unless there is an immediate search.

Id. Even when there is adequate evidence to support a blood draw, a warrant must be obtained first:

Search warrants are ordinarily required for searches of dwellings, and absent an emergency, no less could be required where intrusions into the human body are concerned. . . . The importance of informed, detached and deliberate determinations of the issue whether or not to invade another’s body in search of evidence of guilt is indisputable and great.

Id. at 770. The Supreme Court reaffirmed these principles as recently as 2016, Birchfield v. North Dakota, 136 S. Ct. 2160 (2016), where it distinguished breath tests from blood tests:

[T]he Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. The impact of breath tests on privacy is slight, and the need for [blood alcohol concentration] testing is great. We reach a different conclusion with respect to blood tests. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test.

Id. at 2184.<sup>3</sup> If there is a need for a blood test to detect substances other than alcohol, “[n]othing prevents the police from seeking a warrant for a blood test when there is sufficient time to do so in the particular circumstances or from relying on the exigent circumstances exception to the warrant requirement when there is not.” Id. The imminent destruction of evidence can justify proceeding without a warrant if there is no time to obtain a warrant. Schmerber, 384 U.S. at 770-71. But in 2013, the Court rejected the argument that the natural dissipation of alcohol in human blood categorically creates exigent circumstances that justifies proceeding without a warrant in every case. Missouri v. McNeely, 569 U.S. 141 (2013). Instead, “[w]hether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances.” Id. at 156. I see no reason to apply a different standard when the issue is drugs rather than alcohol.

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<sup>3</sup> The Court also rejected the argument that by driving a vehicle, the driver gave legally implied consent to a compelled blood draw. Id. at 2185-86.

***“Special Needs”***

The government argues that the blood draw here was justified by the government’s special need to regulate the fishing industry in the interest of safety. Gov’t Opp’n 12 (ECF No. 12). It relies principally on Skinner v. Railway Labor Executives’ Association, 489 U.S. 602 (1989). In that case, the Supreme Court upheld against a facial challenge Federal Railroad Administration regulations authorizing “mandatory” warrantless drug and alcohol testing for employees involved in certain train accidents. 489 U.S. at 606, 609, 614, 633. Although searches and seizures are not generally reasonable under the Fourth Amendment unless “accomplished pursuant to a judicial warrant issued upon probable cause,” the Supreme Court held that the Federal Railroad Administration regulations fit within a “recognized exception[ ] to this rule” that is available “when ‘special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.’” Id. at 619 (quoting Griffin v. Wisconsin, 483 U.S. 868, 873 (1987)). In Skinner, the Court “balance[d] the governmental and privacy interests to assess the practicality of the warrant and probable-cause requirements in the particular context.” Id. Among a number of factors important to its decision, the Court emphasized that the railroad industry is highly regulated; that covered employees engage in safety-sensitive tasks; and that employee expectations of privacy are diminished given this pervasive regulation. Id. at 620-627.<sup>4</sup> Because it was resolving a facial

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<sup>4</sup> Other factors important to the Court were the standardized nature of the tests; that the minimal discretion vested in those administering the tests yielded “virtually no facts for a neutral magistrate to evaluate;” that a warrant requirement would likely frustrate the purpose of the testing given the steady dissipation of drugs and alcohol from the blood stream; the government’s

challenge, the Court considered only “whether the tests contemplated by the regulations can *ever* be conducted.” Id. at 632 n.10 (emphasis in original). The tests were prescribed “not to assist in the prosecution of [railroad workers], but rather ‘to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.’” Id. at 620-21 (citation omitted). The Court “[le]ft for another day the question whether routine use in criminal prosecutions of evidence obtained pursuant to the administrative scheme would give rise to an inference of pretext, or otherwise impugn the administrative nature of the FRA’s program.” Id. at 621 n.5.

The Court described the FRA testing as “mandatory,” but it used that term in the sense that negative consequences to an employee resulted from refusal to undergo testing, not that an employee could be physically compelled to submit to the test. Id. at 610-11, 615 (noting that “[e]mployees who refuse to provide required . . . samples may not perform covered service for nine months” and that an “employee who refuses to submit to the tests must be withdrawn from covered service”).<sup>5</sup>

In this case, the government points to numerous regulations to show that commercial fishing, like railroading, is a dangerous, highly regulated industry in which workers have diminished expectations of on-the-job privacy. Gov’t Opp’n 7-12. The defendant agrees. The government cites two sets of Coast Guard regulations that call for drug and alcohol testing of marine workers.

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need to rely on private industry to implement the tests; the generally limited nature of the privacy intrusions authorized by the regulations; the deterrent effect of the regulations; and the information that testing would provide to railroads about the causes of serious accidents. Id. at 621-630.

<sup>5</sup> The Coast Guard regulations at issue here have a similar structure, as I discuss further in text.

The first, Subchapter F, Part 95 of Title 33 of the Code of Federal Regulations, prescribes restrictions on operating covered vessels under the influence, along with standards for drug and alcohol testing. It authorizes law enforcement officers and marine employers to “direct an individual operating a vessel to undergo a chemical test [for drugs or alcohol] when reasonable cause exists.” 33 C.F.R. § 95.035(a). Reasonable cause exists when, among other things, “[t]he individual was directly involved in the occurrence of a marine casualty as defined in Chapter 61 of Title 46, United States Code.” *Id.* § 95.035(a)(1).<sup>6</sup> That is the case here. When law enforcement or the marine employer directs an individual “to undergo a chemical test, the individual to be tested must be informed of that fact and directed to undergo a test as soon as practicable.” *Id.* § 95.035(b).

The second, Part 4 of C.F.R. Title 46, elaborates the Coast Guard’s regulatory authority to investigate serious marine casualties. Subpart 4.06 provides for “Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service.”<sup>7</sup> It provides that “[a]ny individual engaged or employed on board a vessel who is determined to be directly involved in [a serious marine incident] must provide a blood, breath, saliva, or urine specimen for chemical testing when directed to do so by the marine employer or a law enforcement officer.” 46 C.F.R. § 4.06-5(a). Marine employers “must

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<sup>6</sup> Marine casualties include “(1) death of an individual. (2) serious injury to an individual. (3) material loss of property. (4) material damage affecting the seaworthiness or efficiency of the vessel. (5) significant harm to the environment.” 46 U.S.C. § 6101(a).

<sup>7</sup> Serious marine incidents include events involving commercial vessels resulting in “(1) One or more deaths; or . . . (4) Actual or constructive total loss of any [covered] vessel.” 46 C.F.R. § 4.03-2(a)(1), (4).

ensure” that this drug and alcohol testing is conducted following a serious marine incident. Id. § 4.06-3.

The Coast Guard regulations call for “mandatory” testing in the sense that Skinner treated the FRA testing regulations as mandatory. Both sets of Coast Guard regulations contemplate that an individual actually may refuse the test, and impose enumerated penalties on those who do refuse. 33 C.F.R. § 95.040 (refusal is admissible in administrative proceedings); 46 C.F.R. § 4.06-5(b), (d) (employer must remove refusing individual from duties affecting safety; refusal is a violation and can result in adverse administrative proceedings and/or a civil fine); see United States v. O’Keefe, No. 03-137, 2004 WL 439897 at \*1 (E.D. La. Mar. 8, 2004) (employer-directed urine test “not mandatory,” but “failure to undergo the test could result in suspension of the Defendants’ license to operate the tugboat”). In fact, subpart 4.06 flatly states that “No individual may be compelled to provide specimens for alcohol and drug testing required by this part.” 46 C.F.R. § 4.06-5(d).

Unlike in Skinner, the defendant here is not mounting a facial challenge to the validity of these regulations (they appear constitutional in light of Skinner). Indeed, he has stipulated that commercial fishing is a highly regulated industry and a dangerous activity, that he knew he was subject to random inspections of his gear and catch by marine patrol, and that the accident qualified as a serious marine incident. Instead, he argues that the Coast Guard regulations do not authorize a *compulsory* blood draw. He agrees that the regulations authorize severe consequences for refusing, but says they do not permit a compelled,

nonconsensual blood draw over the objection of the person to be tested, and that the latter is what happened to him.

The defendant is correct that these regulations do not authorize compelled testing over objection. As quoted above, one of them says so explicitly. 46 C.F.R. § 4.06-5(d). Like the FRA regulations at issue in Skinner, the Coast Guard regulations actually contemplate refusals to submit and impose penalties for doing so. If the regulations authorized law enforcement to direct forced chemical testing, there would be little need for them to address refusals to submit.

At oral argument, the government did not appear to claim that the blood draw was conducted pursuant to the regulations. Rather, the government argued that the Skinner “special needs” exception applies regardless of whether the regulations permitted a compulsory blood draw, and that overall reasonableness is the applicable standard.

Skinner does not extend as far as the government would like. Skinner was specifically concerned with “whether the tests contemplated by the regulations can *ever* be conducted,” Skinner, 489 U.S. at 632 n.10 (emphasis original), and analyzed the balance between privacy and government interests “in the particular context.” Id. at 619. As the government’s brief notes, “[t]he circumstances under which testing could be administered were already limited by the regulations.” Gov’t Opp’n 14; see Skinner, 489 U.S. at 622 (“Both the circumstances justifying toxicological testing and the permissible limits of such intrusions are defined narrowly and specifically in the regulations that authorize them.”). The regulations at issue in Skinner provided negative consequences for refusing a test, but did not make the tests compulsory. Skinner did not create

an across-the-board reasonableness balancing test for evaluating unauthorized administrative searches. I am aware of no authority for extending Skinner in this way, and the government has cited none. The Coast Guard regulations here properly direct negative consequences for refusing a blood draw, but do not make it compulsory. I conclude that the "special needs" exception, by itself, does not justify a compulsory blood draw.

**Consent**

The government argues that even if Skinner does not support a compulsory blood draw, the defendant voluntarily consented here, and the results are therefore admissible.

I have three competing versions of what happened in the Maine Medical Center trauma room in connection with the 9 p.m. blood draw on November 1, 2014.

The defendant's mother Tina Hutchinson (the defendant was 26 years old) says that the defendant was asleep, that she asked for the blood draw to be postponed, and that she said that the defendant did not like needles, but Officer Hannon proceeded regardless, and used the I-V apparatus to obtain the defendant's blood while he was asleep without inserting an additional needle into the defendant's arm.

Coast Guard investigator Yazbek, who commissioned the draw, says that he was in the room, that the defendant was awake, that Yazbek said the test was mandatory, that Officer Hannon also told the defendant the test was mandatory, that he (Yazbek) did not hear the defendant speak, but that the defendant nodded his head in response to Officer Hannon.

Gorham Police Officer Dean Hannon, who conducted the draw at the Coast Guard's request, says that he does not remember whether Yazbek was in the room; that there were family members in the room, perhaps the mother, and that perhaps the mother objected to the draw; that the defendant was awake and that Hannon told the defendant that the test was mandatory under numerous state and federal laws; that he specifically asked the defendant whether the defendant consented to the blood draw; and that the defendant uttered the word yes aloud.

The DHHS forms Hannon completed the night in question say that Hannon obtained the defendant's verbal consent at 8:55 p.m. before the 9:00 p.m. draw. Yazbek signed a form that he had witnessed the draw. Gov't Ex.18.

Hannon's later report for the Gorham Police Department says that "[t]here was nothing unusual about the blood draw." Gov't Ex. 19.

Other people who were present in the room—the defendant's father and the defendant himself<sup>8</sup>—did not testify.

I do not rely on demeanor to determine the version of events that I credit on this question of consent. Although appellate courts customarily refer to the trial judge's opportunity to observe witness demeanor during testimony as a reason for deferring to the judge's factual findings, research shows that demeanor is often a defective guide to detecting falsity or truth-telling. Instead, I make my factual determinations based on what is most probable, using circumstantial evidence as it is available.

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<sup>8</sup> The defendant's girlfriend was in the room during part of the evening, but the evidence does not reveal whether she was still present during the blood draw.

Here, both Yazbek and Hannon believed that the blood draw was compulsory. That is uncontested. There is no indication that Yazbek thought the defendant's consent was required. However, the forms in the DHHS kit that Hannon always uses include a consent form that Hannon completes before conducting a draw. Hannon says that he always obtains actual consent and that in the absence of actual consent, he refers the requesting law enforcement agency to the warrant process. This particular blood draw was not part of Hannon's or the Gorham Police Department's investigation; thus, Hannon had and has no particular interest in its outcome. If Hannon did take the draw while the defendant was sleeping and without his consent, he had nothing to gain by lying about it in the forms he completed. It is true that Yazbek did not hear the verbal consent that Hannon reported on the form and in his testimony. But the defendant was facing Hannon, Yazbek was farther away, and there were other people in the room who could have created ambient noise. A head nod and a quiet verbal yes are not mutually exclusive. Indeed, if Yazbek and Hannon decided to lie about what actually happened in the trauma room with respect to the blood draw's circumstances, it would be more likely that they would have agreed on a false story, rather than the messiness that often results from independent recollections of events.

I find that the defendant was awake and that he gave explicit consent to the blood draw.

***Coercion***

It is undisputed that both law enforcement officers told the defendant (and his mother) that he had to submit to the blood draw. If that information was

accurate, then the defendant's consent was not required. If that information was not accurate, then the officers gave the defendant misleading information in obtaining his consent.

The First Circuit has detailed the analysis that governs these circumstances:

For consent to a search to be valid, . . . the government must prove by a preponderance of the evidence that the consent was uncoerced. The presence of coercion is a question of fact based on the totality of the circumstances, including "the consenting party's knowledge of the right to refuse consent; the consenting party's possibly vulnerable subjective state; and evidence of inherently coercive tactics, either in the nature of police questioning or in the environment in which the questioning took place."

United States v. Vazquez, 724 F.3d 15, 18-19 (1st Cir. 2013). Critical to my decision, the First Circuit added: "Importantly, courts must also consider 'any evidence that law enforcement officers' . . . misrepresentation prompted defendant's acquiescence to the search.'" Id. at 19.

For the reasons I have already detailed, law enforcement erroneously told the defendant that the blood draw was compulsory. I am satisfied that the law enforcement officers were sincere in their belief, but the First Circuit has held that subjective good faith is insufficient; they have to get the law right.<sup>9</sup> According to the First Circuit, consent will not validate a search if it was "secured as a result of either an unreasonable assessment of the facts or a misapprehension of the law." Id. at 27; see also LaFave, 4 Search & Seizure § 8.2(a). Here the defendant consented only after two law enforcement officers,

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<sup>9</sup> The First Circuit does allow limited leeway in getting the facts right—there law enforcement must only be reasonable—but even on the facts, subjective good faith is not enough. Id.

one of them (Hannon) in police uniform, told him that he had to provide the blood. Thus, his consent was secured as a result of misapprehension of the law.<sup>10</sup> Hannon testified at the hearing that he actually would not have conducted the blood draw if the defendant had refused, but he did not tell the defendant that, nor did Yazbek. Knowledge of the right to refuse consent is also an enumerated Vazquez factor. Moreover, the defendant's consent was obtained in a hospital trauma room where he was hooked up to an I-V apparatus and receiving treatment for injuries after a harrowing sea rescue, still another Vazquez factor.

I find as a "fact based on the totality of the circumstances" (Vazquez's terms) that the defendant's consent was effectively coerced and therefore not valid. Put another way, "[c]onsent pried loose by . . . a claim of authority is merely acquiescence," Vazquez, 724 F.3d at 23. The government must show "more than mere acquiescence in the face of an unfounded claim of present lawful authority." United States v. Brake, 666 F.3d 800, 806 (1st Cir. 2011).

***Probable Cause and Exigent Circumstances for Warrantless Blood Draw***

Because the statute and regulations governing marine activity did not allow a blood draw without consent, because the consent that law enforcement obtained was invalid, and because law enforcement did not obtain a warrant, I next determine whether there were exigent circumstances justifying failure to seek a warrant and whether the officers had probable cause to conduct the blood

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<sup>10</sup> I recognize that Yazbek and Hannon used the term "mandatory" and that Skinner used that word in describing tests that could not be compelled but whose refusal could produce negative employment consequences. Here, however, I am determining what the individuals using and hearing the word understood it to mean in the trauma room of Maine Medical Center on the evening of November 1, where the officer performing the blood draw was in police uniform.

draw. Both are necessary. United States v. Almonte-Baez, 857 F.3d 27, 31 (1st Cir. 2017). It is the government's burden to prove both of these elements. Morse v. Cloutier, 869 F.3d 16, 24 (1st Cir. 2017). The "imminent destruction of evidence" is one of the exigent circumstance exceptions to the need for a warrant. Id.

***Exigent Circumstances***

At 6 or 6:30 p.m., the Coast Guard Command Center first contacted Yazbek. He proceeded to drive from his home in West Bath to Maine Medical Center in Portland. While driving, he talked by cell phone to his supervisor, Lt. Ott. She directed him to be sure to get both a breath test and a blood test. Thus the decision to obtain the blood draw must have occurred soon after 6 or 6:30 p.m. because Yazbek thereafter made a number of phone calls to procure breath and blood testing and arrived at the hospital around 7:30 p.m. The government produced no evidence that investigator Yazbek (or anyone on his behalf) made any effort to determine whether a federal or state judge was available to consider issuing a warrant.<sup>11</sup> (That is unsurprising since Yazbek thought no warrant was necessary.) At the hearing, the government introduced evidence about oxycodone's dissipation rate<sup>12</sup> and argued that in light of the defendant's estimate to rescue personnel that the boat capsized around 11 a.m., the need to preserve evidence justified the failure to get a warrant. But there is no evidence

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<sup>11</sup> As the Supreme Court noted in Missouri v. McNeely, sworn testimony communicated by telephone will allow federal magistrate judges to issue warrants. 569 U.S. at 154. Maine allows warrants to be requested remotely via electronic means, so long as the request conforms to the ordinary written affidavit requirements. Me. R. U. Crim. P. 41C(b).

<sup>12</sup> M. Cherrier et al., Comparative Cognitive and Subjective Side Effects of Immediate Release Oxycodone in Healthy Middle Age and Older Adults, J. Pain (Oct. 2009), <https://www.ncbi.nlm.nih.gov/pubmed/19729346>. Gov't Ex. 13. See also Gov't Exs. 30-31.

that any of the decision-makers had any knowledge of that dissipation rate. Instead, investigator Yazbek testified that he believed he had 32 hours in which to obtain a blood test, which is the time the regulations allow in the event of a serious marine incident. 46 C.F.R. § 4.06-3(b)(1)(i). I conclude that the government has failed to show that the investigators faced exigent circumstances to justify their failure to seek a warrant. Post hoc reconstruction will not suffice. “[T]he bottom-line question is whether a reasonable officer would have thought, *given the facts known to him*, that the situation he encountered presented some meaningful exigency.” Morse, 869 F.3d at 24 (emphasis added). The government has not met that standard. That alone makes the warrantless blood draw invalid. Nevertheless, I look at probable cause as well.

***Probable Cause***

Lt. Ott, as Yazbek’s superior, instructed him early in the evening of November 1 to obtain the blood draw. But I have no information about what she knew beyond the inference that she had the same information Yazbek had while he was driving to Portland, *i.e.*, a sinking in bad weather and the loss of two crew members. Since I have to approach the probable cause assessment here as a hypothetical construct and the decision to obtain the blood draw was not final until the draw occurred, I will look at everything Yazbek knew or was told up until the blood was drawn at 9 p.m.

Before Yazbek drew the defendant’s blood (via Hannon), the Coast Guard had the additional information that none of the crew was wearing an immersion suit or a life jacket, that they were dressed in jeans and t-shirts, and that on account of the weather and heavy following seas the vessel “kind of” or “almost”

“started surfing down the front of a wave.” The defendant gave his father that information, and his father relayed it to the Coast Guard from the hospital by phone. I assume that Yazbek learned it as well. Yazbek also knew that one crew member’s father was adamant, Gov’t Ex. 13, in wanting the defendant tested for drugs and alcohol. Contrary to the government’s brief, Gov’t Opp’n 1-2, and the initial testimony of USCG Criminal Investigator Volk, however, the Coast Guard and Yazbek were not told that a known drug dealer told the crew member’s father that he had sold twenty 30-mg oxycodone pills to the defendant the day before.<sup>13</sup> Nor did they know of alleged marijuana use with a crew member’s father or alcohol consumption at a party the day or night before. The Coast Guard and Yazbek also did not know of an alleged Facebook post that mentioned the defendant’s drug use the night before the accident. The Coast Guard was aware that the *No Limits* had gone out in the face of gale forecasts and I will assume that information was available to Yazbek. The Coast Guard also had the defendant’s statement to his rescuers in the helicopter that the boat “caught a wave, flipped.” I attribute to the Coast Guard and Yazbek the knowledge that lobstering is a highly regulated and dangerous activity, as the defendant has stipulated.

I am not going to consider information that investigators developed *after* the blood draw—for example, the defendant’s instruction in seamanship, his

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<sup>13</sup> In his October 2, 2017, motion the defendant said that “A coast guard petty officer relayed the information about the alleged drug purchase to Yazbek,” Def. Mem. 4 (ECF No. 77), but at the hearing his lawyer said that he wrote that based upon the government’s assertion that it was so, and before the government produced discovery. The evidence at hearing did not support the assertion that such information was communicated to the Coast Guard before the blood draw.

prior criminal history,<sup>14</sup> the information in the toxicology report, other safety violations, the drug dealer's alleged statements to a crew member's father, or the Facebook post.

Aviation Survival Technician Evan Staph, a Coast Guard "swimmer," left the helicopter and rescued the defendant in 20-foot seas. The videos of the rescue reveal vividly the ready heroism of United States Coast Guard personnel. Gov't Ex. 9. Staph observed that when he made the defendant go back into the water from the life raft in order to be hoisted by the rescue basket, the defendant did not flinch at the cold water. But Staph did not make known this observation until after the blood draw. The government asks me to consider research it has found (specifically a 2009 research paper, Gov't Ex. 11) and a toxicologist's affidavit, Gov't Ex. 31, noting that opiates and oxycodone in particular have an analgesic effect that suppresses pain or cold and argues that the effect is common knowledge. But there is no evidence that anyone involved, including Staph, knew of that effect on November 1. More importantly, Staph said explicitly that he attributed the defendant's lack of reaction to cold water to hypothermia (not drugs), and the rescue personnel reported a "pretty bad" contusion on the defendant's left temple, Gov't Ex. 12. I therefore do not consider Staph's observation of the lack of reaction to cold water in the probable cause assessment.

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<sup>14</sup> The criminal history reveals two OUIs and numerous other encounters with law enforcement. Gov't Ex. 2. The government argues that history was "constructively" available to the Coast Guard but there is no evidence that anyone knew or considered it.

The government also asks me to draw negative inferences from the video of the defendant being hoisted into the helicopter and his behavior in the helicopter (he appears to be moving well physically). There is no information that any of that behavior was made known to Yazbek or Ott or what inferences they would or should have drawn from it. Even if I add the defendant's helicopter behavior to the probable cause mix under United States v. Meade, 110 F.3d 190, 194 (1st Cir. 1997) (criticizing but not rejecting application of collective knowledge doctrine where information amounting to probable cause is dispersed throughout an agency and not known by any one individual), there is no evidence that it would have affected a probable cause assessment by a reasonable officer in the position of Yazbek or Ott if they had known it.<sup>15</sup>

Considering the information available as of 9 p.m. on November 1, a reasonable officer could certainly conclude that there was probable cause to conclude that Hutchinson behaved negligently or recklessly in going out November 1 and in how he allowed his crew to be dressed, and in his seamanship on the return. But it would be rank speculation to conclude that drugs were

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<sup>15</sup> At the hearing, the government referred to the "collective" knowledge of the Coast Guard. The First Circuit certainly recognizes "collective police knowledge" in assessing probable cause, United States v. Pardue, 385 F.3d 101, 106 (1st Cir. 2004), but in the context of "working in collaboration" and one officer instructing another what to do, id. at 107; accord United States v. Barnes, 506 F.3d 58, 63 (1st Cir. 2007) ("[R]easonable suspicion can be imputed to the officer conducting a search if he acts in accordance with the direction of another officer who has reasonable suspicion"). The Circuit has expressed skepticism over extending the collective knowledge doctrine to information known generally to an agency as contrasted with another individual officer's knowledge amounting to probable cause and upon which a different arresting officer took action. United States v. Meade, 110 F.3d 190, 193-94 (1st Cir. 1997). Since Meade, the Circuit has authorized a limited extension of the collective knowledge doctrine in circumstances not present here, see United States v. Cook, 277 F.3d 82, 86-87 (1st Cir. 2002) (collective knowledge of officers jointly participating in the challenged stop), but otherwise has refused to decide the question Meade left open. See United States v. Bashorun, 225 F.3d 9, 13-17 (1st Cir. 2000); Morelli v. Webster, 552 F.3d 12, 18 (1st Cir. 2009) ("[W]e need not enter this thicket.").

involved given the information available directly or indirectly to Yazbek. It is tantalizing to consider that the crew member's father who wanted drug and alcohol tests might have had other information that he could have made available to the Coast Guard but, without his doing so, that information cannot contribute to probable cause. And I repeat that this is all a hypothetical construct because Yazbek and his superior Ott never even considered whether there was probable cause or an exigency exception to the warrant requirement.

**Leon Good Faith Exception**

The government argued in its brief that, if no justification exists for the blood draw, it should nevertheless not be suppressed because of the "good faith" exception derived from United States v. Leon, 468 U.S. 897 (1984). Gov't Opp'n 20-21. At oral argument the government conceded that the good faith exception does not apply to these facts.

That was a sensible concession. The good faith exception applies to warranted searches and seizures and a limited number of no-warrant scenarios. See LaFave, 1 Searches and Seizures § 1.3(g) (5th ed.). Those limited no-warrant scenarios include objectively reasonable reliance on binding appellate precedent, on a database erroneously informing police they have a warrant, and on a statute purporting to authorize the search but later determined to be unconstitutional. See Davis v. United States, 564 U.S. 229, 232, 238-39 (2011) (extending the exception to reliance on appellate precedent and noting previous extensions); id. at 258 (Breyer, J., dissenting) (enumerating scenarios in which the exception applies). None of those scenarios is present here. There is no general good faith

exception for all warrantless searches and seizures. See United States v. Ramirez-Rivera, 800 F.3d 1, 32 n.25 (1st Cir. 2015).

### **Consequences**

Because there was no statutory or regulatory justification for a blood draw without consent, because there was no effective consent, because there was no warrant and no exigent circumstance to excuse seeking a warrant and no probable cause, the blood draw and its test results are inadmissible. The defendant concedes that this conclusion does not preclude use of what he may have said to other people.<sup>16</sup> He does seek to exclude any questions asked by law enforcement, government agents, and perhaps other parties concerning the testing process and results, or based on knowledge of the testing, and any statements he made in response to those questions as “fruit of the poisonous tree.” Wong Sun v. United States, 371 U.S. 471, 488 (1963).

The government “has the ultimate burden of persuasion to show that its evidence is untainted,” but the defendant “must go forward with specific evidence demonstrating taint.” Alderman v. United States, 394 U.S. 165, 183 (1969); see also United States v. Kornegay, 410 F.3d 89, 93-94 (1st Cir. 2005) (“To succeed on a motion to suppress, a defendant must establish a nexus between the Fourth Amendment violation and the evidence that he seeks to suppress.”) (citing

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<sup>16</sup> At present, I am aware of statements the defendant made concerning the accident to i) Travis Sawyer, on November 2 and 3; ii) the *Bangor Daily News* on November 3; iii) Yazbek on November 3; iv) an insurance adjuster on November 3; v) a Maine Marine Patrol Officer on November 4; vi) the Coast Guard, in a handwritten report of marine casualty filed November 7; vii) a Department of Labor investigator, with counsel present, on November 17; viii) a lawyer for the insurer in a deposition, on December 11; and ix) the Coast Guard, in an interview on January 13, 2015. Gov’t Opp’n 3-4. Not all of these statements refer to drug use.

Alderman, 394 U.S. at 183); United States v. Finucan, 702 F.2d 838, 844 (1st Cir. 1983); LaFave, 6 Search & Seizure § 11.2(b).

The defendant can demonstrate taint as to all questions asked based on knowledge of the testing and his responses to these questions. All such statements are inadmissible. He cannot establish taint as to voluntary statements not made in response to questions based on knowledge of the testing, as the defense essentially conceded at oral argument.<sup>17</sup> The parties assured me at oral argument that which questions are based on knowledge of the testing is clear from the record. That may be. It may also be that further specificity will be required before trial.

The government also asked me to rule that even if the test results are excluded from its direct case, they can be used as impeachment if the defendant chooses to testify at trial. The defendant's lawyer conceded that if the defendant opened the door by testifying at trial that, for example, he is not a drug user, the government could properly impeach this testimony with the results of the blood draw.

The First Circuit has held that "[w]hen a defendant opens the door to impeachment through his statements on direct, the government may try to establish that his testimony is not to be believed through cross-examination and the introduction of evidence, *including tainted evidence*, that contradicts the direct testimony." United States v. Morla-Trinidad, 100 F.3d 1, 5 (1st Cir. 1996) (emphasis added). The government can also use tainted evidence to impeach

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<sup>17</sup> The defendant's concession was limited to "volunteered statements outside of the course of questioning *by law enforcement*."

testimony given for the first time on cross-examination, *if* the statements are “made in response to proper cross-examination reasonably suggested by the defendant’s direct examination.” *Id.* (quoting United States v. Havens, 446 U.S. 620, 627 (1980)). But the government may not “smuggle in’ the impeaching opportunity with a cross-examination that has ‘too tenuous a connection with any subject opened upon direct examination.’” *Id.* (quoting Havens, 446 U.S. at 625).

I conclude that the government may use the tainted evidence to impeach any testimony offered by the defendant within the limits set by Morla-Trinidad, and in response to any defense tactics that otherwise open the door to it. See LaFave, 6 Search & Seizure § 11.6(b). It may not be used, as the government requested in its brief, to impeach the defendant’s competence as a witness to perceive and remember events or to rebut the implicit assertion that his faculties were unimpaired.<sup>18</sup>

#### CONCLUSION

The motion to suppress is **GRANTED IN PART** and **DENIED IN PART**.

**SO ORDERED.**

**DATED THIS 17<sup>TH</sup> DAY OF JANUARY, 2018**

/s/D. BROCK HORNBY  
**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**

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<sup>18</sup> The government offered no legal support for this request. Gov’t Opp’n 21 n.7.