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

2017 CASE LAW UPDATE

SEPTEMBER 2016 – AUGUST 2017

Maine Criminal Justice Academy
Maine Chiefs of Police Association
Maine Office of the Attorney General

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This publication and the 2017 New Law Update constitute the training outline of the Maine Criminal Justice Academy for recertification training in law updates for the year 2017.

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 as they relate to criminal procedure for the period September 2016 through August 2017. Cases were selected based on general interest and relevance to Maine law enforcement officers, and summaries prepared. Accordingly, this document is not a listing of all decisions of the three appellate courts.

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, the entire text of the decision is available by clicking on the relevant Internet link. Given that court decisions are very fact specific, reading the actual decision is highly recommended for a more comprehensive understanding and before taking any enforcement or other action.

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Questions, suggestions, or other comments?

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United States Supreme Court

Fourth Amendment – Deadly Force – Qualified Immunity

Was Qualified Immunity Appropriate for Use of Deadly Force?

Qualified immunity is appropriate when an officer's conduct does not violate a clearly established statutory or constitutional right of which a reasonable officer would have known. "Clearly established law" is not defined at a high level of generality, but instead it is "particularized" to the facts of the case. The lower court failed to identify a case where an officer acting under similar circumstances violated the Fourth Amendment.

Facts

Two police officers went to Daniel Pauly's house to investigate a road-rage incident that had occurred earlier that night. The officers made verbal contact with Daniel Pauly and his brother, Samuel, who remained inside the house. A third officer, Ray White, arrived at Pauly's house several minutes later. As Officer White approached the house, someone from inside yelled, "We have guns," and then Daniel Pauly stepped out the back door and fired two shotgun blasts. A few seconds later, Samuel Pauly opened a window and pointed a handgun in Officer White's direction. Officer White shot and killed Samuel Pauly. Pauly's estate filed a lawsuit against the officers, claiming the officers violated the Fourth Amendment by using excessive force against him. The District Court and the Tenth Circuit Court of Appeals denied the officers qualified immunity. The officers appealed to the United States Supreme Court.

Discussion

The Supreme Court vacated the Tenth Circuit Court of Appeals' judgment and remanded the case. First, the court noted that qualified immunity is appropriate when an officer's conduct does not violate a clearly established statutory or constitutional right of which a reasonable person would have known. Qualified immunity is to protect "all but the plainly incompetent or those who knowingly violate the law." Second, the court reiterated that "clearly established law" is not defined "at a high level of generality," but "particularized" to the facts of the case. Third, the Court stated that the lower court failed to identify a case where an officer acting under similar circumstances as Officer White violated the Fourth Amendment. Instead, the Court found that the lower court relied upon *Graham v. Connor*, *Tennessee v. Garner*, and other use of force cases, which only outline excessive force principles at a general level. The court added that this was not a case where it was obvious that there was a violation of clearly established law under *Garner* and *Graham*. Finally, the court found that Officer White arrived late, and it is not clear that the Fourth Amendment requires an officer to second-guess the earlier steps already taken by fellow officers in situations like the one Officer White faced here.

White v. Pauly
No. 16-67 (January 9, 2017)
https://www.supremecourt.gov/opinions/16pdf/16-67_2c8f.pdf

Fourth Amendment – Deadly Force – Provocation by Officer

Is Deadly Force Unlawful when Officer's Conduct Provokes an Attack?

The Supreme Court unanimously rejected the Ninth Circuit's "provocation rule," under which a police officer could be held responsible for an otherwise reasonable use of force if the officer provoked the violent confrontation and the provocation was itself an independent Fourth Amendment violation. There is a separate analysis for other Fourth Amendment claims.

Facts

A confidential informant told the the Los Angeles County Sheriff's Department that a potentially armed and dangerous parolee-at-large was seen at a certain residence. While other officers searched the main house, Deputies Conley and Pederson searched the back of the property where, unbeknownst to the deputies, respondents Mendez and Garcia were napping inside a shack where they lived. Without a search warrant and without announcing their presence, the deputies opened the door of the shack. Mendez rose from the bed, holding a BB gun that he used to kill pests. Deputy Conley yelled, "Gun!" and the deputies immediately opened fire, shooting Mendez and Garcia multiple times. Officers did not find the parolee in the shack or elsewhere on the property. Mendez and Garcia sued Deputies Conley and Pederson and the County under 42 U. S. C. §1983, pressing three Fourth Amendment claims: a warrantless entry claim, a knock-and-announce claim, and an excessive force claim. On the first two claims, the District Court awarded Mendez and Garcia nominal damages. On the excessive force claim, the court found that the deputies' use of force was reasonable under Graham v. Connor, but held them liable nonetheless under the Ninth Circuit's provocation rule, which makes an officer's otherwise reasonable use of force unreasonable if (1) the officer "intentionally or recklessly provokes a violent confrontation" and (2) "the provocation is an independent Fourth Amendment violation." On appeal, the Ninth Circuit held that the officers were entitled to qualified immunity on the knock-and-announce claim and that the warrantless entry violated clearly established law.

Discussion

The Fourth Amendment provides no basis for the Ninth Circuit's "provocation rule." The provocation rule is incompatible with excessive force jurisprudence, which sets forth a settled and exclusive framework for analyzing whether the force used in making a seizure complies with the Fourth Amendment. When an officer carries out a seizure that is reasonable, considering all relevant circumstances, there is no valid excessive force claim. The provocation rule, however, instructs courts to look back in time to see if a different Fourth Amendment violation was somehow tied to the eventual use of force. The proper framework is set out in Graham. The provocation rule is an unwarranted and illogical expansion of *Graham.* While the reasonableness of a seizure is based on objective factors, the provocation rule looks to the subjective intent of the officers who carried out the seizure. To the extent that a plaintiff has other Fourth Amendment claims, they should be analyzed separately.

County of Los Angeles v. Mendez
No. 16-369. (May 30, 2017)
https://www.supremecourt.gov/opinions/16pdf/16-369_09m1.pdf

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United States Court of Appeals for the First Circuit

Maine Case
Fourth Amendment – Entry of Residence with Arrest Warrant – Reasonable Belief of Presence

Reasonable Belief that Suspect Resided at the Residence and was There?

Police officers attempting to execute an arrest warrant have limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is inside the dwelling. In this case, the court concluded the officers did not establish a reasonable belief that Young resided at Coleman's apartment.

Facts

Officers obtained an arrest warrant for Young. The officers went to three different residences, but did not locate Young. The officers then obtained information from an informant who stated if Young was not at any of the three residences already checked, then "he had to be back with his former girlfriend." The officers determined that "Jen," who lived in an apartment, was Young's former girlfriend. The officers went to the apartment building and saw a car parked outside that they knew belonged to Jennifer Coleman. The officers knew Coleman previously lived with Young at a different location. Two officers entered the building, went to Coleman's apartment, and knocked on the door. When Coleman's daughter opened the door, the officers asked to speak to her mother. When Coleman got to the door, the officers, without consent, had stepped inside the apartment. After Coleman told the officers that Young was present, the officers walked past Coleman, without her consent, and entered a bedroom where they saw Young. The officers arrested Young and eventually seized cocaine and a firearm located in the bedroom.

Discussion

Young argued on appeal that the officers' initial entry into Coleman's apartment violated the Fourth Amendment because the officers did not have a reasonable belief that he resided at Coleman's apartment and that he was present when they entered it. The court agreed. In *Payton v. New York*, the U.S. Supreme Court held that police officers attempting to execute an arrest warrant have limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is inside the dwelling. In this case, the court concluded the officers did not establish a reasonable belief that Young resided at Coleman's apartment. The information obtained from the informant that Young "had to be back with his former girlfriend" was insufficient to support a reasonable suspicion that Young was living with Coleman, as it was not based on any actual, present knowledge of Young's whereabouts.

Even if the officers had a reasonable belief that Young resided at Coleman's apartment, the court found there was nothing to indicate that the officers reasonably believed Young was present when they entered the apartment. The presence of Coleman's car in front of the apartment building indicated that Coleman might be inside the apartment, not Young. In addition, the officers did nothing to confirm Young's presence such as conducting surveillance or placing a telephone call to the apartment. Thus, the court suppressed the evidence seized from Coleman's apartment.

U.S. v. Young
No. 15-495 August 19, 2016
http://media.ca1.uscourts.gov/pdf.opinions/15-1495P-01A.pdf

Fourth Amendment – Search Warrant Affidavit – Franks Hearing

Defendant Entitled to a Hearing to Challenge Credibility of Information?

A defendant is not entitled to a Franks hearing[1] to challenge the truthfulness of an informant's statements in a search warrant affidavit unless the defendant can make a substantial preliminary showing that a false statement or omission was (1) knowingly and intentionally, or with reckless disregard for the truth included in the affidavit, and (2) that the statements were necessary to the finding of probable cause.

Facts

New Hampshire law enforcement officers received information about a marijuana grow from a Campton town employee named Robert Bain. With Bain's assistance, officers searched an area near Chandler Hill Road and the Mason Road and found two clusters of marijuana plants about 200–300 meters from the residence at 201 Mason Road. Officers concluded that the residence at 201 Mason Road was being rented by Peter Apicelli. The officers also had information from a video camera that captured images of an individual with a red backpack and tan shorts tending the marijuana plants. Officers obtained a warrant to search the house at 201 Mason Road. Inside the house, they found marijuana plants, marijuana drying, and packaged marijuana, as well as a red backpack and tan shorts. Apicelli was subsequently charged with one count of manufacturing marijuana, and he was convicted by a jury.

Discussion

Apicelli raised several issues on appeal, including an argument that he was entitled to an evidentiary hearing, i.e., *Franks* hearing, on what he claimed were misrepresentations and omissions in the warrant affidavit, all related to Robert Bain. The appeals court noted that to be entitled to an evidentiary hearing on statements included in a search warrant affidavit, a defendant must make a substantial preliminary showing that a false statement (or omission) was (1) knowingly and intentionally, or with reckless disregard for the truth, included in the warrant affidavit, and (2) that the false statement was necessary to the finding of probable cause. Apicelli argued that Bain's initial tip to the police, as well as his subsequent identification of Apicelli on the surveillance video, were not credible because Bain had a motive to lie based on a personal dispute between the two men. However, the trial court concluded that the information provided by Bain was not necessary to the finding of probable cause. The court concluded that the police investigation itself was sufficient to establish probable cause for the search warrant. The court said there was a "fair probability," even in the absence of the Bain information, that contraband or evidence of a crime would be found in the residence at 201 Mason Road.

U.S. v. Peter Apicelli
No. 15-2400 (October 7, 2016)
http://media.ca1.uscourts.gov/pdf.opinions/15-2400P-01A.pdf

[1] 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. If 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 suppressed.

Maine Case
Fifth Amendment – Miranda – Voluntariness of Confession

Was Confession Lawful in Absence of *Miranda*? Was Confession Voluntary?

A reasonable person in the suspect's position would have felt free to terminate the interview and leave the police station. Thus, the court held that the suspect was not subjected to a custodial interrogation and, therefore, the officers were not required to provide her with Miranda warnings. Promising to bring the suspect's cooperation to the prosecutor's attention or by suggesting that cooperation may lead to more favorable treatment does not compromise the voluntariness of statements.

Facts

Carole Swan was a selectperson for the Town of Chelsea, Maine. A deputy from the Kennebec County Sheriff's Office received information from a local businessperson that Swan had instructed him to overbill the Town of Chelsea for sand delivery and pay her a $10,000 kickback. Swan was caught with the money in a sting operation. Deputies intercepted her in a parking lot and they suggested that they discuss the issue at the sheriff's office, rather than in the parking lot. Swan agreed and drove herself to the sheriff's office. Once at the sheriff's office the deputies assured Swan that she was "not under arrest," that she was free to leave at any point and that it was "fine" if she did not want to speak with them. At some point, the deputies took Swan's cell phone explaining that they were only keeping the phone so that Swan would not get distracted during their conversation. Swan chose to stay and speak with the deputies and over the course of the hour-and-a-half conversation, Swan made numerous incriminating statements, including an admission that she had received approximately $25,000 in kickbacks while in public office. Towards the end of the interview, Swan told the deputies that she needed to call her husband. The officers returned her phone, left the room, and after speaking with her husband, Swan told the officers that they could come back in and resume the conversation. Swan retained her phone for the rest of the interview and, when it ended, thanked the officers.

Discussion

Following the denial of her motion to suppress incriminating statements made during the interview, Swan was convicted in the U.S. District Court for the District of Maine of Hobbs Act extortion, tax fraud, and making false statements to obtain worker's compensation benefits. Swan appealed the denial of her motion to suppress, arguing that suppression was required because her statements were obtained during a custodial interrogation without the benefit of a *Miranda* warning and that her incriminating statements were not made voluntarily.

Miranda

The police are required to provide a *Miranda* warning before subjecting a suspect to custodial interrogation. The question is whether a suspect is subjected to a custodial interrogation. Would a reasonable person have felt that he or she was not at liberty to terminate the interrogation and leave at the time that the relevant statements were made? The appeals court identified several factors relevant to this determination, including, whether the suspect was questioned in familiar or at least neutral surroundings, the number of law enforcement officers present during the questioning, the degree of physical restraint placed upon the suspect, and the duration and character of the interrogation.

In its analysis, the appeals court found: (1) The fact that the questioning took place at the sheriff's office does not render it custodial; (2) the officers made it clear to Swan that she was free to leave and that door was closed only for the sake of privacy; (3) the officers told Swan that she was "not under arrest," that she was free to leave at any point, and that it was "fine" if she did not want to have a conversation with them; (4) only two officers were involved in interview, and; (5) the officers never drew their weapons and Swan was not handcuffed or otherwise physically restrained. The appeals court also found that the police possession of Swan's cell phone throughout much of interview did not make the interaction custodial. The officers explained to Swan that they would return her phone but were holding it during the interview to minimize distractions, and when Swan told the deputies that she needed to call her husband, they allowed her to make the call and they left the room during the call. The appeals court also found that the duration of the interview, 90 minutes, did not necessarily make the encounter custodial and additionally the conversation was characterized as "a generally even-tone back and forth."

Voluntariness

Swan also argued on appeal that her statements were not voluntary because the officers promised her leniency in exchange for her cooperation. The appeals court rejected the argument, stating that it is well settled in the First Circuit that an officer does not impermissibly overbear a defendant's will by promising to bring the defendant's cooperation to the prosecutor's attention or by suggesting that cooperation may lead to more favorable treatment.

U.S. v. Swan
No. 14-1672 (November 21, 2016)
http://media.ca1.uscourts.gov/pdf.opinions/14-1672P-01A.pdf

Fourth Amendment – Warrantless Search – Exigent Circumstances

Did Exigent Circumstances Justify Warrantless Entry?

Probable cause is a necessary, but not a sufficient, precondition for invoking the exigent circumstances doctrine. The government must show that an exigency existed sufficient to justify the warrantless entry. When entry into private premises is reasonably necessary to head off the imminent loss of evidence, an officer armed with probable cause normally may enter the premises without a warrant.

Facts

While they were investigating a suspected drug-trafficking operation in Lawrence, Massachusetts, federal DEA agents made a warrantless entry into an apartment. The investigation included intercepted telephone calls that contained information leading officers to Medina. The information included his receiving bulk drug shipments on a weekly basis. Medina was already known to the agents and his history included participation in a recent controlled purchase of heroin. Medina was observed leaving a multi-family residential building, carrying a large, heavy trash bag that he put in his car before driving away. He was pulled over for traffic infractions. During the stop, Medina was trembling and appeared very nervous. He was questioned about where he had come from and where he was heading, and he provided answers the agents knew to be false. Medina gave the agents permission to search his car but before the search started, the agents noticed a large wad of cash sticking out of Medina's pocket.

The wad of cash was seized and Medina was arrested. After Medina's arrest, the agents searched the car and found more than $370,000 in cash in the trash bag.

Agents went back to the apartment building and determined that Medina rented a second-floor apartment. They went to the apartment and knocked on the door. From inside, a person asked, "Who is it?" When the agents announced their presence, they immediately heard someone inside running away from the door. The agents also discovered that the front door was sealed over. Concerned that the person inside was either trying to escape or destroy evidence, the agents broke down a side door and forcibly entered the premises. Almonte-Baez was arrested while trying to leave the apartment through a back door. As it turned out, the apartment served as a stash house for a second, more substantial, drug-trafficking operation. Almonte-Baez, a participant in the second drug-trafficking operation, was charged with conspiring to possess heroin with intent to distribute. Relying heavily on plain view observations, the agents secured the premises and obtained a search warrant later in the day.

Following denial of his motion to suppress, Almonte-Baez was convicted in the U.S. District Court of drug trafficking. He appealed, arguing that the district court erred in its determination that the warrantless entry into the apartment was lawful based on the existence of both probable cause and exigent circumstances.

Discussion

The appeals court pointed out that probable cause exists when the totality of the circumstances creates a "fair probability" that contraband or evidence of a crime will be found in a particular place. In this case, the agents knew that Medina rented the apartment in the building and, based on their investigation, they reasonably suspected that he received weekly heroin shipments at that address. They had observed Medina carrying a large trash bag from the apartment building that they discovered contained $370,000 in cash. Medina's false answers during the traffic stop and his failure to explain the source of the cash in the trash bag provided convincing reasons to believe that the cash was obtained illegally. In addition, the agents were aware of a previous conviction of dealing drugs and Medina's current involvement in the drug trade. Taken in total, this information supported their finding of probable cause.

The appeals court also found that exigent circumstances existed when the agents entered Medina's apartment without a warrant and that the agents had an "objectively reasonable" basis for concluding that destruction of evidence was likely unless they acted without delay. This conclusion, the court stated, was based on what their investigation had uncovered, their encounter with Medina earlier in the day, and because they heard someone inside the apartment running away from the door that was sealed shut. The agents had reason to think that the apartment contained evidence of a crime and that the person they heard inside the apartment was trying to destroy that evidence.

U.S. v. Almonte-Baez
No. 15-2367 (May 12, 2017)
http://media.ca1.uscourts.gov/pdf.opinions/15-2367P-01A.pdf

Maine Case
Fourth Amendment –Investigatory Stop – Duration – De Facto Arrest

Is an 82-minute Terry Detention Reasonable?

A seizure lasting 82 minutes is reasonable if that amount of time is needed to investigate the possible illegal activity for which there was reasonable suspicion and there were no obvious or alternative ways to investigate and the suspects were from another state and were leaving the state with possibly fraudulently obtained merchandise and gift cards.

Facts

At approximately 1:30 a.m. on September 6, 2013, a 7-Eleven employee approached a marked Kittery police cruiser parked near the store and told the officer that there were people in the store buying thousands of dollars' worth of gift cards with other gift cards. The employee identified a car in the parking lot connected to a woman inside the store buying the gift cards. The car was a rental vehicle with a Tennessee license plate and the two men inside the car were identified as Gyadeen Ramdihall and Jervis Hillaire. A woman, later identified as Vegilia O'Connor, was inside the 7-Eleven buying the gift cards. In response to questions asked by the police, Ramdihall and Hillaire were unable to give plausible or consistent answers. For example, Ramdihall told the police that they were at the 7-Eleven to buy gas, but he had no explanation as to why he parked in front of the store rather than at the gas pumps. There were other answers that did not add up, including O'Connor's statement that she had left New York around 4:00 p.m. that same day to travel to Maine to shop, but she could not explain why she had left so late and would arrive in Maine at a time when stores were closed. Ramdihall, Hillaire, and O'Connor also provided conflicting answers to the same questions. As the officers' inquiry continued, they were granted consent to look in the trunk of the car where they found computer equipment, including Mac Books, Mac Book Pros, iPads, and iPad Minis. Hillaire told the officers that one of the Mac Book computers belonged to him, but no one claimed ownership of any of the other items. The police seized the items in the trunk. Ramdihall, Hillaire, and O'Connor left the 7-Eleven sometime after 3:00 a.m.

Discussion

Ramdihall was indicted and convicted in federal court for conspiracy to possess and use counterfeit access devices with intent to defraud. The court denied his motion to suppress evidence and statements that had been obtained in connection with the stop in Kittery, and a later stop in Ohio. Ramdihall argued that the Kittery stop was unreasonably long and, thus, became an unconstitutional seizure, sometimes called a seizure tantamount to an arrest or a *de facto* arrest.[2]

In this case, the seizure lasted for 82 minutes and, while the trial court said that tat amount of time was lengthy, it was no longer than reasonably necessary to investigate the possible illegal activity. The appeals court agreed with the findings of the trial court that the length of the stop was proportional to the law enforcement purposes of the stop and there were no obvious or

[2] To qualify as a *Terry* stop, a detention must be limited in scope and executed through the least restrictive means. The constitutionality of an investigatory *Terry* stop is determined by whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances that justified the interference in the first place. Where police actions taken during the detention exceed what is necessary to dispel the suspicion that justified the stop, the detention may amount to an 'arrest' and is lawful only if it is supported by probable cause.

alternative ways for the officers to investigate the possible illegal activity, the suspects were from away [New York], and were leaving the state with possibly fraudulently obtained merchandise and gift cards. The appeals court went on to say that there is no magic number that transitions a stop from one justified under a reasonable articulable suspicion to an unreasonable seizure under the Fourth Amendment; rather, the law enforcement purposes to be served by the stop must be considered, as well as the time reasonably needed to effectuate those purposes.

U.S. v. Ramdihall
No. 15-1841 (May 17, 2017)
http://media.ca1.uscourts.gov/pdf.opinions/15-1841P-01A.pdf

Maine Case
Fourth Amendment – Probable Cause for Search Warrant
Fifth Amendment – Miranda - Voluntariness

Was Defendant's Consent to Search Voluntary?
Did Mistaken Information in Affidavit Nullify Search Warrant?
Was Defendant's Waiver of *Miranda* Rights Voluntary?

That a small portion of the information contained in an affidavit ultimately proved to be mistaken does not spoil the good faith of the affiant or nullify the validity of the warrant. Defendant's claim that the consent to search and his later waiver of Miranda rights were not voluntary because of mental illness was not supported by the evidence.

Facts

In October of 2014, Customs and Border Protection agents intercepted a package at Kennedy International Airport in New York. The package was from Shanghai and was to be delivered to Christopher Coombs in Westbrook, Maine. Years before the package arrived in New York, Coombs was convicted of drug trafficking and he was in the final six months of supervised release for that conviction. Chemical field testing done on the amber-colored crystals in the package detected ecstasy and bath salts. With the contents of the package safely removed, a controlled delivery was arranged to Coombs at his Westbrook residence. While the controlled delivery was underway, an anticipatory search warrant for Coombs residence was issued by a magistrate with the caveat that it should be executed only if Coombs took the package into his residence. Probable cause for the warrant included the representation that the substance in the package tested positive for ecstasy and bath salts.

As it turned out, Coombs accepted the package outside his residence and he was arrested on the spot. By the time the news of the warrant arrived at the scene, Coombs was under arrest and had given officers consent to search his residence. Coombs was transported to the police station and, after *Miranda* warnings were provided, he made incriminating statements. During the search of Coombs's home, officers seized a computer, a tablet, and five cell phones. While in custody, Coombs placed and received several telephone calls to his wife. These calls were recorded. When Coombs learned that the police had seized the computer, tablet, and five cell phones, he asked his wife to delete receipts from two e-mail accounts and supplied her with the passwords.

Eventually, the government sought and received warrants authorizing the search of the five cell phones and the two e-mail accounts that Coombs had mentioned to his wife. The search of the e-mails disclosed several exchanges between Coombs and overseas pharmaceutical companies.

After the issuance of the last of these warrants, the seized crystals were subjected to more sophisticated laboratory testing and, for the first time, the testing revealed that the substance, while still illegal bath salts, was not the chemical composition originally referenced in the anticipatory warrant and the warrants that followed.

Coombs was indicted for possession with intent to distribute a controlled substance, and obstruction of justice for instructing his wife to delete certain e-mails. Coombs filed several motions to suppress, which were denied, and he appealed.

Discussion

Motion to Suppress Fruits of Search of Cell Phones and Emails

Coombs argued that there was no probable cause to search his cell phones and e-mails because the affidavits contained false information as to the chemical composition of the amber-colored crystals. The appeals court said that a criminal defendant may question the validity of an affidavit with a showing that a false statement necessary to a finding of probable cause was included in the affidavit "knowingly and intentionally, or with reckless disregard for the truth." The court went on to say that there was no evidence that when the affidavits were executed that either affiant knew or had any reason to believe that the amber-colored crystals were not what they represented them to be. The mistaken assertion was not made knowingly or with reckless disregard for the truth, and small inaccuracies resulting from good faith mistakes or incorrect assertions made in good faith reliance on a third party's errors, or even lies, do not invalidate the warrant or demand suppression.

Consent to Search Home

Coombs also challenged the denial of his motion to invalidate his consent to search his home. Coombs maintained that his consent was not voluntarily given. He argued that he had just been thrown to the ground and arrested, and that he was intimidated and under intense stress. However, the record showed that he was cooperative and lucid, no weapon was drawn or threats uttered, and that more than 20 minutes elapsed between his arrest and his consent to the search. Coombs also argued that his history of mental illness nullified his consent. But the record contained nothing in the way of persuasive evidence that might show a nexus between Coombs psychiatric history and the giving of consent, and the officers who testified observed no evidence of mental incapacity during their interactions with Coombs.

Waiver of *Miranda* Rights

Finally, Coombs argued that his motion to suppress his statements at the police station following his arrest should have been granted. Coombs agreed that the officers advised him of his *Miranda* rights, but claimed that his history of mental illness suggested that his waiver was not voluntary. The court did not agree, stating that the government produced evidence that the officers not only read Coombs his rights but also received his verbal assurances that he understood those rights. The officers testified that he was cooperative and responsive during the interview and that there was no reason to doubt the voluntariness of his waiver.

U.S. v. Coombs
No. 16-1246 (May 19, 2017)
http://media.ca1.uscourts.gov/pdf.opinions/16-1246P-01A.pdf

Maine Supreme Judicial Court

Fourth Amendment – Terry Vehicle Stop

Was Officer's Inquiry Supported by Reasonable Articulable Suspicion?

Given that the drug store had been closed for several hours, and suspecting that a burglary may be afoot, the officer was justified in briefly detaining the defendant to ask if he was all right and to inquire as to his purpose in being there. The intrusion was minimal and reasonable when the officer's initial contact was itself based on reasonable and articulable facts of a concern for safety or wrongdoing.

Facts

At about 1:00 a.m., a Belfast police officer observed a vehicle turn into the parking lot of a closed drug store. The vehicle stopped and its lights were turned off. Thinking that there may be a burglary in progress, the officer decided to investigate further. The officer drove around the back side of the drug store looking for anything unusual and, when he did not observe anything unusual behind the store, he continued around the building to where the vehicle was parked. The officer used his spotlight to illuminate the interior of the parked car, and Adam Gerry sat up so that he was visible. The officer asked Gerry if he was "all right and what he was doing," and when Gerry responded, the officer could smell alcohol coming from him. Gerry was charged with operating under the influence.

Discussion

Gerry moved to suppress evidence obtained during the detention and arrest, arguing that the police interaction with him constituted an unlawful detention that was not supported by a reasonable articulable suspicion. His motion was denied and he appealed. The Law Court rejected Gerry's argument, stating that even if the officer no longer suspected a burglary might be taking place, and although there may have been no safety concern articulated, it was the officer's duty to at least check on any vehicle found in similar circumstances in the early morning hours, and the officer's questions were appropriate and created only a "minimal further intrusion" into Gerry's liberty interests.

State v. Gerry
No. 2016 ME 163 (November 8, 2016)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2016/16me163geco2.pdf

Maine's "Fifth Amendment" – Voluntariness of Confession

Was the Confession Involuntary Because of Promises?

Under Maine law, for a confession 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." The defendant's cognitive disability and his apparent reliance on the officers' misleading statements assuring him that if he confessed he would not be subject to the sex offender registration requirements rendered his incriminating statements involuntary.

Facts

Timothy Hunt voluntarily went to the police station for questioning that lasted around two hours. He was not in custody, and was told that he could terminate the questioning and leave at any time. He was given Miranda warnings and he indicated that he understood his rights. Two officers were involved in the questioning, although only one officer questioned him at a time. Hunt confessed and was indicted on six counts of gross sexual assault and six counts of unlawful sexual contact. He moved to suppress evidence of incriminating statements he made during the interview with the two detectives. Prior to the suppression hearing the court received a report describing Hunt's cognitive skills as "less than average." In a written order denying Hunt's motion, the court found that Hunt had gone willingly to the police department to be interviewed and he knew that the detectives wanted to talk to him about sexual allegations. The court concluded that the interviewing techniques used by the detectives were fundamentally fair and that Hunt's confession was not a product of coercive police conduct. After Hunt's motion to suppress was denied, a jury found him guilty of all twelve charges. He appealed the denial of his motion to suppress arguing that his incriminating statements were motivated by improper promises of leniency and were therefore involuntary.

Discussion

The judgment of conviction was vacated and the case remanded to the trial court for a new trial. In Maine, when a defendant in a criminal case moves to suppress statements because they were made involuntarily, the State has the burden to prove voluntariness beyond a reasonable doubt. The Maine Law Court has long held that when applying this totality of the circumstances approach to make a voluntariness determination, the trial court may consider various relevant circumstances, including the details of the interrogation, duration of the interrogation, location of the interrogation, whether the interrogation was custodial, the recitation of Miranda warnings, the number of officers involved, the persistence of the officers, police trickery, threats, promises or inducements made to the defendant, and the defendant's age, physical and mental health, emotional stability, and conduct.

False promises of leniency that induce a confession are improper. A promise is false when it involves a benefit that could not be delivered—or is not in fact delivered—by the governmental agent making the promise, or when the agent has no authority to give the defendant what was offered. Although the officers in this case made no direct promises to Hunt, they made statements assuring him that if he confessed he would not be subject to the sex offender registration requirements. Based on the assertions by the detectives and given Hunt's "less than average" cognitive skills, Hunt could reasonably believe that the officers had the authority or power to relieve him from the registration requirements.

Although no single factor renders Hunt's confession involuntary, the totality of the circumstances—in particular, the officers' misleading statements and considering Hunt's cognitive disability and his apparent reliance on their representations—rendered Hunt's incriminating statements involuntary as a matter of law.

State v. Hunt
2016 ME 172 (November 29, 2016)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2016/16me172hu.pdf

Fifth Amendment – Miranda – Jailhouse Interviews

Is an Inmate "in custody" for Purposes of Miranda?

Defendant was not "in custody" for Miranda purposes when interviewed at jail. Incarceration, without more, does not automatically make an interview custodial for purposes of Miranda warnings.

Facts

Wallace Ames was questioned by two officers while an inmate at the Androscoggin County Jail on an unrelated charge. The officers were not in uniform and not armed, having left their firearms at a secure location when they entered the jail. The interview with Ames took place in the visitation room. Ames and the officers were a few feet apart at a normal conversational distance and there were no obstacles between Ames and the door. Ames was told that he was free to leave and go back to his cell at any time and he confirmed that he felt comfortable speaking to the detectives. Ames was not given *Miranda* warnings. About 15 minutes into the interview, Ames confessed his involvement to a burglary and theft at a restaurant at which he had worked. Ames was indicted for burglary and theft.

Discussion

Ames filed a motion to suppress the incriminating statements he made during the interview at the jail, arguing that he should have been given *Miranda* warnings because he was in custody at the time of the interview. The motion was denied and Ames appealed. The Law Court adopted the U.S. Supreme Court ruling of *Howes v. Fields*, 565 U.S. 499 (2012) that determined that there is no categorical rule that imprisonment alone constitutes custody for the purposes of *Miranda*. The circumstance of incarceration, without more, does not automatically make an interview custodial for purposes of *Miranda* warnings. The fact that an interrogation takes place while a suspect is incarcerated must be considered to determine whether an interview is custodial, but, imprisonment alone does not constitute *Miranda* custody. Applying the federal precedent from *Howes*, the Law Court said that Maine will not adopt a bright-line rule that the circumstance of incarceration, without more, makes an interview custodial for purposes of Miranda warnings.

State v. Ames
No. 2017 ME 27 (February 7, 2017)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me27am.pdf

Fourth Amendment – Search Warrant Affidavit – Probable Cause

Did the Affidavit Contain Enough Information to Establish Probable Cause?

To discern whether probable cause exists, a magistrate reviewing an affidavit for a search warrant must apply a totality-of-the-circumstances test that establishes whether, given all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place at the time of the search. The warrant affidavit must set forth some nexus between the evidence to be seized and the locations to be searched; the nexus may be inferred from the type of crime, the nature of the items sought, the extent of an opportunity for concealment, and normal inferences as to where a criminal would hide evidence of a crime.

Facts

In September 2015, a woman reported to police that she had been the victim of a sexual assault while working as a prostitute on Congress Street in Portland. She stated that a man driving a silver color Toyota Corolla picked her up and drove her to the parking lot across from the Concord Trailways station in Portland and, after displaying a gun, had her perform oral sex on him. The woman described the man and stated that he showed her a camouflage wallet containing a gold star-shaped police badge bearing the State of Maine seal and the words "Cape Elizabeth" and "Retired." She stated that the man told her that he had been brought back from retirement by the State Police. The police applied for a search warrant, including in the affidavit the information from the woman, as well as information from a Concord Trailways employee who located video of the parked Toyota at the time of the incident and provided a license plate number for the vehicle, and investigative information contained in motor vehicle and other records. A warrant was issued to search Gary Mariner, his Lyman residence, and his 2010 Toyota Corolla for evidence related to the alleged sexual assault. Police executed the warrant and seized a Cape Elizabeth police badge inscribed with the word "Retired," and a camouflage tri-fold wallet, along with other items that the victim had described. Mariner was indicted for gross sexual assault and impersonating a public servant.

Discussion

Mariner filed a motion to suppress the evidence obtained from the search, arguing that the search warrant was not supported by probable cause and that the Concord Trailways employee's statement was conclusory, i.e., without a factual basis of knowledge. The trial court granted the motion, finding that there was no probable cause to search Mariner or his home because there was no information that Mariner was the operator of the vehicle or that the alleged victim had identified Mariner as her assailant and that the information obtained from the Concord Trailways employee was "too general and did not provide a reliable basis for the court to conclude that the video captured the suspect vehicle and the plate number of the suspect vehicle on the date and at the time in question." The State appealed the suppression order.

The Law Court disagreed with Mariner's argument and the finding of the trial court, stating that the magistrate who issued the warrant could reasonably infer that the Concord Trailways employee was given the information provided by the alleged victim and, with that information, found a vehicle matching those details on a surveillance video and provide the police with that vehicle's license plate number. Because the employee was a disinterested party, whose account was not "inherently unreliable," the warrant judge was entitled to rely on that information, along with information provided by the police including information contained in motor vehicle and other records and the victim's description of her assailant and the circumstances of the alleged assault. The warrant judge could reasonably determine that the totality of the information set forth in the affidavit created a *fair probability* that Mariner was the assailant and that evidence of the crime would be found at his home, in his car, and on his person. Further, the warrant judge could reasonably infer that the badge and other items identified in the warrant and the supporting affidavit, including a wallet, backpack, and handgun, were the kind of items that a person would normally carry, conceal, or store in the pockets of clothing, in a vehicle, or in the person's home.

State v. Mariner
No. 2017 ME 102 (May 23, 2017)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me102.pdf

Fourth Amendment – Probable Cause – Arrest

Was Pursuit into Curtilage and Seizure of Driver Unlawful?

A police officer with a reasonable, articulable suspicion of a civil traffic violation sufficient for an investigatory traffic stop has probable cause to arrest for the Class E crime of failure to stop when that officer has personal knowledge of facts that would lead a prudent and cautious officer to believe that a driver was refusing to stop. The officer may pursue the driver immediately and continuously into the curtilage of his home.

Facts

On June 14, 2015, at about 10:30 p.m., a police officer on patrol in Fort Kent observed a car with a defective plate light. When the officer caught up with the car, he turned on the cruiser's "wig wag" lights. The officer followed the car for about 860 feet. The car turned into the driveway of a residence and parked. The officer parked his cruiser behind the car and followed the driver who was later identified as Dale Blier. Blier left his car, walked up a short flight of stairs, opened a screen door, and entered an enclosed porch. As Blier stepped into his residence, the officer spoke to him through the open door. The officer told Blier that he was carrying out a traffic stop and that Blier needed to come outside and produce his license, registration, and proof of insurance. Blier left his residence, walked to his car to retrieve the requested documentation and at that point the officer detected the smell of alcohol and decided to conduct field sobriety tests. Blier was arrested for OUI. Blier moved to suppress all the evidence from the stop.

Discussion

The trial court granted the motion to suppress, concluding that (1) although the officer had a reasonable, articulable suspicion to make a traffic stop for the defective license plate lights, the officer did not have probable cause to suspect any criminal activity, and no exigent circumstances existed when he ordered Blier to exit his house; (2) because Blier would not have believed he was free to disregard the officer's order to come outside, the verbal order amounted to an unlawful seizure of Blier; and (3) because all evidence of Blier's OUI arose after that seizure, it must be suppressed.

The State appealed the trial court's suppression order, and the Law Court vacated the order, holding that the police officer had probable cause to arrest the defendant for the crime of failure to stop his vehicle on request or signal of a uniformed law enforcement officer and the officer pursued him immediately and continuously. The court concluded that the seizure of the defendant did not constitute an unlawful seizure or arrest.

State v. Blier
No. 2017 ME 103 (May 25, 2017)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me103.pdf

Fifth Amendment – Invoking Right to Silence – Voluntariness of Confession
Fourth Amendment – Exigent Circumstances – Plain View

Was Murder Confession and Photographic Evidence Legally Obtained?

To assert one's right to discontinue questioning, an individual must articulate with sufficient clarity so a reasonable police officer in the same circumstances would understand the statement to be a retraction of a waiver right and the reassertion of the right to remain silent.

Encouraging a person to tell the truth, together with generalized implications that things would be better for him if the suspect confessed, and that officers did not believe certain statements made by the suspect, does not render a confession involuntary.

Once a search is justified by a warrant or some exception to the warrant requirement, officers may seize objects that come into plain view while engaged in a lawful search and whose "incriminating character" is "immediately apparent," and evidence resulting from that seizure will not be subject to the exclusionary rule.

Facts

In April 2013, Romeo Parent informed police that he and William True had committed a theft. Michael McNaughton, who knew both Parent and True, put out the word among acquaintances that he planned to harm Parent for "snitching" on True and that he was looking for Parent. Several days later, McNaughton and Nathan Morton learned that Parent was at a pharmacy in Auburn. Morton drove McNaughton to the pharmacy, where they asked Parent to get in the car with them. Parent agreed to go with them and they picked up True after leaving the pharmacy. Morton drove the group to a remote location on South Mountain Road in Greene where they killed Parent. The next day, McNaughton, True, and Morton returned to the murder scene to dispose of Parent's body. A day later, McNaughton was interviewed by the police. During that interview, the police photographed injuries on McNaughton's body and collected his clothing. The following day, officers interviewed McNaughton again; during that interview, McNaughton admitted to killing Parent. McNaughton was charged by indictment with murder.

Discussion

McNaughton moved to suppress evidence of incriminating statements that he had made during the police interviews as well as the photographic evidence of his injuries. He also argued that his statements were involuntary and made in response to continued questioning after he had invoked his right to remain silent. He contended that the photographs of his injuries were collected impermissibly absent a search warrant or an exception to the Fourth Amendment's warrant requirement. The trial court denied McNaughton's motion in part, declining to suppress the photographs, as well the incriminating statements McNaughton made up to a certain point during the second interview. The court granted the motion as to statements McNaughton made in response to continued questioning after he stated "I really don't want to speak any more on the subject" and "I'll take Mariah," which the court interpreted to mean "Miranda." McNaughton appealed.

Right to Remain Silent
The Law Court found that McNaughton made several ambiguous statements about whether he wanted to answer some of the officers' questions. At times, he stated that he could not provide the answers that he felt the detectives were looking for even though he wanted to and he simply stated his name and a nine-digit number. At one point, he also stated that he didn't "want to give the answers" to "some questions," explaining that the officers had told him he didn't "have to answer every question." In context, none of these assertions was sufficiently clear to convey a desire for police questioning to cease. The court said that viewing the totality of the officers' interactions with McNaughton, McNaughton's words and actions exhibited an affirmative willingness to continue talking.

Voluntariness
The Law Court stated that the detectives made no specific suggestions or promises about how the process of prosecution or sentencing would be better for McNaughton if he confessed to the murder. They did not make concrete promises of leniency but, instead, explained "mitigating factors" only in the abstract. The detectives' statements that McNaughton needed to tell the truth, together with generalized implications that things would be better for him if he confessed, and that they did not believe certain statements he made, did not render the confession involuntary.

Photographs of Observable Injuries
What a person knowingly exposes to the public enjoys no Fourth Amendment protection. McNaughton did not have a reasonable expectation of privacy in injuries to his face, neck, and hands that were clearly visible to the detectives. Thus, photographs of those injuries did not constitute a "search" within the meaning of the Fourth Amendment. Since there was no search, it was permissible for the officers to record McNaughton's publicly-viewable injuries by taking photographs of them, just as it was permissible for them to videotape the interview.

Photographs of Injuries Covered by Clothing
It was reasonable for McNaughton to expect that those injuries that were not visible until he partially removed his clothing were subject to Fourth Amendment protection. While a warrant is generally required for searches and seizures to be considered "reasonable," warrantless searches and seizures are permitted in some circumstances when there is adequate probable cause for the seizure and insufficient time for the police to obtain a warrant. Once a search is justified by a warrant or some exception to the warrant requirement, officers may seize objects that come into plain view while engaged in a lawful search and whose "incriminating character" is "immediately apparent." It was objectively reasonable for the police to believe that McNaughton was responsible for Parent's murder, and that the interview would end before they could procure a warrant for McNaughton's clothing. McNaughton told them that he was planning to leave for Massachusetts the following morning; evidence contained on McNaughton's clothing could be lost or destroyed if McNaughton left the police station. Having a lawful justification for the seizure of McNaughton's clothing, the detectives were also justified in collecting evidence that appeared in plain view during that seizure, including photographing injuries that had previously been covered by McNaughton's clothing.

State v. McNaughton
No. 2017 ME 173 (August 1, 2017)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me173.pdf

Fourth Amendment – Extraterritorial Vehicle Stop – Exclusionary Rule

Was the Vehicle Stop Outside the Officer's Jurisdiction Constitutionally Valid?

Although there was an assumed violation of the "fresh pursuit" statute when a Winslow officer, who was legitimately investigating another traffic infraction in Waterville, seized the defendant who he had witnessed operating erratically in Waterville, the officer's actions were "reasonable" under the Fourth Amendment so as not to invoke the Exclusionary Rule.

Facts

On March 19, 2015, at approximately 10:00 p.m., Ryan Turner drove his car over a sidewalk median in Waterville and drew the attention of a Winslow police officer who had just stopped another driver, coming across the bridge into Waterville, for a traffic infraction that had occurred in Winslow. The Winslow officer stopped what he was doing and located Turner's car, which was parked in an adjacent bank parking lot. The officer drove his cruiser behind the vehicle, leaving sufficient room for the vehicle to pull around the cruiser, and turned on the cruiser's blue lights. He noticed that the vehicle's engine was not running and that there was damage to the vehicle consistent with a vehicle having been driven over a curb. The officer also made observations of the driver, whose appearance indicated impairment. The officer asked for the driver's license and registration, and immediately notified Waterville police and a Waterville officer arrived approximately two minutes later. Turner was charged with operating under the influence.

Discussion

Turner moved to suppress all evidence obtained from the Winslow officer's stop of the vehicle, arguing that he was unreasonably seized by the Winslow police officer because the officer was acting outside the municipality where he had been appointed, in violation of Maine's "fresh pursuit" statute, 30-A M.R.S. § 2671, and the Winslow Code. Turner's motion to suppress was denied and he appealed. The Law Court affirmed the judgment, stating that if the Winslow officer had been within the area of his geographic authority he would have had sufficient articulable suspicion of either the commission of a crime or the existence of a health and safety crisis to support the stop of Turner's vehicle. The court concluded that the Exclusionary Rule does not require the suppression of evidence if the extraterritorial exercise of the officer's authority was (1) supported by the law and constitutional requirements that would have applied had the officer been within his lawful territory; (2) justified by the facts surrounding the stop; and (3) not made unreasonable by the presence of other factors, such as a willful disregard of territorial limits, the seeking out of crime in another territory, or a complete failure to contact the local law enforcement agency. The court also suggested that the officer was acting within his community caretaking capacity.

State v. Turner
No. 2017 ME 185 (August 22, 2017)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me185.pdf

Motor Vehicle Law – Distracted Driving – Sufficiency of Evidence

Must there be Proof of the Specific Distraction to Prove Distracted Driving?

To prove that a person operated a motor vehicle while distracted, it is not necessary to articulate the specific distraction but there must be some evidence that the driver was, in fact, distracted by an activity that was not necessary to the operation of the vehicle. There was sufficient circumstantial evidence to support an inference that the driver was engaged in an activity that was not necessary to the operation of the vehicle and would reasonably have been expected to impair his ability to safely operate the vehicle.

Facts

On August 13, 2015, at around 4:30 p.m., Thomas Palmer's truck crashed into a car turning left off Route One in Woolwich. The crash involved several cars and a passenger in one of the vehicles died from injuries caused by the crash. Palmer did not apply the brakes before his truck crashed into the rear end of the turning car. Palmer was adjudicated to have committed the traffic infraction of failure to maintain control of a motor vehicle, 29-A M.R.S. § 2118(2)(B) (2016), and the civil violation of a motor vehicle violation resulting in death, 29-A M.R.S. § 2413-A(1) (2016). Palmer argued on appeal that the adjudications were unsupported by the evidence because the State did not present evidence of the activity in which he was engaged that allegedly distracted him.

Discussion

The Law Court said that the plain language of §2118 illustrates that the Legislature contemplated a wide variety of activities that would be sufficient to support a finding that a driver was operating a motor vehicle while distracted. The Legislature did not limit the statute's application to particular activities; rather, any activity could support a finding if the activity (1) was not necessary to the operation of the vehicle, and (2) that the activity actually impaired, or would reasonably be expected to impair, the ability of the person to safely operate the vehicle. The court concluded that to meet those two necessary conditions, there must be some evidence that the driver was, in fact, distracted by an activity that was not necessary to the operation of the vehicle. At trial Palmer denied that he was using his phone, looking at paperwork, or eating, and that he could not remember what he was doing before he looked up and saw the car turning. At trial evidence was presented from an interview the day after the incident in which Palmer stated that maybe he had been distracted, maybe he was looking at a piece of paper, or moving his head to stretch. The Law Court determined that there was sufficient evidence for the trial court to find, by a preponderance of the evidence, that Palmer was engaged in the operation of a motor vehicle while distracted.

State v. Palmer
No. 2017 ME 183 (August 22, 2017)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me183.pdf