Recent Court Decisions Relevant to Maine Law Enforcement Officers

United States Supreme Court
United States Court of Appeals for the First Circuit
Maine Supreme Judicial Court Sitting as the Law Court

2015 CASE LAW UPDATE

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Maine Criminal Justice Academy
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Prepared by

Brian MacMaster & Margie Berkovich
Investigation Division – Office of the Attorney General

This publication and the 2015 New Law Update constitute the training outline of the Maine Criminal Justice Academy for recertification training in law updates for the year 2015.

Preparers' Note

The preparers of this document reviewed the published decisions of the United States Supreme Court, the United States Court of Appeals for the First Circuit, and the Maine Supreme Judicial Court Sitting as the Law Court as they relate to criminal procedure for the period September 2014 through August 2015, and selected cases believed to be of general interest and relevance to Maine law enforcement officers. This document is not a listing of all decisions of the three appellate courts.

In the interest of clarity and brevity, the selected decisions have been summarized. The summaries are those of the preparers, and do not represent legal opinions of the Maine Office of the Attorney General or interpretations by the Maine Criminal Justice Academy or the Maine Chiefs of Police Association.

If a particular decision is of interest to the reader, an Internet link is provided so that the reader can review the entire text of the decision. Given that court decisions are generally very fact specific, this is highly recommended for a more comprehensive understanding, and particularly before taking any enforcement or other action.

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Questions, suggestions, or other comments?

Brian MacMaster or Margie Berkovich
Investigation Division – Office of the Attorney General
6 State House Station – Augusta, ME 04333-0006
Telephone: (207) 626-8520
brian.macmaster@maine.gov
margie.berkovich@maine.gov

United States Supreme Court

Fourth Amendment – Extension of Traffic Stops – Reasonable Suspicion

Extending Traffic Stop without Reasonable Suspicion Rejected as Unlawful

Absent reasonable suspicion, authority for the traffic stop ends when tasks tied to the original purpose of the stop are—or reasonably should have been—completed. Certain unrelated investigations that do not lengthen the roadside detention may be permitted, but a stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission.

A Nebraska K–9 officer stopped Rodriguez for driving on a highway shoulder. After the officer attended to everything relating to the stop, including issuing a warning for the traffic offense, he asked Rodriguez for permission to walk his dog around the vehicle. When Rodriguez refused, the officer detained him until a second officer arrived. The first officer then retrieved his dog, who alerted to the presence of drugs in the vehicle. The ensuing search revealed methamphetamine. Seven or eight minutes elapsed from the time the officer issued the written warning until the dog alerted. Rodriguez was indicted on federal drug charges, and he moved to suppress the evidence seized from the vehicle on the ground that the officer had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff. The trial court, while finding that the officer had no reasonable suspicion upon which to justify the extended stop, denied the motion on the grounds that prolonging the stop by seven to eight minutes for the dog sniff was a *de minimis* intrusion on Rodriguez's rights. The Eighth Circuit affirmed under the same rationale of a *de minimis* intrusion, but declined to reach the question as to whether the officer had reasonable suspicion to continue Rodriguez's detention after issuing the written warning.

The U.S. Supreme Court disagreed, holding that while a seizure for a traffic violation justifies a police investigation of that violation, police extension of a stop in the absence of additional reasonable suspicion violates the Fourth Amendment. The Court emphasized that authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. The Court remanded the case to the Court of Appeals to determine whether the officer's decision to detain the driver may have been supported by reasonable suspicion.

In 2005, the Supreme Court held that a dog sniff conducted during a lawful routine traffic stop does not violate the Fourth Amendment, as long as it does not lengthen the roadside detention beyond the time reasonably required to complete the mission.[1] Beyond determining whether to issue a traffic ticket, an officer's mission during a traffic stop typically includes checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.

Rodriguez v. U.S. (April 21, 2015)
http://www.supremecourt.gov/opinions/14pdf/13-9972_p8k0.pdf

[1] *Illinois v. Caballes*, 543 U.S. 405 (2005). The critical question is whether conducting the sniff adds time to the stop.

Fourth Amendment – Reasonable Suspicion – Mistake of Law

Mistake of Law Justifies Investigatory Detention if Mistake Reasonable

It has been long settled dictum that a reasonable mistake of fact does not negate the requisite reasonable suspicion for an investigatory stop. Now, the U.S. Supreme Court has declared that a mistake of law is the same in that regard. Whether an officer is reasonably mistaken about the one or the other, the result is the same, and neither the text of the Fourth Amendment or Supreme Court precedents offer any reason why that result should not be acceptable when reached by a reasonable mistake of law.

An officer following a suspicious vehicle noticed that only one of the vehicle's brake lights was working and pulled the driver over. While issuing a warning ticket, the officer became suspicious of the actions of the two occupants. Heien, the car's owner, gave the officer consent to search the vehicle. The officer found cocaine, and Heien was arrested and charged. The trial court denied Heien's motion to suppress the seized evidence, concluding that the vehicle's faulty brake light gave the officer reasonable suspicion to initiate the stop. The North Carolina Court of Appeals reversed, holding that the relevant code provision requires only a single stop lamp, and the justification for the stop was therefore objectively unreasonable. The State Supreme Court held that, even assuming no violation of the state law had occurred, the officer's mistaken understanding of the law was reasonable and the stop was valid.

The U.S. Supreme Court held that there was reasonable suspicion justifying the stop because the officer's mistake of law was reasonable. The Court said that the Fourth Amendment requires government officials to act reasonably, not perfectly, and gives those officials "fair leeway for enforcing the law." Searches and seizures based on mistakes of fact may be reasonable. The Court held that mistakes of law are no less compatible with the concept of reasonable suspicion, which arises from an understanding of both the facts and the relevant law. Whether an officer is reasonably mistaken about one or the other, the result is the same, and neither the text of the Fourth Amendment nor Supreme Court precedent offer any reason why that result should not be acceptable when reached by a reasonable mistake of law. In support, the Court pointed to cases from the early 19th century that explained the concept of probable cause and treated legal and factual errors alike.

Heien v. North Carolina (December 15, 2014)
http://www.supremecourt.gov/opinions/14pdf/13-604_ec8f.pdf

Fourth Amendment – Civil Liability – Warrantless Entry – Deadly Force – Americans with Disabilities Act

Qualified Immunity for Warrantless Entry and Use of Deadly Force

Public officials are immune from suit under 42 U. S. C. §1983 unless they violate a clearly established statutory or constitutional right, an exacting standard that gives government officials breathing room to make reasonable but mistaken judgments. The only question was whether the officers violated the Fourth Amendment when they decided to reopen Sheehan's door rather than attempt to accommodate her disability. Because any such Fourth Amendment right, even assuming it exists, was not clearly established, the officers were entitled to qualified immunity.

Sheehan lived in a group home for individuals with mental illness. After she began acting erratically and threatened to kill her social worker, officers were dispatched to help escort Sheehan to a facility for temporary evaluation and treatment. When the officers first entered Sheehan's room, she grabbed a knife and threatened to kill them. They retreated and closed the door. Concerned about what Sheehan might do behind the closed door, and without considering if they could accommodate her disability, the officers reentered her room. Sheehan, knife in hand, again confronted them. After pepper spray proved ineffective, the officers shot Sheehan multiple times. Sheehan later sued for, among other things, violating Title II of the Americans with Disabilities Act of 1990 (ADA) by arresting her without accommodating her disability.[2] She also sued the officers in their personal capacities under 42 U. S. C. § 1983, claiming that they violated her Fourth Amendment rights when they entered her room and shot her.

The District Court granted summary judgment because it concluded that officers making an arrest are not required to determine whether their actions would comply with the ADA before protecting themselves and others, and also that the two officers did not violate the Constitution. Vacating in part, the Ninth Circuit held that the ADA applied and that a jury must decide whether Sheehan should have been accommodated under provisions of the ADA. The Ninth Circuit also held that the officers were not entitled to qualified immunity because it is clearly established that, absent an objective need for immediate entry, officers cannot forcibly enter the home of an armed, mentally ill person who has been acting irrationally and has threatened anyone who enters.

The U.S. Supreme Court dismissed the question of whether the ADA requires police officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody. Certiorari was originally granted on the question with understanding that the petitioners would argue that the ADA does not apply, but the petitioners merely argued that Sheehan was not qualified for an accommodation. More importantly, the Court held that the two officers were entitled to qualified immunity from liability for the injuries suffered by Sheehan. Public officials are immune from suit under 42 U. S. C. §1983 unless they have violated a statutory or constitutional right that was clearly established at the time of the challenged conduct, an exacting standard that gives government officials breathing room to make reasonable but mistaken judgments. The officers did not violate the Fourth Amendment when they opened Sheehan's door the first time, and there is no doubt that they could have opened her door the second time without violating her rights had Sheehan not been disabled. Their use of force was also reasonable. The only question was whether they violated the Fourth Amendment when they decided to reopen Sheehan's door rather than attempt to accommodate her disability. Because any such Fourth Amendment right, even assuming it exists, was not clearly established, the officers were entitled to qualified immunity.

San Francisco v. Sheehan (May 18, 2015)
http://www.supremecourt.gov/opinions/14pdf/13-1412_0pl1.pdf

[2] Title II of the ADA commands that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or subjected to discrimination by any such entity." 42 U.S.C. §12132.

Fourth Amendment – Administrative Searches – Pre-compliance Review

Hotel Operators Not Required to Turn Over Guest Records on Demand

The provision that requires hotel operators to make their registries available to the police on demand is unconstitutional because it penalizes them for declining to turn over their records without affording them any opportunity for pre-compliance review.

The City of Los Angeles required hotel operators to record and keep specific information about their guests on the premises for a 90-day period. The records were required to be made available to the police department for inspection, and a hotel operator's failure to make the records available constituted a crime. A group of motel operators and a lodging association brought a challenge to the ordinance on Fourth Amendment grounds. The District Court entered judgment for the City, finding that respondents lacked a reasonable expectation of privacy in their records. The Ninth Circuit reversed, determining that inspections are Fourth Amendment searches and that such searches are unreasonable because hotel owners are subjected to punishment for failure to turn over their records without first being afforded the opportunity for pre-compliance review.

The U.S. Supreme Court affirmed the Ninth Circuit decision, holding that an administrative search can only be constitutional when the subject of the search is afforded an opportunity to obtain pre-compliance review by a neutral decisionmaker — a procedure not afforded by the Los Angeles ordinance.

Maine has a similar provision in Title 30-A, section 3821. The records must be kept for two years and be available at all reasonable times to the inspection by any full-time law enforcement officer. Violation of the statute is a Class E crime, punishable by a fine of $100 to $500 and/or up to 90 days imprisonment for each offense. Until such time as the statute can be changed to pass constitutional muster, it is recommended that no persons be charged if they refuse to grant access to guest records. Officers can still ask for and innkeepers may still consent to searches of guest records. If refused access to the records, officers can apply for an administrative warrant or obtain a grand jury subpoena for the information. And, inspection of the records without a warrant can still be done pursuant to the accepted exceptions to the warrant requirement, such as exigent circumstances.

City of Los Angeles v. Patel (June 22, 2015)
http://www.supremecourt.gov/opinions/14pdf/13-1175_2qe4.pdf

United States Court of Appeals for the First Circuit

Fourth Amendment – Search Warrant – Franks Hearing – Omission of Material Information

Omission of Material Information in Affidavit May Negate Probable Cause

A police officer seeking to obtain a search warrant should include in the affidavit any known facts that may negate the credibility of an informant and/or the reliability of the informant's information. Failure to investigate indicia of unreliability is reckless, and recklessness may be inferred from the fact of omission from an affidavit if the omitted information was critical to the probable cause determination.

In February 2010, the Conway (N.H.) Police Department received an email message stating that child pornography had been seen on the laptop computer of John Tanguay. The allegations were investigated by a state trooper, who learned that the author of the email message was Josh Wiggin. The trooper contacted a Conway police officer for information on Wiggin and was told that Wiggin was known as a police groupie, who was "quirky" and "troubled" in his teen years, had a history of suicidal ideation, and had experienced "a few scrapes with the law." The Conway officer specifically mentioned that Wiggin had been convicted of uttering a false prescription. The trooper did not ask for more details about Wiggin nor did she make any effort to find out what other "scrapes" Wiggin may have had. She interviewed Wiggin. About a week later, the trooper obtained a warrant to search Tanguay's home, vehicle, and workplace. In the affidavit, the trooper communicated the substance of Wiggin's interview, emphasizing that Wiggin had come forward despite the potential embarrassment of having his sexual interest in men revealed to his parents and girlfriend. The affidavit did not contain any of the information learned from the Conway police officer regarding Wiggin's history and reputation.

The police seized a computer, hard drive, and compact disc that were found to contain sexually explicit images and videos depicting minors. A federal indictment thereafter charged Tanguay with a single count of possession of child pornography. Tanguay moved for a Franks[3] hearing, claiming that the trooper either deliberately or recklessly omitted material information from her affidavit. He also moved to suppress the evidence seized during the search. The district court convened a hearing at which the trooper testified. The court concluded that the trooper had recklessly, if not intentionally, omitted from her affidavit three clusters of relevant information known to her at the time she sought the warrant: (1) Wiggin's prior conviction for falsifying a prescription, a crime of dishonesty; (2) Wiggin's reputation among local police as "troubled," "suicidal," "quirky," and a "police groupie," which the court said suggested a history of mental instability and a willingness to compromise oneself to impress the police, and; (3) the fact that

[3]In *Franks v. Delaware* (1978), the U.S. Supreme Court held that where a defendant makes a substantial preliminary showing that a false statement made deliberately, or with reckless disregard for the truth, was included in a search warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held. In the event that at that hearing, the allegation of perjury or reckless disregard is established by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search.

Wiggin's interview statement—that Tanguay was viewing a pornographic video depicting children as young as eight years of age when Wiggin arrived—arguably conflicted with Wiggin's typed notes describing the subjects of that video as young men or teens. The court went on to say that an inquiry by the trooper conceivably would have discovered that one of Wiggin's prior "scrapes" was a juvenile conviction for making a false report to the Conway police. That conviction stemmed from Wiggin's claim that he had been shot in the leg by an unidentified sniper when, in fact, he had shot himself to see what it felt like. Because such a conviction was for a crime of dishonesty, disclosing it would have cast grave doubt on Wiggin's credibility and, thus, undermined any showing of probable cause. However, the court concluded that there still would have been probable cause to authorize the search even without the omitted information and that the trooper did not know of the false report conviction at the time she executed the affidavit and she had no duty as a matter of law to inquire further about Wiggin.

The First Circuit Court of Appeals disagreed with the lower court finding, stating that the lower court was wrong when it said that a Franks violation could not arise out of a failure to include in an affidavit facts not actually known to the trooper at the time she executed the affidavit, and that the district court was also wrong in concluding that she had no duty as a matter of law to inquire further about Wiggin's background. On remand, the appeals court directed the district court to first determine (1) whether the information known to the trooper gave her an obvious reason to doubt Wiggin's truthfulness and, (2) whether the information known to her triggered a duty of further inquiry and, if it did, the court then must determine whether the trooper's doubts were of such a magnitude that her failure to conduct an additional inquiry demonstrated a reckless disregard for the truth as opposed to mere negligence.

U.S. v. Tanguay (May 22, 2015)
http://media.ca1.uscourts.gov/pdf.opinions/14-1174P-01A.pdf

Maine Case – Fourth Amendment – Franks Motions – Substantial Preliminary Showing

No Entitlement to Franks Hearing if No Substantial Preliminary Showing

A defendant is entitled to an evidentiary hearing to challenge the veracity of a sworn statement used by police to procure a search warrant if the defendant makes a substantial preliminary showing that (1) an intentional false statement, or one made with reckless disregard for the truth, was included in the affidavit, and (2) if the allegedly false statement is necessary to the finding of probable cause.

A warrant was obtained for the search of Richard Graf's home based on information from a confidential informant. During the search, police found marijuana plants and an unregistered short-barreled shotgun. Graf was indicted on federal firearms possession and drug charges. Graf challenged the sworn statement used by police to get the warrant and asked the federal trial court for a Franks hearing. He argued that the officer either embellished the informant's reliability, or more likely, that either the officer or the informant was simply lying.

In cases where law enforcement relies on tips from confidential informants to provide probable cause to search, the affidavit must recite some of the underlying circumstances from which the informant concluded that relevant evidence might be discovered, and some of the underlying circumstances from which the officer concluded that the informant was credible or the informant's information reliable.

The court found that a Franks hearing was not warranted despite some irregularities in how the confidential informant was identified and discrepancies in describing the informant in subsequent affidavits. The court did not address the question of whether the allegedly false statement was necessary to the finding of probable cause because Graf did not make a substantial preliminary showing that an intentional false statement, or a statement made with reckless disregard for the truth, was included in the affidavit.

U.S. v. Graf (April 21, 2015)
http://media.ca1.uscourts.gov/pdf.opinions/14-1156P-01A.pdf

Maine Case – Fifth Amendment – Miranda – Functional Equivalent of Interrogation

"Small Talk" not Interrogation such as to require Miranda Warning

The Fifth Amendment requires police to provide criminal suspects the Miranda warning before custodial interrogation. The warning is not required where a suspect is simply taken into custody, but where the suspect is subjected to interrogation. Interrogation includes the "functional equivalent" of questioning, i.e., any words or action on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. An officer's questions to a defendant about his probationary status are not the functional equivalent of interrogation.

In April 2011, a Maine probation officer was supervising Cletus Davis, who had been released from prison and was living with his girlfriend in Wales. Conditions of probation included answering all questions of his probation officer and permitting the officer to visit him at his home or elsewhere, a prohibition against owning, possessing or using a firearm or other dangerous weapon, and submitting to random search and testing for drugs at the direction of a probation or law enforcement officer. After receiving a call from the mother of Davis' girlfriend alerting him that there were guns and drugs at the girlfriend's residence, the probation officer, along with other officers, went to the girlfriend's home to do a probation check. Upon entering the house, Davis was handcuffed because of his criminal history, which included an armed standoff and because of the information that guns and possibly drugs in the house. He was told that he was not under arrest and if everything checked out okay he would be free to go. Davis was asked if there were any firearms in the home and he responded that that there was a .22 caliber rifle. Several firearms and ammunition for the .22 caliber rifle were found and seized; Davis was placed under arrest and transported to jail.

Davis was provided no *Miranda* warning. Davis told the officer transporting him to jail that he wanted to speak with his lawyer before answering questions. The officer and Davis exchanged "small talk" during the ride to jail that included the officer asking Davis about his probationary status. Davis did not directly respond to the question, but sometime thereafter during the ride to jail uttered a statement that he knew the firearms were in the house and his girlfriend was supposed to have removed them. The officer testified that Davis's statement was not in response to any question he asked. A federal grand jury indicted Davis on one count of being a felon in possession of two firearms. Davis moved to suppress the two statements regarding the presence of the firearms in his residence, arguing that he had not been provided a *Miranda* warning on either occasion—when responding to a question at the start of the search and when speaking with the transport officer. The district court denied the motion and Davis appealed.

The First Circuit Court of Appeals rejected Davis's argument stating that the court has never held that the use of handcuffs necessarily renders a probationer in custody for *Miranda* purposes, and the officer's question to Davis about his probationary status while transporting him to jail was not the functional equivalent of interrogation because the statement was not in response to any question the officer asked.

U.S. v. Davis (December 9, 2014)
http://media.ca1.uscourts.gov/pdf.opinions/13-2292P-01A.pdf

Fourth Amendment – Use of Force – Civil Liability – Qualified Immunity

Where No Clearly Established Right, No Civil Liability for Violation

The decision to handcuff the arrestee according to standard police practice is a judgment call. No reasonable officer would have believed the decision to handcuff the arrestee according to standard police practice violated the constitutional provision against excessive force. Therefore, the officers were entitled to qualified immunity because there was no clearly established right to be cuffed with hands in front and the officers acted reasonably.

On June 6, 2011, four police officers arrived at the plaintiffs' home to serve a warrant for an unpaid fine for a traffic violation. The officers were aware that Hunt had been arrested approximately two months earlier for his involvement in a major cocaine and heroin distribution ring in Cape Cod. When informed that he was under arrest, Hunt requested that he be handcuffed with his hands in front of him because he had undergone surgery on his stomach the previous week. The officers asked Hunt to lift his shirt, but they saw nothing that dissuaded them from the usual practice of handcuffing his hands behind his back. Hunt continued to request that he be handcuffed in front and his demeanor changed from being calm to being angry. A scuffle ensued; Hunt was subdued and his hands were handcuffed behind his back. Hunt sued the officers and the Town of Falmouth, Massachusetts, claiming, among other things, that the officers had used excessive force. The district court denied the officers' motion for summary judgment. The officers appealed to the First Circuit Court of Appeals, which stated that to determine whether the officers were entitled to qualified immunity the court must determine if there was a constitutional violation and whether the violated right was clearly established when the conduct occurred. The relevant question, then, was whether in 2011 Hunt had a clearly established right to be handcuffed with his hands in front of him when it would not be obvious to a reasonable officer that Hunt's recent surgery would prevent him from putting his hands behind his back.

The First Circuit concluded that the district court erred in denying qualified immunity to the officers. The officers' decision to handcuff an arrestee according to standard police practice is a judgment call that must be analyzed based on the totality of the circumstances. The court went on to say that given the facts of this case that no reasonable officer would have believed that a decision to handcuff Hunt according to standard police practice violated the constitutional provision against excessive force. Therefore, the officers were entitled to qualified immunity because Hunt had no clearly established right to be cuffed with his hands in front of him and the officers acted reasonably.

Hunt v. Massi (December 10, 2014)
http://media.ca1.uscourts.gov/pdf.opinions/14-1379P-01A.pdf

Maine Case – Fourth and Fifth Amendments – Plain View Exception

Warrantless Seizure of Firearms Supported by Plain View Exception

The plain view exception permits the warrantless seizure of an item if the officer is (1) lawfully present in a position from which the item is clearly visible, (2) there is probable cause to seize the item, and (3) the officer has a lawful right of access to the item itself. The officers' consensual entry into the appellant's dwelling did not offend the Fourth Amendment and, once they were lawfully inside, the warrantless seizure of the sawed-off shotgun was lawful under the plain view exception.

A temporary order of protection was issued against Randolph Gamache after his former wife alleged he abused her. Among other things, the order required Gamache to surrender any firearms in his possession. When the officers arrived at Gamache's apartment to retrieve firearms, Gamache answered the door and motioned for the officers to enter. Once inside, one of the officers asked Gamache if he had any firearms in the apartment. Gamache pointed to the living room wall, where two shotguns were clearly visible and prominently displayed. The officers seized the shotguns, one of which had a barrel length of less than 18 inches. On two subsequent occasions, detectives went to the Gamache's home to question him about the sawed-off shotgun. Gamache made incriminating statements to the detectives, admitting, among other things, that he had used a hacksaw to shorten the barrel of the shotgun and that he knew that it was unlawful for him to trim the barrel to less than 18 inches. These interviews were "conversational" and "relaxed." Gamache was indicted by a federal grand jury for possession of an unregistered sawed-off shotgun. He moved to suppress the sawed-off shotgun and his statements about it on Fourth and Fifth Amendment grounds.

The plain view exception permits the warrantless seizure of an item if the officer is (1) lawfully present in a position from which the item is clearly visible, (2) there is probable cause to seize the item, and (3) the officer has a lawful right of access to the item itself. The court stated that the officers made a lawful plain view seizure of the sawed-off shotgun. The officers were lawfully present in response to a voluntary consent of entry by Gamache. The sawed-off shotgun was clearly visible from the lawful vantage point of the officers and, although the officers did not immediately realize the length of the shotgun's barrel was less than 18 inches, they had probable cause to seize it based upon the court order. The court went on to say that Gamache's subsequent admissions were not fruit of the poisonous tree because there was no prior Fourth Amendment violation and, thus, no poisonous tree.

U.S. v. Gamache (July 6, 2015)
http://media.ca1.uscourts.gov/pdf.opinions/14-1546P-01A.pdf

Maine Supreme Judicial Court Sitting as the Law Court

Fourth Amendment – Search of Person – Exigent Circumstances – Easily Destroyed Evidence

Warrantless Search of Person Based on PC and Exigent Circumstances

Exigent circumstances exist when there is a compelling need to conduct a search and insufficient time during which to secure a warrant. This is the case when the nature of the evidence is such that it is easily destroyed. This was true in this case, as demonstrated by the fact that either person, although handcuffed, was apparently able to dispose of a bag of pills that was later found on the ground.

The State appealed the trial court's granting of a motion to suppress evidence of illegal drugs seized from Eric Martin after officers stopped a vehicle in which Martin was a passenger. The State argued that the search was justified by probable cause and exigent circumstances, search incident to arrest, and the inevitable discovery exception to the Exclusionary Rule. The Law Court concurred with the argument that the search was justified by probable cause and exigent circumstances, and vacated the suppression order.

Agent Peter Johnson had established probable cause that a vehicle headed north on the Interstate to Aroostook County was carrying a significant load of heroin and prescription pills and containing two individuals believed to be armed. One of these individuals was Martin, a passenger in the vehicle. The other was Wafford, the driver. Officers stopped Wafford's vehicle on I-95. Both men in the car were ordered out and handcuffed. Detective Ross McQuade of the Aroostook County Sheriff's Office patted the men down, first Wafford and then Martin. At the time that he conducted the pat-down searches, McQuade did not know which of the two men was Wafford. He testified that in searching Martin for weapons and contraband he did not feel anything that could be a weapon, "but in Martin's lower body region, towards the right side of his lower groin area, I felt something that appeared to be unnatural and thought that it was likely a plastic bag." He felt objects in the bag moving around but he did not know what they were.

When McQuade was unable to locate the bag in Martin's pockets, he alerted MDEA Supervising Special Agent Shawn Gillen. Gillen pulled out the waistband of Martin's "extremely loose" shorts and underwear with his finger, then "reached in and grabbed the bag," which contained 98 oxycodone pills. After Wafford and Martin were arrested, Gillen was notified by a deputy that another bag of 50 pills was found on the ground in the same area where McQuade had searched both men; the pills were the same kind taken from Martin.

Martin moved to suppress the bag of pills seized by Gillen, asserting that Gillen had conducted an unreasonable warrantless search. Martin did not challenge the legality of either the stop or the initial pat-down. The trial court held an evidentiary hearing and granted the motion, finding that Agent Gillen's search of Martin's person exceeded the bounds of a valid protective search or justifiable search for contraband. The court found that the police investigation in this case provided a clear basis for probable cause to believe that there would be contraband in the vehicle or on the person of Mr. Wafford, but that the search of Martin was not supported by probable cause because there was no particularized evidence of his involvement in drug trafficking beyond his presence in Wafford's car. The State appealed the decision.

The Law Court, relying on U.S. Supreme Court precedent involving probable cause for an arrest[4], found that the probable cause to search Wafford's car extended to Martin as a passenger in a car that travelled to Maine for the purpose of delivering illegal drugs. The only remaining question was whether exigent circumstances eliminated the need for a warrant. Exigent circumstances exist when there is a compelling need to conduct a search and insufficient time during which to secure a warrant. This is the case when the nature of the evidence is such that it is easily destroyed. The court found that in this case this was true, as demonstrated by the fact that either Wafford or Martin, although handcuffed, was apparently able to dispose of a bag of pills that was later found on the ground.

The State's alternative arguments of search incident to arrest and inevitable discovery were not considered in light of the conclusion that the warrantless search was supported by probable cause and exigent circumstances.

State v. Martin (July 23, 1015)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2015/15me91ma.pdf

Maine's "Fifth Amendment" – Voluntariness of Confession

Murder Suspect's Statements Determined to be Voluntary

Under Maine law, in order for a statement to be voluntary, the State must establish beyond a reasonable doubt that it is "the free choice of a rational mind, fundamentally fair, and not a product of coercive police conduct." However, under Maine's standard, a showing of police misconduct is not required in order for an incriminatory statement to be involuntary.

After a jury trial, Andrew Kierstead was found guilty of murder and sentenced to 45 years in prison. Defendant appealed, arguing that the trial court erred in denying his motion to suppress statements he made to law enforcement officers in the hours following the murder because he was in a state of intoxication and emotional distress at the time, which rendered his statements involuntary. Kierstead did not contend that his statements were involuntary as a result of police coercion or improper state action. The Law Court affirmed the conviction, holding that the trial court did not err in determining that Kierstead's statements to law enforcement were the free choice of a rational mind, were fundamentally fair, and were not a product of coercive police conduct.

On September 27, 2012, Kierstead went to the home of Richard Mills to buy methadone, which he regularly purchased illegally from Mills. Kierstead had been drinking since early that morning, and he continued to drink at Mills's house. After Mills refused to provide Kierstead with methadone because Kierstead owed him money from prior drug purchases, Kierstead lured Mills outside on the pretext that he needed help with his truck. Kierstead shot Mills with a 12 gauge shotgun several times at close range, including four times in the back. After the shooting, Kierstead swallowed several Vicodin pills in an attempt to commit suicide. After ingesting the pills and passing out for a period of time, Kierstead awoke and called 9-1-1.

[4] Maryland v. Pringle, 540 U.S. 366 (2003), is a case regarding the reasonableness of the arrest of a passenger in an automobile. A police officer stopped a car for speeding and searched the car, seizing $763 from the glove compartment and cocaine from behind the back-seat armrest, and arrested the car's three occupants, including Pringle, after they denied ownership of the drugs and money. The U.S. Supreme Court concluded that the presence of Pringle in the car established probable cause for his arrest.

He reported to the dispatcher that he had shot and killed his friend, whose body was in the driveway. He provided an address for his location as well as a description of the property, and reported that he had tried to kill himself by overdosing on pills. The dispatcher instructed Kierstead to go out on the porch and wait for police to arrive. Throughout the 12-minute call, Kierstead was "calm but upset," repeatedly saying things to the effect of "I can't believe this happened," and "I ruined my life." He did not slur his speech or demonstrate any other signs of intoxication.

Knox County Deputy Kirk Guerrette responded to the address, and found Kierstead sitting on the porch and talking on the phone. Following the officer's instructions, Kierstead put his hands behind his back and, without stumbling or falling, began walking backward toward the officer. Guerrette asked where Mills was and how long he had been there, and Kierstead responded coherently and without slurring. Kierstead stood upright without difficulty during a pat-down search, was able to walk normally and unassisted, and was calm and compliant. The EMT's who evaluated Kierstead while he sat in the back of a police cruiser asked him several questions to determine his alertness, and he responded appropriately to each question. An EMT also took Kierstead's vitals, which, except for an elevated pulse, were all normal. At one point, Kierstead stood up so that his blood pressure could be tested, and he did not stagger or fall in doing so. He was alert and responsive throughout the evaluations, and did not nod off or slur his speech. Though one EMT described him as "in shock" or "stunned," no one who evaluated Kierstead believed him to be in need of medical care.

Sheriff's Detective Reginald Walker conducted an audio-recorded interview of Kierstead at the scene. Walker, who at no point told Kierstead that he had to speak with him, read Kierstead his *Miranda* rights, each of which Kierstead indicated he understood before agreeing to speak with Walker. Kierstead provided details about the shooting and expressed his regret for shooting Mills. Throughout the interview, Kierstead was soft-spoken, but calm, coherent, and largely responsive. Although at times he did not immediately respond to certain questions, Walker was able to quickly regain his attention and resume his questioning. At no point during the interview did Kierstead appear to lose consciousness. Kierstead became emotional at times, particularly when he talked about the shooting. He requested and was given water, and stated that he had not eaten in days but was not hungry. At one point, he reported feeling nauseated and Walker let him step out of the car, which Kierstead had no difficulty doing. As Kierstead stood outside, Walker began talking with another officer about hunting, and Kierstead asked that they stop talking about guns and shooting things.

State Police Detective Jason Andrews also met Kierstead at the scene. Kierstead was willing to speak with Andrews but asked that they leave the scene. Andrews transferred Kierstead to his cruiser to take him to the Rockland Police Department, and Kierstead had no difficulty standing or walking to Andrews's car. After Kierstead smoked a cigarette, he became nauseated and vomited. On the way to the police station, Kierstead spoke with Andrews about his job and where he lived. He spoke clearly, and did not nod off or fall asleep during the drive. At the police station, Kierstead drank more water and smoked another cigarette before again becoming ill and vomiting. Detectives Andrews and Jackson conducted an audio-recorded interview of Kierstead. Kierstead was again informed of his *Miranda* rights, and he indicated that he understood them and was willing to speak with the detectives.

The detectives, like Detective Walker, were nonconfrontational and Kierstead agreed that they treated him fairly and did not compel him to make any statements. After coherently providing details about the shooting, Kierstead stated that he had tried to kill himself and that he still wished to die. As a result, and pursuant to standard booking procedure, Kierstead was taken to a hospital for a mental health evaluation. At the hospital, Dr. John Whitney Randolph examined Kierstead, and concluded that he exhibited symptoms of toxic levels of acetaminophen, which is found in Vicodin. He believed that Kierstead was at the lowest stage of acetaminophen overdose. Dr. Randolph found that Kierstead's blood-alcohol level was .054%, a rate he believed sufficient to impair one's judgment. Extrapolating backward based on standard metabolic rates, he calculated that around the time Kierstead spoke with law enforcement officers his blood-alcohol level might have been as high as .20%. At that level, Randolph opined, an individual may "slump over," lose consciousness and perhaps become comatose, and have difficulty talking.

The trial court denied Kierstead's suppression motion based on its conclusion that his statements were proved voluntary beyond a reasonable doubt. The court reasoned that, though there was evidence that Kierstead had consumed Vicodin, methadone, and alcohol on the day of the shooting, he did not display signs of heightened drug impairment or of actual significant impairment due to alcohol. Kierstead appealed the trial court's finding of voluntariness.

Under Maine law, in order for a statement to be voluntary, the State must establish beyond a reasonable doubt that it is "the free choice of a rational mind, fundamentally fair, and not a product of coercive police conduct."[5] In determining voluntariness, the totality of the circumstances is considered. That a person is under the influence of drugs or in emotional distress does not, by itself, render a statement involuntary. Rather, the particular circumstances of each case must be evaluated to determine whether a defendant's drug-related or emotional condition made him incapable of acting voluntarily, knowingly, and intelligently. Here, the Law Court concluded, the trial court was correct in finding that the totality of the circumstances established beyond a reasonable doubt that Kierstead's statements were made voluntarily. Though Kierstead exhibited some signs of a low-level acetaminophen overdose (specifically, nausea), and though there was objective evidence of Kierstead's alcohol consumption, there is abundant evidence that Kierstead's mental faculties were not significantly impaired at the time he made the statements in question.

State v. Kierstead (April 30, 2015)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2015/15me45ki.pdf

[5] Practically all other jurisdictions, federal and state, require proof of voluntariness by the much lesser standard of a preponderance of the evidence, and the threshold element of involuntariness is a showing of coercive police misconduct. In Maine, where the burden of proof is beyond a reasonable doubt—an interpretation by the Law Court of the Maine Constitution's equivalent of the Fifth Amendment—there need not be a showing of police misconduct, but evidence that one's incriminating statement was not the free choice of a rational mind and, thus, not a product of acting voluntarily, knowingly, and intelligently.

Fourth Amendment – Standing – Reasonable Expectation of Privacy

No Standing to Object to Search where No Expectation of Privacy

Standing is a threshold issue and if a motion to suppress asserts a violation of the Fourth Amendment, the defendant must demonstrate that his own reasonable expectation of privacy was violated by the action of the State. In this case, there was no evidence to show that the defendant had a reasonable expectation of privacy in the vehicle in which he was riding or a possessory interest in the property that was seized.

Paul Lovett was charged with unlawful trafficking of scheduled drugs and the State sought criminal forfeiture of cash discovered during the search of a vehicle in which he was riding. He filed a motion to suppress the evidence gathered from the search. The suppression court denied the motion, concluding that the MDEA agents had sufficient probable cause to search the vehicle based on the totality of the circumstances. The Law Court affirmed, also holding that because Lovett failed to show his reasonable expectation of privacy in the vehicle, his Fourth Amendment rights were not violated by the search.

On May 17, 2013, MDEA Agent Shawn Gillen advised Agent Craig Holder of a phone tip that provided information about a white Ford with Delaware plates leaving Fort Fairfield headed south on U.S. Route One. The informant reported that cocaine was hidden behind the CD player of the vehicle. The informant also reported that the vehicle was operated by a white female who had a black male passenger. At the time Agent Holder received the phone tip, he believed it was from an anonymous source. However, Agent Gillen testified that, at the time of the search, he understood that the tip was not anonymous and that the informant had given reliable information in the past. MDEA agents set up a surveillance point outside of Houlton, where they observed a white Ford vehicle with a white female operator and a black male passenger. The rear of the vehicle displayed a single Delaware plate. The agents stopped and searched the vehicle. Lovett, who did not challenge the stop of the vehicle, sought to suppress the evidence found during the search. The suppression court concluded that the agents had probable cause to search the vehicle based on the totality of the circumstances, including the tip and confirmation of details from the tip.

At the suppression hearing, the State argued that Lovett lacked standing to challenge the search of the vehicle, but the court did not address that issue in deciding the motion. Nevertheless, the Law Court addressed the issue of Lovett's standing because standing is a threshold issue and courts are only open to those who meet this basic requirement. If the motion to suppress asserts a violation of the Fourth Amendment, the defendant must demonstrate that *his own* reasonable expectation of privacy was violated by the action of the State. In this case, there was no evidence in the record demonstrating that Lovett had a reasonable expectation of privacy in the vehicle in which he was a passenger or an interest in the property that was seized. Accordingly, the Law Court concluded that Lovett did not have standing, basing its determination on U.S. Supreme Court precedent[6] that states that to establish standing to challenge the search of a vehicle, a defendant must demonstrate a possessory interest in the vehicle or an interest in the property seized.

State v. Lovett (January 29, 2015)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2015/15me7loco.pdf

[6] *Rakas v. Illinois*, 439 U.S. 128, 148 (1978).

Fifth & Sixth Amendments – Voluntariness and Right to Counsel

Sixth Amendment Right to Counsel is Offense Specific

Jessica Babb entered a conditional guilty plea to stealing drugs. The Law Court affirmed the judgment, holding (1) the trial court did not err in denying Babb's motion to suppress her confession, which was made to police during a voluntary polygraph, given Babb's right to counsel in a separate, prior prosecution did not apply to interrogations arising out of subsequent, separate alleged offenses; and (2) the pre-charge interrogation regarding the new criminal conduct that gave rise to the current prosecution was not a "critical stage" of the prosecution for purposes of the Sixth Amendment.

Several months before the events that gave rise to the current charges, Babb was charged with theft of drugs. She pled guilty and was granted deferred disposition requiring her to refrain from all criminal conduct and released on bail. Approximately three months later, a Falmouth woman reported to police that jewelry and prescription medication had been stolen from her home. Babb, who was employed at the house as a housecleaner, became a suspect in the investigation. A police detective called Babb and asked if she would meet with him at the police station. Babb drove herself to the police station, where she denied having taken the items from the home. When the detective offered Babb the opportunity to take a polygraph test, she agreed. Before administering the test, the polygraph examiner told Babb that she was free to leave at any time. He also told Babb that she would not be arrested during the polygraph test regardless of what she said, but that he would convey the information to the investigating officers, who would take whatever action they deemed necessary. The examiner explained to Babb that, because she was not in custody, *Miranda* warnings were not required. Nevertheless, he told her, certified examiners give the warning as part of their protocol; he administered the warning to Babb. He told Babb that she was free to call an attorney if she had one. Babb did not request an attorney. After the test, the examiner informed Babb that the results indicated deception. Babb then confessed to taking the prescription medication, but not the jewelry, from the residence. At the examiner's suggestion, Babb prepared a written confession on a "voluntary statement" sheet that the examiner provided. The voluntary statement sheet had *Miranda* warnings printed at the top of the page. The interaction between the examiner and Babb was congenial throughout. Babb later sent the examiner an unsolicited email that included additional incriminating statements.

Babb was indicted for stealing drugs. She moved to suppress the statements that she made to the polygraph examiner, arguing that her Sixth Amendment right to counsel was violated by questioning her outside the presence of the attorney appointed in the earlier prosecution; that the evidence was obtained in violation of the Fifth Amendment because her statements to the police were involuntary, and because she was not properly given *Miranda* warnings; and she felt coerced because her earlier sentence included conditions requiring her to submit to random drug tests and this led her to believe that she was required to answer questions.

The trial court denied Babb's motion, concluding that the State did not violate Babb's Sixth Amendment right to counsel because there were no formal charges against Babb related to the offenses for which she submitted to questioning. The court also found that Babb's statements to the police were voluntary under the totality of the circumstances and that Babb was not entitled to *Miranda* warnings pursuant to the Fifth Amendment because the interview was noncustodial.

Once the State has initiated adversary judicial proceedings against a person, the Sixth Amendment guarantees the defendant the right to counsel at "critical stages" of the criminal process. Interrogation of a defendant *after* the State has initiated criminal judicial proceedings is such a stage. The right to counsel guaranteed by the Sixth Amendment is offense specific, however, and cannot be invoked once for all future prosecutions.

State v. Babb (November 18, 2014)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2014/14me129ba.pdf

Fifth Amendment – Exclusionary Rule – Probation Revocation Hearings

Exclusionary Rule Inapplicable in Probation Revocation Hearings

The Exclusionary Rule does not apply to probation revocation proceedings unless the probationer presents proof of "widespread police harassment" or other proof of a serious due process violation.

Johansen confessed to burglary and theft. His probation was revoked after the trial court denied suppression of his confession that was obtained in violation of *Miranda*. The court found that the admission of the confessions did not violate Johansen's right to due process because (1) the confessions were made voluntarily and were reliable, and (2) they were corroborated by the questioning officer's testimony about his conversation with the victim regarding Johansen's behavior. Johansen appealed. The Law Court affirmed the judgment, holding that the Exclusionary Rule does not apply to probation revocation proceedings unless the probationer presents proof of widespread police harassment or other proof of a serious due process violation.[7]

Officers arrested Johansen, a recent burglary suspect, on an outstanding warrant. An officer read Johansen his *Miranda* rights verbatim from a card, and Johansen said he understood the rights and indicated he did not want to talk. At that point, the officers allowed Johansen to go back into his apartment to change clothes and say goodbye to his wife. When Johansen returned, one of the officers informed Johansen that he still had additional questions for Johansen regarding the burglary. Without again reciting the full *Miranda* warnings, the officer asked Johansen if, having his rights in mind, he was willing to speak with the officers. Johansen said yes and confessed to the burglary and theft and led the officers to the stolen property in his own apartment. The officers took Johansen to the county jail, where one officer further questioned Johansen. The officer again reminded Johansen of his rights without repeating the full *Miranda* warnings, and Johansen again admitted that he had committed the burglary and theft.

State v. Johansen (November 25, 2014)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2014/14me132jo.pdf

[7] In its decision, the Law Court cited an earlier case where it concluded in the Fourth Amendment context that suppressed evidence was admissible for purposes of revoking the defendant's probation. [*State v. Foisy*, 384 A.2d 42, 44 (Me. 1978); *State v. Caron*, 334 A.2d 495, 498-99 (Me. 1975)]. The court said that this reasoning promotes a balance between the proper functioning of the probation system and probationers' rights to due process.

Admissions & Confessions

Assertion of *Right to Silence* by In-Custody Suspect

• Cease all interrogation efforts immediately.

• No further interrogation efforts on anything until:

The suspect has been left alone by police for at least several hours, Miranda warnings are repeated, and waiver obtained,

or

The suspect initiates new discussion with police of his involvement in criminal activity, Miranda warnings are repeated, and waiver obtained,

or

The suspect leaves custody whereupon there is no requirement of Miranda warning and waiver.

[When a suspect who is not in custody chooses to meet with and talk to police, it is clear that he is not asserting his right to remain silent. Therefore, if during non-custodial interrogation a suspect asserts his right to remain silent, police may continue to attempt questioning. The suspect is free not to respond and free to leave. The suspect's decision to remain and to respond to further questions indicates his or her choice to speak with police rather than to assert the right to silence.]

Assertion of *Fifth Amendment Right to Counsel* by In-Custody Suspect

Prior to approaching a suspect to initiate interrogation, officers must determine whether a suspect has previously invoked *the right to counsel* while in custody or during a prior custodial interrogation. There must have been a 14-day break in custody since invoking the right to counsel.

• Cease all interrogation efforts immediately.

• No further interrogation efforts on anything until:

Legal counsel is actually present at any subsequent interrogation, Miranda warnings are repeated, and waiver obtained,

or

The suspect initiates new discussion with police of his involvement in criminal activity, Miranda warnings are repeated, and waiver obtained,

or

At least 14 days have elapsed after release from custody, Miranda warnings are repeated, and waiver obtained.

Attachment of *Sixth Amendment Right to Counsel* by Charged Suspect

• No further interrogation efforts regarding the formally charged crime until:

Legal counsel is actually present, Miranda warnings are given, and waiver obtained,

or

The suspect initiates discussion with police regarding the formally charged crime, Miranda warnings are repeated, and waiver obtained.

[This right has nothing to do with custody or non-custody. The Sixth Amendment right to counsel applies only to matters in which a suspect has been formally charged. Attachment of this right blocks further interrogation efforts only on the formally-charged offense. Police may still approach the suspect in an effort to discuss uncharged crimes. Sometimes, however, a suspect in custody may have previously asserted under Miranda, which precludes interrogation efforts during the period of custody plus 14 days after release from custody].

Voluntariness and Coerced Statements

To be admissible in evidence, an incriminating statement must not only clear the above-discussed hurdles, it must be made voluntarily and not be compelled by unlawful coercion. Determination of what is unlawful coercion and when a statement is voluntary tends to involve the interplay of three factors: (1) the conduct of the government agent (interrogator); (2) the susceptibilities of the suspect (confessor), and; (3) the environment in which the activity (interrogation) occurs. Some coercion is so extreme and obvious that virtually any resulting statement would be judged involuntary. Physical abuse and/or deprivation, threats and/or promises in exchange for confession, and other extreme forms of will-bending are all likely to fall into this category.

The standard upon which the voluntariness of an admission or confession is judged in Maine is proof beyond a reasonable doubt, a standard adopted by the Law Court in 1972. That same year, the U.S. Supreme Court adopted the lesser standard of a preponderance of the evidence. Maine law requires proof beyond a reasonable doubt that statements to law enforcement are the product of the exercise of a suspect's "free will and rational intellect." There need not be a finding of coercive, improper, or incorrect conduct upon the part of the police for a suspect's statements to be rendered involuntary in Maine. While the Maine Law Court has recognized the lesser standard of proving voluntariness enunciated by the U.S. Supreme Court in 1972, it points out that Maine's higher standard is based not on the federal constitution's Fifth Amendment, but on the Maine Constitution.