

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

2nd Circuit - District Division - Plymouth  
26 Green St.  
Plymouth NH 03264

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**NOTICE OF DECISION**

**GILLES R. BISSENETTE, ESQ  
AMERICAN CIVIL LIBERTIES UNION OF NH  
18 LOW AVENUE #12  
CONCORD NH 03301**

Case Name: **State v. Daniel McCarthy, ET. AL.**  
Case Number: **469-2017-CR-01888, ET. AL.**

Enclosed please find a copy of the Court's Order dated August 21, 2018 relative to:  
**Order on Motion for Reconsideration**

August 22, 2018

Deborah A. Nichols  
Clerk of Court

(668)

C: Daniel McCarthy, ET. AL.; Woodstock Police Department; Plymouth Area Prosecutor

# The State of New Hampshire

GRAFTON, SS.

2<sup>ND</sup> CIRCUIT – DISTRICT DIVISION - PLYMOUTH

STATE OF NEW HAMPSHIRE

v.

DANIEL MCCARTHY, ET. AL.

DOCKET # 469-2017-CR-01888, ET. AL.

## **ORDER ON MOTION FOR RECONSIDERATION**

The State filed a Motion for Reconsideration of the Court's Order dated May 1, 2018 in a timely manner. The Defendants filed an objection to the motion. Having finally had the time to review the pleadings and the relevant law related thereto the Court finds that it can rule on these pleadings without further hearing.

The State first argues that the Court's rulings in the Order dated May 1, 2018 failed to consider the expectation of privacy analysis of *State v. Goss*, 150 N.H. 46 (2003) which the State raised in its oral argument during the hearings on these motions. The State argued that the Court improperly relied on the holding in *State v. Pellici*, 133 N.H. 523 (1990), which predated the expectation of privacy analysis adopted for the first time in *Goss*. Indeed in *Pellici* the N.H. Supreme Court noted that at the time, "Unlike the United States Supreme Court, we have neither adopted nor rejected the reasonable expectation of privacy analysis for purposes of determining what constitutes an invasion of protected interests under part I, article 19. *See State v. Valenzuela*, 130 N.H. 175, 180–81, 536 A.2d 1252, 1256–57 (1987), *cert. denied*, 485 U.S. 1008, 108 S.Ct. 1474, 99 L.Ed.2d 703 (1988)." *Id.* at 532-533 The fact that the *Goss* decision did recognize the reasonable expectation of privacy in the New Hampshire Constitution for the first time did not over-rule *Pellici*, which this Court believes is still good law. Furthermore, people who are lawfully operating a motor vehicle on ways in New Hampshire do have a reasonable expectation that their vehicle will not be subject to a warrantless search without probable cause. Finally, the *Goss* decision clearly reaffirms the fact that the New Hampshire Constitution affords the people of New Hampshire more protection than that provided by the 4<sup>th</sup> Amendment.

The State next argues that the Court Order ignored the well settled principal in New Hampshire that law enforcement officers in one jurisdiction can transfer information constituting probable cause to law enforcement officers in another jurisdiction. As noted by the Defendants, the State's argument ignores the fact that the probable cause being transferred from one agency to another must have been lawfully obtained in order for it to be relied upon by the receiving agency. That requirement was not present in the instant case because the Court found that the canine searches violated the New Hampshire Constitution and therefore any evidence produced from those searches would be inadmissible regardless of it being transferred to the new agency. The Court further found that the primary purpose of the checkpoints was generalized crime prevention and therefore in violation of the 4<sup>th</sup> Amendment. The evidence was not tainted, "based solely on the transfer from one agency to another,"<sup>1</sup> as alleged by the State, but rather was tainted by the unconstitutional search that led to its discovery in the first instance.

Finally, the State faults the Court for finding that the State failed to produce evidence necessary to overcome a motion to suppress with respect to one dog and its handler because the issue was not pled. This was a hearing on a motion to suppress. The State had the burden to prove that the evidence in question was admissible. With respect to canine searches the relevant law requires the State to show that the dog involved in the search was properly trained and certified.<sup>2</sup> The State was obviously aware of that requirement because it addressed that issue with the other dog and handler teams involved in these cases. For reasons that are unknown to the Court the State neglected to address that issue with respect to the canine, Sam. The State's failure to present sufficient facts to allow the Court to determine that the evidence was admissible was the State's error, not the Court's.

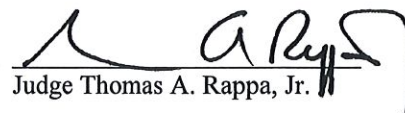
The Court orders the following:

1. The State's Motion for Reconsideration dated May 8, 2018 is DENIED.

**IT IS SO ORDERED:**

August 21, 2018

Date

  
Judge Thomas A. Rappa, Jr.

<sup>1</sup> State's Motion for Reconsideration, p. 2, par. 9.

<sup>2</sup> See, *U.S. v. One Million, Thirty-Two Thousand, Nine Hundred Eighty Dollars in U.S. Currency*, 855 F.Supp.2d, 678, 697-698 (D.Ct. – N.D. Ohio)(2012)