

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

AYER DISTRICT COURT
NO. 1848CR001006

COMMONWEALTH

v.

JEFFERSON GANDRA

RULING ON DEFENDANT'S MOTION TO DISMISS

After hearing on the defendant's Motion to Dismiss the criminal charges, in consideration of the law, the arguments of counsel and facts established through testimony, the court finds that the evidence obtained from the defendant as a result of a motor vehicle stop on August 18, 2018, was obtained in violation of the defendant's rights against self-incrimination as enumerated by the Miranda warnings. Further, after the arrest of the defendant, the arresting and booking officers failed to adequately provide a Portuguese interpreter to provide the rights as required under M.G.L. Chapter 263, sec. 5A- referred to as the Statutory Rights and Consent. The primary evidence against the defendant supporting the charge of Operating Under the Influence of Alcohol was obtained as a direct result of those violations of the Defendant's rights.

The question before the court is the appropriate sanction for the multiple violations the defendant's rights. Certainly suppression of the evidence is one such action, but suppression is not always sufficient to address the magnitude of the violations. In this case, under these facts, the finds that the "[C]ommonwealth's failure to adequately notify him of his rights violated not only statutory, but also his Federal and State constitutional rights...Dismissal of the complaint would be an appropriate remedy only in the event that

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prejudice to the defendant cannot be negated.” *Commonwealth v. Kelley*, 404 Mass. 459, 464 (1989) citing *Commonwealth v. Andrade*, 389 Mass. 874, 882, n. 4 (1983). In this case and as supported by the findings below, the court finds that the appropriate sanction is dismissal of the charge of OUI. Therefore, the Motion to Dismiss is **ALLOWED**.

FINDINGS AND RULING

The Massachusetts State Police interaction with the defendant began on the side of the road. A 911 caller reported erratic operation, and another motorist who stopped near the defendant also reported observing erratic operation before the stop. Trooper Devlin was aware prior to her interaction that the defendant was in need of a Portuguese speaker. After a call out, Trooper Kevin Delgado responded, indicating he was fluent in Spanish and would attempt to speak with the defendant.

By the time Trooper Delgado began his involvement, Trooper Devlin determined that the defendant had been operating without a license (confirmed through a CJIS check) and had made observations consistent with OUI – blood shot eyes and a strong odor of alcoholic beverage from the defendant’s person. Upon inquiry, the defendant reportedly denied any alcohol consumption. Trooper Delgado was informed of this information.

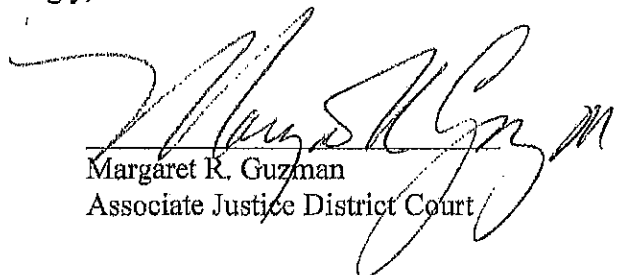
Trooper Delgado informed the defendant that he was being detained for the Unlicensed Operation and began the process of interrogating the defendant on his alcohol consumption, eventually reporting that the defendant admitted to consuming beer. The trooper then instructing the defendant on the performing the Field Sobriety tests. A site for the tests was chosen and the defendant got his instructions. The Horizontal Gaze Nystagmus was followed by the Nine Step Walk and Turn, which was then followed by the One Leg stand. The defendant’s arrest for OUI was based on his poor performance on the field

sobriety tests and his admission to alcohol consumption. The defendant was not apprised of his Miranda rights at any point during the interaction prior to his arrival at the barracks for booking.

At booking, the state police still did not have a person to speak with the defendant in Portuguese. Trooper Devlin testified that she used her own cellphone to call a language service. The call was not recorded nor was the name of the person on the line. The only corroboration of language interpretation in the defendant's natural language of Portuguese is the assertion of Trooper Devlin, including the assertion that the Statutory rights and Consent and Miranda were provided over the phone. The Commonwealth entered a copy of the Spanish and English Statutory Rights and Consent form given to the defendant. The only indication on the form is that the defendant refused to sign it.

Trooper Delgado began his interactions with the defendant by informing he was being detained for a criminal offense and was suspected of another offense. He was not free to go and should have been informed of his Miranda rights, and done so in a language he could understand. He was not. Neither trooper even attempted at the scene to inform him, not in Portuguese, Spanish or English.

The cumulative effect of the failures to inform Mr. Gandra of his rights at so many points cannot be undone by suppressing a statement. The facts in this case call for the unusual and significant sanction of dismissal. Accordingly, the defendant's Motion to Dismiss is ALLOWED. So Ordered.


Margaret R. Guzman
Associate Justice District Court

May 1, 2019