

arrested in Oswego, New York for drug and firearms violations. Order [dated June 4, 1998], *State of Maine v. Thomas J. Metz*, Maine Superior Court (York County), copy included in Exh. A to State's Response, at 1.

After the petitioner was arrested, Detective William Lefort of the New York State Police narcotics unit was called in to the police station where the petitioner was in custody and directed to obtain consent or a warrant to search the petitioner's vehicle. *Id.* at 1-2; Trial Transcript, *State of Maine v. Thomas J. Metz*, Docket No. YOR-98-441 ("Tr."), submitted with State's Response, at 3, 8-9. The petitioner's companion, who was arrested along with the petitioner, testified that the petitioner told her as they were being taken to adjacent interview rooms "not to say anything until we get a lawyer." Tr. at 63. Lefort arrived at some time after this statement was allegedly made and was not informed of it. *Id.* at 27-28. He went into the interview room where the petitioner was handcuffed to a desk and gave him a *Miranda* warning, after which the petitioner agreed to speak with Lefort and gave him permission to search his car. Order at 2. After obtaining a signed consent form, Lefort and the petitioner began a general conversation during which Lefort asked the petitioner "what the hell is that manslaughter charge [in Maine] about?" *Id.* The petitioner described his version of the events leading up to his indictment and said that he "was fucked up at the time of the accident." Tr. at 22. Lefort, based on his experience in investigating the use and sale of illegal drugs, interpreted this statement to mean that the petitioner was under the influence of a drug or drugs at the time of the accident, and he so testified at trial. *Id.* at 295-96.

Also introduced at trial were the results of a blood test taken after the accident pursuant to 29-A M.R.S.A. § 2522, which showed the presence of cocaine and a metabolite of cocaine in the petitioner's blood. *Id.* at 614, 620-21. The petitioner had moved to suppress both the statement made to Lefort and the results of the blood test; the trial court denied both motions. Order at 4-5; Tr. at 618-

19. The motion to suppress the statement invoked *Miranda v. Arizona*, 348 U.S. 436 (1966). Motion to Suppress Statements, *State of Maine v. Thomas J. Metz*, Docket No. [CR] 97-813, 97-1071, and 98-034, Maine Superior Court (York County), copy included in Exh. A to State's Response. The motion to suppress the results of the blood test was based on an alleged failure to comply with the requirements of 29-A M.R.S.A. § 2522(3). Motion to Suppress, *State of Maine v. Thomas J. Metz*, Docket No. CR-97-1071, Maine Superior Court (York County), copy included in Exh. A to State's Response.

After a four-day trial, a jury convicted the petitioner on both charges. Docket Sheet at 2[reverse]-3. The petitioner appealed from the conviction and applied for leave to appeal the sentence imposed. *Id.* at 3[reverse]. Leave to appeal from the sentence was denied. *Id.* On the appeal from the conviction, counsel for the petitioner presented both of the suppression issues, on the grounds set forth above. Brief of the Appellant, *State of Maine v. Thomas J. Metz*, Docket No. YOR-98-441, Maine Supreme Judicial Court, sitting as the Law Court, included in Exh. C to State's Response, at 3-10. The Law Court denied the appeal. *State v. Metz*, Dec. No. Mem 99-107 (Me. Sept. 21, 1999).

II. Discussion

The petitioner raises here the same issues he raised in his appeal to the Law Court, asserting that "several inculpatory statements," not otherwise identified, made to Lefort were given only after his statement to his companion, which was an "equivocable [sic] request for an attorney," so that any subsequent statements made in the absence of an attorney should have been suppressed; and that the state failed to show that there was probable cause to believe that the petitioner had been under the influence of an intoxicant at the time of the accident, absent the result of the blood test, making that result inadmissible at trial. Petition Under 28 USC § 2254 for Writ of Habeas Corpus by a Person in

State Custody (“Petition”) (Docket No. 1) at 5. The petitioner is represented in this proceeding by the same attorney who represented him at trial and on appeal to the Law Court.

The statute governing the petitioner’s claims in this proceeding provides, in relevant part:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

* * *

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

28 U.S.C. § 2254.

The petitioner’s claim that his admonition to his companion constituted a sufficient invocation of his own right to counsel that no questions should have been put to him by Lefort,¹ despite the petitioner’s agreement to talk after hearing Lefort’s recitation of his *Miranda* rights, a

¹ The trial court “accepted” the companion’s testimony (“although I have some doubts”) that “sometime before Mr. Lefort met with Mr. Metz, Mr. Metz made a general statement directed at [the companion] to the effect that she “not say anything until we get lawyers,” and that “most likely the police, or at least some of them,” heard the statement but that Lefort did not hear it, nor was he advised of it. Order at 3.

warning with which the petitioner could not have been unfamiliar given his earlier arrest in Maine, is governed by “clearly established Federal law” as set forth in *Davis v. United States*, 512 U.S. 452 (1994). In that case, the defendant, after being informed of his rights, spoke with investigators for about an hour and a half before saying “Maybe I should talk to a lawyer.” *Id.* at 454-55. The investigators informed him that they would stop any questioning if he was asking for a lawyer and the defendant responded “No, I don’t want a lawyer.” *Id.* at 455. At trial, the defendant sought to exclude statements made during the interview. *Id.*

The Supreme Court held that “if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.” *Id.* at 459. The suspect “must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards [v. Arizona]*, 451 U.S. 477 (1981)] does not require that the officers stop questioning the suspect.” *Id.* Finally, “if the suspect’s statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.” *Id.* at 461-62. Finding the statement at issue to be less than an unambiguous or unequivocal request, the Court affirmed the conviction. *Id.* at 462.

Here, the only respect in which the petitioner’s reported statement was unequivocal was in its expression of the petitioner’s desire that his companion not speak to the police until a lawyer was present. With respect to his own possible conversations with a police officer, the statement is ambiguous at best. A reasonable officer who heard the petitioner’s admonition to his companion would understand only that the petitioner might be invoking his right to counsel, and that is not enough under *Davis* to cause his later statement to be excluded.

To the extent that the petition might be construed to allege that the trial court made an unreasonable determination of the facts with respect to this issue, rather than that the trial court's decision was contrary to clearly established federal law, the petitioner offers nothing, let alone any suggestion of clear and convincing evidence, to rebut the presumption of correctness created by 28 U.S.C. § 2254(e)(1).

The petitioner is not entitled to relief on this issue.

With respect to the admission into evidence of the results of the blood test, the petitioner has identified only an alleged violation of state law as the ground for relief. The remedy provided by 28 U.S.C. § 2254 "is limited to the consideration of federal constitutional claims." *Burks v. Dubois*, 55 F.3d 712, 715 (1st Cir. 1995). "Thus, federal habeas review is precluded, as a general proposition, when a state court has reached its decision on the basis of an adequate and independent state-law ground." *Id.* at 716. To the extent that the petitioner might somehow contend that this claim is not based merely on state law because he has alleged that the inculpatory statements made to Lefort were used to establish probable cause under the state statute, *see* Petition at 5, I have concluded that the state court's decision to admit those statements into evidence was not contrary to, nor did it involve an unreasonable application of, clearly established federal law. Accordingly, reliance on those statements, in part, to find probable cause to admit the results of the blood test under the state statute could not have been an error, let alone an error of federal constitutional dimension.

III. Conclusion

For the foregoing reasons, I recommend that the petition be **DENIED** without a hearing.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum,

within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Date this 17th day of October, 2000.

David M. Cohen
United States Magistrate Judge

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