Recent Court Decisions Relevant to Maine Law Enforcement Officers

UNITED STATES SUPREME COURT
U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT
MAINE SUPREME JUDICIAL COURT

2022 CASE LAW UPDATE

OCTOBER 2021 — SEPTEMBER 2022

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

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This publication and the 2022 New Law Update constitute the training outline of the Maine Criminal Justice Academy for recertification training in law updates for the year 2022.

Preparers' Note

The preparers of this document reviewed the published decisions of the United States Supreme Court, the U.S. 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 October 2021 through September 2022. The document contains summaries of cases of general interest and relevance to Maine law enforcement officers. 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 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, it is advisable and highly recommended that the entire text of a decision be reviewed for a more comprehensive understanding and particularly before taking any enforcement or other action.

The preparers wish to recognize the support and assistance of Assistant Attorney General Donald W. Macomber of the Attorney General's Criminal Division, who reviewed this document and who is always available to answer questions posed to him concerning criminal procedure and other constitutional issues.

Questions, suggestions, or other comments?

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UNITED STATES SUPREME COURT

Fifth Amendment: Section 1983 Liability for Miranda Violation

Vega v. Tekoh

Decided June 23, 2022
https://www.supremecourt.gov/opinions/21pdf/21-499_gfbh.pdf

Question: Does a *Miranda* violation constitute a violation of the Fifth Amendment?

Facts: Terence Tekoh worked as a patient transporter in a hospital in Los Angeles. After a patient accused him of sexual assault, hospital staff reported the allegation to the Los Angeles Sheriff's Department. Deputy Carlos Vega went to the hospital to ask Tekoh some questions and to take Tekoh's statement. Although the parties described vastly different accounts of the nature of the interaction between Tekoh and Vega, it is undisputed that Vega did not advise Tekoh of his *Miranda* rights before questioning him or taking his statement. Tekoh was arrested and charged in California state court, but a jury returned a verdict of not guilty. Following the acquittal on the criminal charge, Tekoh sued Vega under 42 U.S.C. § 1983 alleging that Vega violated his Fifth Amendment right against self-incrimination by taking his statement without first advising him of his *Miranda* rights. A jury found for Vega. Tekoh appealed. The U.S. Court of Appeals for the Ninth Circuit vacated the verdict, reversed the district court's judgment, and remanded the case for a new trial. Vega appealed to the U.S. Supreme Court.

Holding: A violation of the *Miranda* rules does not provide a basis for a § 1983 claim. *Miranda* imposed a set of prophylactic rules requiring that police issue warnings before a custodial interrogation and disallowing the use of statements obtained in violation of those rules. A *Miranda* violation is not necessarily a Fifth Amendment violation. Three justices offered a dissenting opinion in which they argued that the Court's precedents recognized *Miranda* as conferring a constitutional right, and as such, violation of that constitutional right should be sufficient to support a claim under 42 U.S.C § 1983.

Fourth Amendment: Section 1983 Liability – Showing of Innocence in Underlying Criminal Action

Thompson v. Clark, et al.

Decided April 4, 2022
https://www.supremecourt.gov/opinions/21pdf/20-659_3ea4.pdf

Question: Must a plaintiff who seeks to bring a Section 1983 action show that any criminal proceeding against him arising out of the same facts ended in a manner that affirmatively indicated his innocence?

Facts: Camille Watson was staying with her sister and her sister's husband Larry Thompson when she called 9-1-1 after seeing a diaper rash on the couple's infant daughter and mistaking the rash for signs of abuse. In response, two EMTs arrived at Thompson's apartment building to investigate. The EMTs saw nothing amiss, and, unaware of Camille's 9-1-1 call, Thompson told the EMTs that no one in his home had called 9-1-1. He asked the EMTs to leave, and they did. Four police officers arrived to investigate the alleged child abuse and insisted on seeing Thompson's daughter. They physically tried to enter Thompson's home, and when Thompson attempted to block the doorway, the officers tackled and handcuffed him. He was arrested and taken to jail, where he spent two days charged with obstructing and resisting arrest. About three

months later, the charges against him were dropped. Thompson filed a Section 1983 claim against the police officers involved. A federal district court granted judgment in favor of the defendant officers due to Thompson's failure to establish favorable termination of his criminal case. Thompson appealed.

Holding: A plaintiff wishing to bring a Section 1983 claim need only show that the underlying criminal case ended without a conviction. The acquittal of the defendant is not required. This satisfies the requirement of showing a favorable termination of any underlying criminal case. The purposes of the requirement are (a) to avoid parallel civil and criminal litigation, (b) to prevent inconsistent civil and criminal judgments, and (c) to prevent civil suits from being improperly used as collateral attacks on criminal proceedings.

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U.S. Court of Appeals for the First Circuit

Fourth Amendment: Curtilage – Warrantless Entries

French v. Merrill

Decided October 1, 2021
http://media.ca1.uscourts.gov/pdf.opinions/20-1650P-01A.pdf

Question: Did repeated entries onto the curtilage violate clearly established law?

Facts: French, a college student, was dating a fellow student, Nardone. On February 18, 2016, at approximately 1:00 a.m., the police were dispatched to Nardone's residence in response to a call concerning a domestic dispute. Nardone told the officers that she wanted French to leave her residence. French left but, during the walk to his apartment, he sent Nardone several offensive text messages. Nardone showed the messages to officers, who caught up with French before he arrived home. They served French with a cease harassment notice. Later that day, Nardone reported that French had been calling her, sending her messages via text, email, and various social media platforms. Nardone also said that some of her friends told her that French was looking for her on campus and that she had seen French during a trip to a local store and assumed French was following her. The police arrested French for harassment; the State subsequently dismissed the charge. About seven months later, at approximately 3:19 a.m., Nardone reported a possible break-in at her residence. Nardone said that she and French had reconciled, although they were not dating. She also said she suspected that French had stolen her cell phone while she was sleeping that night, a suspicion she based on French having taken her keys the prior week and not returned them. The officers responded to a second call from Nardone at approximately 4:43 a.m., reporting that she and her roommate had seen French attempting to enter their home, but that he had run off when they screamed. The officers received another report that French had just been seen running down the street toward his house. The officers immediately went to French's house. They saw lights on inside the home and decided to conduct a "knock and talk." The officers walked onto the front porch, knocked on the front door, and announced they were police officers seeking to speak with French. No one answered the door, and the officers left the property. While one officer went to speak to Nardone, the other officer stayed near French's home to surveil the property. While standing in a neighbor's driveway, the officer thought he saw a young man peering out the basement window. The officer shined his flashlight through the window, which caused the young man to cover the window and turn off the basement lights. The officer then returned to the front porch of French's home, again knocked on the front door, but no one answered. The officer noticed that lights were quickly being turned off in the residence. The officer left French's property. A few minutes later, the other officer returned with two additional officers. The other officer walked back onto French's property and, peering through a window, saw that a light was on in the kitchen. He rejoined the other officers and told them that he would return to the station to apply for a search warrant. One of the officers suggested that they should attempt another "knock and talk." Two officers went to the side of the house, walked through the curtilage along a narrow strip of grass, and located what they believed was French's bedroom window. They knocked forcefully on the window frame and ordered French to come out and talk. A third officer returned to the front porch, knocked on the front door, and told French to come outside. Eventually, French came to the door and spoke to the officers. French admitted that he had Nardone's cell phone but claimed he had found it on the ground outside Nardone's building and

planned to return it the next day. The officers arrested him for burglary. The State subsequently dismissed the charge because Nardone refused to cooperate and was out of state. French sued the officers, claiming that his arrest in February was without probable cause, and their entry into the curtilage in September was unlawful. The trial court held that the February arrest for harassment was supported by probable cause. As to the multiple attempts in September to persuade French to come to the door, the trial court said that the officers were entitled to qualified immunity because there was no clearly established law that made their conduct unlawful. French appealed.

Holding: The appeals court agreed with the trial court that the officers had probable cause to arrest French in February for harassment but held that the officers exceeded the scope of the implicit social license that authorized their presence on French's property and were not entitled to qualified immunity. First, it was obvious that the occupants of the home were aware of and did not want to receive visitors, as evidenced by the refusal to answer the door during the officers' first and second entries onto the porch and the swift covering of windows and turning off lights in response to the knock on the door during the second entry onto the porch. Second, despite these signs, the officers continued to try to coax French out of the house even after one of the officers said he would attempt to obtain a warrant. The court concluded that any reasonable officer would have understood that repeated, forceful knocking on the front door and a bedroom window frame, while urging French to come outside, during the officers' third and fourth entries, exceeded the limited scope of the customary social license to enter French's property. The court concluded that the officers engaged in the kind of warrantless and unlicensed physical intrusion on French's property that was clearly established as a Fourth Amendment violation in *Florida v. Jardines* (U.S. Supreme Court, 2013).

Fifth Amendment: Miranda – Custodial Interviews

U.S. v. O'Neal

Decided November 4, 2021
http://media.ca1.uscourts.gov/pdf.opinions/20-1184P-01A.pdf

Question: When does a non-custodial encounter become custodial requiring *Miranda* warnings?

Facts: Federal agents determined that two files containing child pornography had been downloaded to a device with an IP address assigned to Larry O'Neal, who was employed as an officer with U.S. Customs and Border Protection at the Houlton, Maine, Port of Entry. Agents obtained a warrant to search O'Neal's home, which resulted in the seizure of O'Neal's computers and hard drives. While the search was taking place, O'Neal's supervisor facilitated a meeting between agents and O'Neal. In a common area that served as a break and copy room, an agent introduced himself to O'Neal and asked O'Neal to enter an unoccupied room where an interview subsequently took place. O'Neal spent approximately two-and-a-half hours inside the room talking with three agents about a variety of topics including hunting, motorcycles, potato farming, and church. The agents told O'Neal that he was being investigated for possession of child pornography and that a search warrant was being executed at his home. Before the interview, O'Neal was told at least twice that he was not under arrest and that he was free to leave at any time. The interview took place in a room approximately 12 or 14 feet by 15 or 16 feet. O'Neal sat in a chair facing a desk, the door to the room was closed but not locked and, even though O'Neal would have had to walk past at least one agent to leave the room, nothing obstructed his path to the door. The agents interviewing O'Neal were dressed in plain clothes and no weapons were visible, except

a holstered firearm carried by one of the agents. O'Neal was not given *Miranda* warnings. O'Neal admitted to knowingly searching for and downloading child pornography. After the interview, the agents asked O'Neal if he was willing to take a polygraph test, and he agreed. Before doing so, O'Neal took a break and left to use the restroom. No one accompanied him to or back from the restroom, which was located outside the area of the office. Before O'Neal took the polygraph, he was given *Miranda* warnings, which he waived. After he completed the polygraph test, the agents arrested him. O'Neal moved to suppress incriminating statements he made during the workplace interview, arguing that the interview was custodial necessitating *Miranda* warnings. The trial court denied the motion and O'Neal appealed.

Holding: The appeals court determined that there was no dispute that O'Neal was subjected to an interrogation, but O'Neal was not in custody for purposes of *Miranda* when he made the incriminating statements. Would a reasonable person have felt at liberty to terminate the interview or interrogation and leave? Factors that can shed light on whether an individual is in custody include, whether the suspect was questioned in familiar or at least neutral surroundings, the number of officers present, the degree of physical restraint upon the suspect, and the duration and character of the interrogation. The interview commenced with an explanation for the visit and inviting O'Neal to speak with the agents in private. O'Neal was told that he was free to leave and that he was not under arrest. The interview was long, but the tone of the conversation was described as relatively calm, non-threatening, and varied in topic. The agents did not exercise physical control or restraint on O'Neal, and he was allowed to make a trip to the bathroom, unaccompanied, between the interview and the polygraph examination. The door to the conference room where the interview took place was closed for privacy but was not locked and the number of plainclothes officers present was not so overwhelming as to by itself establish custody. For the most part, weapons were concealed, and they were never drawn. Express statements by agents to O'Neal that he was not under arrest and that he was indeed free to leave were the most convincing reason to believe that O'Neal was not in custody.

Fourth Amendment: Pretextual Vehicle Stop

U.S. v. Miles

Decided November 17, 2021
http://media.ca1.uscourts.gov/pdf.opinions/20-2031P-01A.pdf

Question: Did the vehicle stop violate the Fourth Amendment because the officer's stated reason for making the stop was pretextual and his real reason was based on nothing more than a hunch?

Facts: A state trooper patrolling the Maine Turnpike at around 10:30 p.m. saw a car traveling southbound at about 30 m.p.h. hour. The car moved from the travel lane into the passing lane and traveled there for approximately two miles, not passing any other vehicles. The trooper learned that the car was registered to a woman in Dorchester, Massachusetts, whose last name and address were familiar to the trooper from his participation in a drug arrest several years before of a man with the same last name living on the same street. The trooper stopped the vehicle for the stated reason of the driver operating in the passing lane without passing another vehicle. When the trooper approached the stopped car, he smelled marijuana and observed a bottle of champagne on the back seat. The trooper learned that the driver, Arthur Miles, was driving with a suspended Massachusetts license, was in violation of probation conditions, and was on bail in Maine. The trooper handcuffed Miles and searched the car, which resulted in the discovery of illicit drugs.

Miles moved to suppress both the statements that he had made at the scene and the physical evidence obtained during the traffic stop, claiming that the stop was not based on reasonable suspicion of a crime or traffic infraction but on a "mere hunch" from the trooper's memory of an individual with the same last name as the registered owner of the stopped car who had previously been arrested for drug activity on the very street where the registered owner of the stopped car lived. The trial court denied the motion, finding that the stop was objectively reasonable. Miles appealed.

Holding: The appeals court said that the alleged pretextual stop was beside the point when the legal basis for a stop is reasonable articulable suspicion of a violation of law, i.e., the failure to keep right except when passing. Reasonableness is based on objective criteria; it is not dependent on an individual officer's subjective motivation. A claim that the officer making the stop was acting by some hidden agenda will not support a successful Fourth Amendment challenge when there is reasonable suspicion based on objective criteria.

Fourth Amendment: "Vehicle Frisk" for Weapons – Actual vs. Reasonable Belief

U.S. v. Guerrero

Decided December 6, 2021
http://media.ca1.uscourts.gov/pdf.opinions/21-1244P-01A.pdf

Question: Must officers *actually* fear that the suspect was armed to conduct a "vehicle frisk" for weapons?

Facts: At approximately 1:00 a.m., police officers responded to a "shots fired" call from a laundromat. When the officers arrived, they saw a BMW sedan racing away from the area. The officers attempted to stop the vehicle, but the driver refused to pull over. After a brief chase, the BMW stopped and the officers secured the driver, Juan Guerrero, and the passenger, a 16-year-old minor. The officers then searched the BMW and found a loaded magazine in a backpack behind the driver's seat. The government charged Guerrero with unlawful possession of ammunition by a convicted felon. Guerrero filed a motion to suppress the evidence seized from the vehicle. The U.S. Supreme Court has held that when officers conduct investigative detentions or *Terry* stops involving vehicles, they may conduct a warrantless "vehicle frisk" of the areas within the suspect's "grab space" if they have reasonable suspicion that a suspect could immediately access a weapon. Subsequently, in several other cases, when determining the reasonableness of vehicle frisks, the First Circuit Court of Appeals required that: (1) the officers must *actually* fear that the suspect was armed (subjective prong); and (2) this fear must be reasonable under the circumstances (objective prong) before officers could "frisk" a vehicle for weapons. In this case, the trial court held that the second prong was satisfied, as it was objectively reasonable for the officers under the circumstances to believe that Guerrero could have accessed a weapon in the BMW. However, the court held that the officers lacked an "actual fear" for their safety; therefore, they were not entitled to frisk the BMW for weapons. The government appealed.

Holding: The First Circuit Court of Appeals expressly rejected the "actual fear," or subjective prong, articulated previously by the court. The court noted that since its decision of 20 years ago regarding the subjective prong, the U.S. Supreme Court had issued several opinions that held that legal tests based on reasonableness should be based on objective standards rather than on standards that depend on the subjective state of mind of the officer. The court reversed the trial court's ruling that granted the motion to suppress the evidence seized from the vehicle.

Fourth Amendment: Scope of Search Warrant – Good Faith Exception

U.S. v. Pimentel

Decided February 17, 2022
http://media.ca1.uscourts.gov/pdf.opinions/20-2024P-01A.pdf

Question: Did officers exceed the scope of a search warrant that authorized a search of the second floor when they searched the third floor instead?

Facts: Officers executed a no-knock search warrant for shotguns and related property. They found two shotguns and related paraphernalia in the defendant's bedroom on the third floor of the building. The warrant authorized a search of the second floor. (Unknown to the police, shortly before the search, the defendant moved from the second floor to the third floor of the building.) The defendant moved to suppress the evidence, arguing that the police exceeded the scope of the warrant by searching his third-floor bedroom. The trial court denied the motion, finding that the Good Faith Exception to the Exclusionary Rule applied to the circumstances. The defendant appealed.

Holding: The Appeals Court affirmed the trial court's denial to suppress the evidence, holding that the officers reasonably believed that the warrant permitted the search of the third-floor bedroom. The court explained that officers were forced to respond to new information that was uncovered while executing a warrant and made a good-faith judgment about whether the search remained within the scope of the warrant. The warrant and supporting affidavit identified the defendant by name; the warrant directed the officers toward the apartment "which is occupied by" him; the officers were able to ascertain from their encounter with the defendant and his admissions that he resided on the third floor and that the weapons they sought were located there. Despite the warrant's language identifying the place to be searched as "88 Fountain St. 2nd floor," the officers' actions in searching the third floor were consistent with a reasonable effort to ascertain and identify the place intended to be searched. They reasonably believed that the warrant permitted the search of the defendant's third-floor bedroom and, accordingly, the Good Faith Exception applied

Fourth Amendment: Probable Cause for Vehicle Search

U.S. v. Batista

Decided April 25, 2022
http://media.ca1.uscourts.gov/pdf.opinions/21-1365P-01A.pdf

Question: Was there probable cause to search the vehicle?

Facts: A "cooperating witness" (CW) working with DEA and the Waltham, Massachusetts, police placed two telephone calls to Batista to arrange a 200-gram fentanyl purchase at their "usual place" in Waltham. The CW told the officers that Batista would expect to see a white van belonging to the CW's drug trafficking partner at the site of the transaction. At 8:19 p.m. on the same day, the CW placed another recorded telephone call to Batista to request an estimated time for their meeting. Barista said that he was on his way to the meeting place and would be there in 25 minutes. The CW and officers traveled in a car together and parked on a side street with a view of the meeting place. Around 9 p.m., other officers in the white van reported that a black Cherokee Jeep passed them traveling in the opposite direction. Shortly thereafter, Batista called the CW and said the white van was being followed and hung up abruptly. Other officers observed the Jeep make a

U-turn and speed off and, shortly thereafter, officers stopped the Jeep. Two officers with their guns drawn approached the Jeep and ordered Batista out of the car. A short while later, the car with the CW inside pulled up within a few feet of Batista, and the CW identified Batista. The identification was reported by radio to all the officers. Officers searched the Jeep and recovered 200 grams of fentanyl. Batista was arrested, later indicted, and filed a motion to suppress the evidence based on his claim that the officers lacked probable cause to search his vehicle. The trial court denied the motion, holding that the warrantless search was supported by probable cause. Batista appealed.

Holding: The Appeals Court concluded the police had probable cause based on the CW's information that Batista was committing a crime when the police stopped his vehicle. There was reason to believe the truthfulness of the CW's statements about his dealings with Batista. The court pointed out that when an informant has been caught dealing drugs and makes a deal for leniency, it is to his advantage to produce accurate, trustworthy information. In this case, the CW was arrested in a fentanyl trafficking investigation and agreed to cooperate. An informant's credibility is further bolstered when the informant incriminates himself, as the CW did here by revealing his history of purchasing drugs for resale from Batista. The CW's recorded calls with Batista showed familiarity and prior history of drug dealing with Batista. He also told the DEA agent that Batista would recognize and expect the white van at or near the meeting place, which he did, and which prompted the warning call from Batista to the CW. The fact that the CW did not identify Batista until after the stop was irrelevant because the officers already had probable cause to believe there were illicit drugs in Batista's car at the time of the stop.

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MAINE SUPREME JUDICIAL COURT

Fourth Amendment: Voluntary Consent for Blood Draw

State v. Croteau

Decided 04/05/2022
https://www.courts.maine.gov/courts/sjc/lawcourt/2022/22me022.pdf

Question: Was the defendant's consent voluntary?

Facts: Brent Croteau's vehicle left Interstate 95 and came to rest in a ditch. An off-duty state trooper identified himself and asked Croteau if he was injured and what happened. Croteau said that he had taken a lot of his medications and wanted to kill himself. He was taken by ambulance to a hospital without any roadside sobriety testing. An on-duty trooper interviewed Croteau at the hospital after advising him of his *Miranda* rights. Hospital staff continued to communicate with Croteau about his medical care, and the trooper told Croteau that he was all set and that he would call him in a couple of days. The exchange between the trooper and Croteau was cordial. The trooper left momentarily but then returned to ask if Croteau would submit to a blood draw. Croteau responded, "Sure," and, when told by the trooper that he would be looking for evidence of impairment, Croteau said that he had nothing to hide. He signed a consent form. The trial court suppressed the blood evidence, finding that Croteau's consent was not voluntary and emphasizing that Croteau was denied an explanation of his statutory duty to submit to testing or his option to refuse and bear the statutory consequences of refusal and that the evidence was insufficient to establish that he could make an informed decision, especially given that the trooper had advised him that he was finished interacting with him and was leaving so that Croteau could receive medical attention. The State appealed.

Holding: The Law Court vacated the trial court's decision to suppress the blood test results, holding that Croteau's response to the trooper's request objectively manifested free and voluntary consent. The Court concluded that although the trooper did not advise Croteau of his right to refuse to submit to a blood draw and requested it as an afterthought while Croteau was being prepared for an EKG, Croteau's treatment was not conditioned on submission to the blood draw, he could respond coherently to questions, he had been given *Miranda* warnings, he had already confessed to taking more than his prescribed amount of medication before driving, and the trooper did not convey false information, make a show of force, or state or imply that law enforcement had a right to draw the blood. In the absence of any express or implied misrepresentation that Croteau was required to submit to testing, Croteau's agreement to submit to testing cannot be considered a mere acquiescence to a claim of authority, but free and voluntary consent under the totality of the circumstances.

Maine Constitution, Article 1, Section 6: Voluntariness of Incriminating Statements

State v. Athayde

Decided 07/05/2022
https://www.courts.maine.gov/courts/sjc/lawcourt/2022/22me041.pdf

Question: Were the defendant's statements voluntary under Maine's standard of proof?

Facts: On the night of December 12, 2018, and in the early morning hours of December 13, 2018, Athayde struck the victim at least 43 times with metal curtain rods and a wooden coat hanger while

they were in their shared home with their two daughters, ages three and four. As a result of the injuries that Athayde inflicted at that time and the aggravation of injuries that he had previously inflicted on the victim, the victim lost roughly two-thirds of her blood from internal and external bleeding, which caused her death. Athayde was convicted of murder after his motion to suppress statements he made during a walk-through of the scene with detectives was denied. Athayde called 9-1-1 from his home after midnight on December 13, 2018, and police arrived at about 1:00 a.m. Athayde was placed in police custody and brought to the police department. There, two detectives interviewed him, beginning at 4:13 a.m., after being administered *Miranda* warnings. Athayde acknowledged that he understood his rights. He was able to describe in his own words what the warnings meant. Athayde signed a written waiver of his rights and indicated that he wanted to cooperate. The officers were professional, respectful, and nonconfrontational in their interview. They did not raise their voices, and Athayde thanked them for their treatment of him. At times, Athayde became emotional and sobbed, overwhelmed by the enormity of the events, but he was able to refocus quickly and describe what had happened. The detectives allowed Athayde to express his feelings and they did not interrupt him, instead waiting for him to be able to control his feelings and continue with the conversation. The detectives frequently offered Athayde food, water, or coffee, but Athayde declined their offers, except that he did eat some crackers. With Athayde's consent, the detectives brought him to his home at approximately 4:24 p.m. He was reminded of his *Miranda* rights before beginning a walk-through and was told that he did not have to participate and could refuse to do so. Athayde indicated that he understood and that he would participate. In the presence of four detectives, Athayde walked from room to room describing and showing what had happened. As Athayde explained the events, the lead detective redirected him if he strayed from the subject or was unclear. The walk-through ended at about 5:53 p.m. Athayde said that he had performed CPR on the victim and that it had made him tired. He said that he was fatigued and overwhelmed at times. He was in handcuffs during the walk-through. Athayde did not sleep during the entire time he was with the detectives. A detective offered him the opportunity to rest, but he appeared to want to continue to speak with the detective. No bed or cot was available, and he was only able to sit in a chair or lie down on the floor. Athayde told the detectives that he felt sick. This feeling of illness resulted from his emotional reaction to what had happened between him and the victim, and he remained able to appreciate and understand what was happening. Athayde declined medical attention. The trial court denied Athayde's motion to suppress, concluding that Athayde made the statements during the walk-through voluntarily. Athayde appealed.

Holding: The Law Court held that "although a close case, Athayde's statements were voluntary under the Maine Constitution." Finding no error in this regard under the U.S. Constitution where voluntariness is measured by a preponderance of the evidence and the absence of police coercion or other misconduct, the Law Court noted that the Maine Constitution requires the State to prove voluntariness beyond a reasonable doubt. Given that the Maine Constitution rejects confessions as involuntary even in the absence of police misconduct, and noted that when a person suspected of a serious crime is frequently emotionally agitated, there can come a point in the course of police interrogation when the police may need to cut off discussion—even when the suspect is mentally competent, has signed multiple *Miranda* waivers, and wants to keep talking—and insist that the person rest or take other steps to ensure a confession meets Maine's high standards. But although the duration of the interrogation, the amount of sleep deprivation, and the emotional state of the defendant here raise serious questions, the police were not required to terminate the conversation with Athayde under the totality of the circumstances presented. None of the values protected under

the Maine Constitution were undermined by the admission of Athayde's statements. The circumstances surrounding his statements supply no reason to conclude that his statements are untrue: the statements were not coerced by police misconduct; he was not under any condition that negated his capacity to decide whether to speak; and his right to speak or not speak, as he chose, was protected.

Fourth Amendment: Warrantless Arrest – Probable Cause

State v. Rosario

Decided 08/25/2022Ath
https://www.courts.maine.gov/courts/sjc/lawcourt/2022/22me046.pdf

Question: Was there probable cause for the warrantless arrest of the defendant?

Facts: In September 2019, a reliable confidential informant (CI) working with MDEA reported that a person with the last name of Messon asked the CI if the CI wanted to conduct drug deals. The CI and Messon had multiple calls, which the MDEA recorded, discussing the sale and pricing of illegal drugs. During one call, Messon said his brother would contact the CI, but Messon did not provide his brother's name. The CI received a call minutes later and spoke with a man, who identified himself as "Peter," about a drug transaction. "Peter" turned out to be the defendant, Pedro Rosario. The CI and Rosario had additional calls about drug transactions, which the MDEA monitored and recorded. In December 2019, the CI and Rosario agreed to meet, but the transaction was canceled because Rosario was unable to find a driver. He later found a driver and agreed to meet the CI in Houlton on December 18 where Rosario would sell drugs to the CI. On December 17, MDEA obtained a search warrant for GPS location data of the cell phone number Rosario was using. Around 9:00 a.m. on December 18, Rosario told the CI that he was on his way north. Over the next few hours, the location information showed the phone traveling north. At 1:47 p.m., the phone was in Houlton near the spot where Rosario and the CI had agreed to meet. However, Rosario phoned the CI and called off the transaction because he thought he saw law enforcement near the meeting location; thereafter, the location data showed the phone traveling south on I-95. Minutes before 2:30 p.m., location data showed the phone was near the Island Falls exit. A state trooper caught up to a gray Kia sport utility vehicle with Massachusetts license plates that was behind a white vehicle. Another trooper was parked at an I-95 crossover and saw the two vehicles pass him, followed by the first trooper. The second trooper proceeded south behind the first trooper and told the other officers that he identified Rosario in the gray vehicle when it passed him. The first trooper initiated a "felony stop" of the Kia. The traffic volume on I-95 was very light at the time of the stop at 2:32 p.m. Rosario was arrested and convicted at trial. Denying a motion to suppress the arrest for lack of probable cause, the trial court concluded that when the officers stopped the Kia, they had reasonable articulable suspicion, and indeed probable cause, to believe that it contained the person who had agreed to travel and sell drugs to the CI in Houlton and that criminal conduct had taken place or was taking place. While conceding that law enforcement had "reasonable articulable suspicion" for the stop, Rosario argued on appeal that law enforcement lacked probable cause. The State contended that competent evidence supported the trial court's findings that, before the stop, law enforcement had probable cause to believe that the phone and Rosario were in the vehicle and that Rosario had engaged in a conspiracy to traffic illegal drugs.

Holding: There was probable cause, before the stop, to stop the Kia and arrest its occupants. The MDEA monitored multiple calls between a known and reliable CI and the defendant discussing

drug transactions, including a transaction arranged in Houlton. Under a search warrant, law enforcement received GPS data for the cell phone number used by the defendant showing that the phone was traveling north after the defendant informed the CI that he was on his way north, and that the phone was near the meeting location, and that the phone was traveling south after the defendant called off the transaction. The GPS data, accurate to within 25 meters, showed that the phone was near the Island Falls exit. The traffic volume on I-95 was light and, before the stop, a state trooper saw the suspect vehicle and told the other officers that he identified the defendant in the vehicle. The facts and circumstances met the "very low threshold" of probable cause.

Fourth Amendment: Reasonable Suspicion to Stop

State v. Lovell

Decided 09/08/2022
https://www.courts.maine.gov/courts/sjc/lawcourt/2022/22me049.pdf

Question: Was there reasonable suspicion to stop the defendant?

Facts: An Amtrak conductor informed an Amtrak detective that Lovell made a round trip from Portland, Maine, to Haverhill, Massachusetts, with another man during which the pair disembarked in Haverhill and returned to Portland on the first available train. The conductor reported that the two men appeared to be "high on some kind of drugs" on the return leg of their journey. The next day the conductor informed the detective that after Lovell and his companion departed the train, he found what appeared to be a "crack pipe" on the seat where the two had been sitting. The detective consulted an internal Amtrak database and discovered that Lovell had previously made two other trips from Portland to Haverhill the same month and on each trip had stayed in Haverhill for a short time before returning to Portland on the first available train. The detective knew from his training that the Haverhill area was a location where narcotics were obtained and then distributed throughout New England and that passengers who used trains for quick round trips could be using the train system to transport drugs. He also understood that the Amtrak conductors watch for train passengers who appear to be intoxicated from alcohol or drugs and keep track of where the passengers sit so that the conductors can monitor their well-being. Based on this knowledge and the facts provided to him by the conductor, the detective notified an MDEA agent that Lovell had made several quick round trips from Portland to Haverhill; that the conductor working the train on Lovell's most recent trip reported that Lovell and his companion appeared to be high on drugs during their return trip; and that the conductor found what he believed was a crack pipe on the seat where Lovell and his companion had been sitting. The conductor contacted the detective a couple of weeks later and informed him that Lovell was scheduled to make a round trip from Portland to Haverhill that day with a 38-minute stopover in Haverhill. The detective notified the MDEA agent that Lovell was scheduled to make another quick trip to Haverhill, this time accompanied by a child. The agent obtained a copy of Lovell's driver's license and current bail conditions, both of which provided an address for Lovell located north of Portland and confirmed the time that the train from Haverhill was expected to arrive back in Portland. The agent then went to the Portland train station and saw a man leaving the train terminal at a time consistent with the arrival of the train from Haverhill. The man's appearance matched Lovell's driver's license photo and the man appeared to be with a small child. The agent followed the man and the child as they walked through the station, and he confirmed with other officers outside the station that the man he believed to be Lovell had entered a Honda Civic. Officers stopped the car on the I-295 southbound ramp. Based on evidence discovered during the stop, the grand jury

indicted Lovell on the four counts for which he was later convicted. Lovell moved to suppress the evidence obtained during the stop, arguing that the police officer lacked a clearly articulated and objectively reasonable suspicion to justify the stop. The trial court denied the motion to suppress, and Lovell appealed.

Holding: The Law Court held that the vehicle stop was constitutionally permissible. Reasonable articulable suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence and need not rise to the level of probable cause. The suspicion need only be more than speculation or an unsubstantiated hunch. A tip—even an anonymous one— may be reliable if the officer corroborates the information. Corroboration can consist of the officer verifying details such as the physical description and location of the suspect and does not require that an officer observe illegal behavior. Here, the MDEA agent had reasonable suspicion for Fourth Amendment purposes to stop the defendant after he disembarked from the train. While the defendant fit a "drug courier profile" and that by itself would not provide reasonable articulable suspicion without "something more," the agent's corroboration of the information along with the conductor's statements provided the "something more."

Fourth Amendment: Reliability of Anonymous Tip

State v. Barclift

Decided September 27, 2022
https://www.courts.maine.gov/courts/sjc/lawcourt/2022/22me050.pdf

Question: Was anonymous information sufficiently reliable to constitute reasonable suspicion to stop?

Facts: On January 9 and 10, 2020, the Augusta Police Department and the Maine Drug Enforcement Agency each received, through an online reporting system similar to email, a written anonymous communication containing a tip concerning Barclift. The two tips were nearly identical in content, suggesting that the same person provided them. The tipster wrote that Barclift was a rap artist known as Down Leezy and that he traveled regularly from New York to Maine by Concord Trailways bus carrying large quantities of cocaine or heroin in a bag or a backpack, and that he had been doing so for years. The tipster also gave a date of birth for Barclift and indicated that he typically carried a firearm. Through internet searches, police confirmed that Barclift was a rap artist known as Down Leezy. From law enforcement authorities in New York, they obtained a photograph of Barclift and an indication that he had a criminal history of indeterminate vintage. They also contacted an employee of Concord Trailways in Boston, who said that Barclift had purchased ten bus tickets to Maine in the month of January 2020, made four trips to Maine within the first nine days of January 2020, and purchased bus tickets for travel to Maine since 2014. The employee also told police that Barclift used cash to pay for his bus tickets. On January 22, 2020, the Concord Trailways employee reported that Barclift had purchased a bus ticket for travel to Augusta that afternoon and described the clothing that Barclift was wearing. A team of police officers set up surveillance at the Concord Trailways bus terminal in Augusta. The bus arrived and Barclift got off. He was wearing a backpack and carrying a black plastic bag. He exited the terminal building, approached a waiting SUV, put his backpack and bag in the back seat area, and started getting into the front passenger seat. Multiple police officers and vehicles converged on the SUV, Barclift got out with his hands raised in the air, and an officer immediately placed him in handcuffs. Eventually, officers searched Barclift's backpack, found a plastic bag containing

approximately 300 grams of cocaine, and placed him under arrest. Barclift filed a motion to suppress evidence in which he argued that the police lacked a sufficient basis for the stop. The trial court denied the motion. Barclift appealed.

Holding: The Law Court disagreed with the trial court's decision stating that the evidence regarding the anonymous tip and the subsequent efforts by police to confirm its reliability failed to establish an objectively reasonable, articulable suspicion sufficient to justify the stop. The information that the police obtained in attempting to corroborate the anonymous tip was not enough to indicate that the tipster's assertion of illegality was reliable. Because the tip was lacking in predictive information that, if confirmed as accurate, might have validated the reliability of the tip, the police needed to obtain independent information corroborating the tipster's assertion of illegal conduct to establish an objectively reasonable suspicion of wrongdoing on the day of the stop. One means of doing so would be to obtain reliable information through other sources. The necessary information could also have been obtained through surveillance before a stop, among other means, but the police stopped Barclift without having observed anything suspicious. While corroboration does require the police to observe illegal behavior, courts have held that a drug courier profile may be used as a starting point for an investigation; however, consistency with a bare profile alone cannot amount to reasonable suspicion of illegal activity, because those who engage in the activities that the profile describes include large numbers of innocent people.

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