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FOR PUBLICATION

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

TRAFFIC CASE NO. 06-00136

Plaintiff,

v.

JESSE I. ANDREW,

ORDER OF CONVICTION

Defendant.

BACKGROUND

Defendant Jesse I. Andrew was cited for violating 9 CMC §§ 7104 (Reckless Driving), 7105 (Driving While Under the Influence of Alcohol or Drugs), 7106 (Refusal to Submit to Sobriety Test), and 5853 (Prohibition of Open Containers).¹ A bench trial was held on October 25, 2006. Assistant Attorney General James Buckingham appeared for the Government; Assistant Public Defender Samuel Randall appeared for Defendant. Closing arguments were heard on November 8, 2006.

I. BACKGROUND

On November 24, 2005, Defendant was stopped for racing. The evidence indicates that after being stopped by the police, Defendant refused to take a field sobriety test. Defendant did not sway or fall and did not have slurred speech. Officers noted alcohol on his breath, but did not ask

¹ The Government dismissed the charge of reckless driving.

1. Defendant whether he had had anything to drink. There were closed containers of alcohol in the
2. vehicle. There is conflicting evidence as to whether Defendant's eyes were bloodshot.

3. Defendant was arrested and brought to the police station. He refused an additional sobriety
4. test. He also refused to take a breath test.

5. **II. ANALYSIS**

6. Section 7106 requires any person who operates a motor vehicle upon the highways within
7. the Commonwealth to submit to a test of his or her breath, provided that the person has been
8. advised of this section and has been arrested by a police officer who has reasonable grounds to
9. believe the person is under the influence of alcohol or drugs. The penalty for a person's refusal to
10. comply is revocation of his or her license.

12. The refusal to comply with an initial field test does not necessarily lead to an inference of a
13. defendant's consciousness of guilt. A defendant may be detained in an environment that is not
14. conducive to a field sobriety test, and which case he would have a legitimate reason for refusing the
15. test. In the instant case, however, Defendant consistently refused to comply with any form of
16. testing. Defendant's repeated refusals, when considered in connection with the alcohol on his breath
17. and reckless driving, suggest that Defendant was conscious of his guilt.

19. American jurisprudence supports this conclusion. In *State v. Babbitt*, 525 N.W.2d 102 (Wis.
20. Ct.App.1994), the court held that refusal to take an Intoxilyzer test or perform a field sobriety test is
21. indicative of consciousness of guilt, as the most plausible reason for a defendant to refuse such a
22. test is the fear that taking the test will expose the defendant's guilt.

23. In *Thompson v. State*, 65 P.3d 534, 538 (Idaho App. 2003), the defendant's excessive speed
24. and delayed stop in response to the officer's overhead lights, when coupled with the other evidence
25. of alcohol use and the inference of consciousness of guilt that can be drawn from Defendant's
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1. refusal of field sobriety tests, established probable cause the defendant had been driving while under
2. the influence.

3. In *State v. Ferm*, 7 P.3d 193, 204 (Hawai'i App. 2000), the court held that an inference of
4. consciousness of guilt is one of many reasonable and permissible inferences to be taken from
5. evidence of refusal to take a field sobriety test.

6. In *People v. Hasenflue*, 252 A.D.2d 829, 831 (N.Y.S.2d 1998), the defendant's failure to
7. pass the field sobriety tests, his admission that he was drunk and his aberrant behavior in the police
8. station, together with the inference that his refusal to take the breathalyzer test demonstrated
9. consciousness of guilt, supported the jury's conclusion that the defendant had operated his vehicle
10. while intoxicated.

12. In Illinois, a defendant's refusal of a request to submit to breathalyzer test following arrest
13. for driving under the influence of alcohol is admitted as evidence against the defendant. *People v.*
14. *Garriott*, 625 N.E.2d 780, 784 (Ill. App. 1993), citing S.H.A. 625 ILCS 5/11-501.2(c).

15. In *State v. Anderson*, 631 P.2d 822 (Or. App. 1981), the court found that the inferences to be
16. drawn from defendant's refusal to take a breath test are relevant to the issue of whether or not he
17. was intoxicated at the time of his arrest.

19. Contrarily, in Massachusetts cases, courts have declined to admit evidence of a defendant's
20. refusal to take a test. *See Opinion of the Justices*, 412 Mass. 1201, 1211, 591 N.E.2d 1073 (1992)
21. (explaining that evidence of a defendant's refusal to submit to a breath test violates the self-
22. incrimination clause of Article XII of the Massachusetts Constitution). The CNMI does not have a
23. constitutional provision that is corollary to Massachusetts. As in other states, self-incrimination is
24. regulated only by the Fifth Amendment of the U.S. Constitution. The United States Supreme Court,
25. in *South Dakota v. Neville*, 459 U.S. 553, 103 S.Ct. 916, 74 L.Ed.2d 748 (1983), decided that the
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1. fifth amendment was not offended by the admission of refusal evidence because the refusal was not
2. compelled by the state. Thus, there are no bars to the admission and evaluation of Defendant's
3. refusal to take any sobriety test.

4. Based on the totality of the evidence, the Court finds Defendant guilty of violating 9 CMC
5. §§ 7105 (Driving While Under the Influence of Alcohol or Drugs), 7106 (Refusal to Submit to
6. Sobriety Test). There is insufficient evidence to convict Defendant of violating 9 CMC § 5853.

7. A sentencing hearing is hereby scheduled for 1:30pm ; Dec. 6th, 2006. Defendant and his
8. counsel are ordered to appear.

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10. SO ORDERED this 14th day of November, 2006.

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12. /S/ _____
13. Juan T. Lizama
14. Associate Judge, Superior Court

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