2012 CASE LAW UPDATE

Summaries of Recent Court Decisions
of Interest to Law Enforcement Officers

United States Supreme Court
First Circuit Court of Appeals
Maine Supreme Judicial Court

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

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This publication and the 2012 New Law Update constitute the training outline of the Maine Criminal Justice Academy for recertification training in law updates for the year 2012.

Preparer's Note

The preparer of this document reviewed the published decisions of the United States Supreme Court, the First Circuit Court of Appeals, and the Maine Supreme Judicial Court for the period September 2011 through August 2012, and selected cases believed to be of general interest to Maine law enforcement officers. This document is not a listing of all decisions of the three appellate courts.

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

If a particular decision is of interest to the reader, an Internet link is provided so that the reader can review the entire text of the decision. This is highly recommended for a more comprehensive understanding, and particularly before taking any enforcement or other action.

The preparer wishes to recognize the invaluable support of Assistant Attorney General Donald W. Macomber of the Attorney General's Criminal Division who not only reviewed this document and offered meaningful comments and suggestions, but who is always available to answer numerous inquiries posed to him throughout the year concerning criminal procedure and other constitutional issues. Also deserving of recognition is Detective Margie Berkovich of the Attorney General's Investigation Division who assisted to a great degree in the preparation of the case summaries.

Questions, suggestions, or other comments?

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United States Supreme Court

Fourth Amendment – Privacy Invasion

Installation and Monitoring of GPS Tracker Requires Warrant

Attaching a GPS device to a vehicle and then using the device to monitor the vehicle's movements constitutes a search under the Fourth Amendment for which police must have a warrant.

Issue: Is the Fourth Amendment implicated when a GPS tracking device is attached to a vehicle and the vehicle's movements are monitored on public streets?

Facts: Following denial of motion to suppress evidence gained as a result of a GPS tracking device attached to defendants' vehicle and the monitoring of that device, defendants were convicted in the U.S. District Court for the District of Columbia of conspiracy to distribute and to possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base. They appealed. The U.S. Court of Appeals for the District of Columbia reversed. Certiorari was granted.

Holding: The U.S. Supreme Court sided with the federal court of appeals and held that officers must obtain a warrant to place a GPS tracker on a suspect's vehicle. The Court was unanimous in holding that installing the tracker and the long-term monitoring (28 days) was a search under the Fourth Amendment. A majority of five justices held that, "the Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." The Supreme Court did not consider whether the search was reasonable because the prosecutors did not make that claim in the lower court, thereby giving the Court leeway to deem the argument waived. The bottom line for officers is that installing a GPS tracker on a suspect vehicle requires both probable cause and a warrant.

U.S. v. Jones, 132 S.Ct. 945 (2012)
http://www.supremecourt.gov/opinions/11pdf/10-1259.pdf

Fourth Amendment – Strip Search at Jails

Strip Searching Detainee Entering Jail Population Constitutional

Jail strip searches do not require reasonable suspicion, at least so long as the arrestee is being admitted into the general jail population.

Issue: Is the Fourth Amendment violated by a jail's policy of strip searching every detainee placed in the general jail population?

Facts: Detainee, who had been arrested on an outstanding bench warrant after a traffic stop, brought a §1983 class action against counties, alleging that invasive searches conducted before he entered the jail's general population violated his Fourth and Fourteenth Amendment rights. The U.S. District Court for the District of New Jersey granted detainee plaintiff summary judgment and the respondent appealed. The U.S. Court of Appeals for the Third Circuit reversed. Certiorari was granted.

Holding: By a 5-4 vote, the Court held that neither the Fourth Amendment nor Fourteenth Amendment was violated by the policy where it is a standard part of the intake process. The searches were invasive but did not include any touching of unclothed areas by the inspecting officer. The Court held that the searches struck a reasonable balance between inmate privacy and the needs of the institutions. The Court said that deference must be given to judgment of correction officials unless there is "substantial evidence" showing that the officials' response to the situation is exaggerated. The Court expressly stated that its ruling does not address cases where the detainee is held separately from the general jail population. This decision is a departure from previous rulings of the federal courts in which such search procedures were not permitted in the absence of reasonable suspicion of concealed weapons or other contraband.

Florence v. Bd. of Chosen Freeholders of Burlington County, 132 S.Ct. 1510 (2012)
http://www.supremecourt.gov/opinions/11pdf/10-945.pdf

Fourth Amendment – Exigent Circumstances – Civil Liability

Qualified Immunity for Warrantless Entry into Home

The officers had an objectively reasonable belief that "violence was imminent," which constituted an exigency to enter the home without a warrant and for which they were entitled to qualified immunity.

Issue: Was warrantless entry into home lawful when officers were concerned about an imminent threat of violence?

Facts: Officers were investigating reports that Vincent Huff had written a letter threatening to "shoot up" his high school. The officers learned that Huff had been absent from school for two days and that he was frequently bullied by other students. Officers spoke with one student who knew Huff and believed that he was capable of violence. Many parents heard reports of the threat and kept their children home from school. Two officers went to the Huff home to speak with Vincent and his parents. No one answered their knock on the door. The officers called the home telephone number and could hear it ringing inside. When no one answered the phone, the officers called Mrs. Huff's cell phone. She answered, spoke briefly with an officer, and then abruptly hung up the phone. After a few minutes, Mrs. Huff and Vincent came to the front porch to talk to the officers. When one of the officers asked Mrs. Huff whether they could talk inside, she refused. The officer asked whether there were any guns in the house. Instead of answering, Mrs. Huff quickly turned and ran into the house. An officer, concerned that Mrs. Huff could retrieve a gun, followed her inside to the living room. After a few more minutes, Mr. Huff came into the living room and challenged the officers. The officers left without further incident.

The Huffs then sued the officers, claiming that they illegally entered the Huff home. The trial court granted qualified immunity to the officers, ruling that the officers were required to make a decision in tense and rapidly-evolving circumstances. The Ninth Circuit Court of Appeals, in a 2-1 decision, reversed the grant of qualified immunity. The officers appealed.

Holding: The Supreme Court held that the trial court properly granted qualified immunity to the officers, protecting them from suit. In a short, unanimous decision, the Court stated: "Reasonable officers in the position of petitioners could have come to the conclusion that there was an imminent threat to their safety and to the safety of others. The Ninth Circuit's contrary conclusion was flawed for numerous reasons." The Court criticized the Ninth Circuit majority for taking the view that conduct cannot be regarded as a matter of concern so long as it is lawful, and for looking at each separate event in isolation, rather than the combination of events (totality of the circumstances). The Court also faulted the Ninth Circuit for failing to be cautious before "second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation."

Ryburn v. Huff, 132 S.Ct. 987 (2012)
http://www.supremecourt.gov/opinions/11pdf/11-208.pdf

Fifth Amendment – Miranda – Questioning Inmates

Prisoner Not Always "In Custody" for Purposes of *Miranda*

The Sixth Circuit's categorical rule – that an interrogation is per se custodial, for purposes of Miranda, when a prisoner is questioned in private about events occurring outside the prison – is wrong.

Issue: As a categorical rule, is an inmate always "in custody" for purposes of *Miranda*?

Facts: While serving a jail sentence, Fields was escorted by a corrections officer to a conference room where two police officers questioned him about an unrelated crime. At the beginning of the interview, and again during the interview, the officers told Fields that he could leave whenever he wanted and be escorted back to his cell. Fields eventually confessed to the crime. The officers never advised Fields of his *Miranda* warnings. The Sixth Circuit Court of Appeals held categorically that any time an inmate is taken from the general prison population and questioned about a crime that occurred outside the prison, he is always in custody for *Miranda* purposes.

Holding: The Supreme Court disagreed. The Court held that serving a term of imprisonment, by itself, is not enough to constitute *Miranda* custody. When a prisoner is questioned, the determination of *Miranda* custody should focus on all of the circumstances surrounding the interrogation, to include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted. In this case, the court held that Fields was not in-custody for *Miranda* purposes. Although the interview went for between five and seven hours and beyond the time Fields would have normally gone bed, the officers told Fields several times that he could leave and go back to his cell whenever he wanted. Additionally, the interview was conducted in a comfortable conference room, the officers did not physically restrain or threaten Fields, and they offered him food and water. All of these facts were consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave.

Howes v. Fields, 132 S. Ct. 1181 (2012)
http://www.supremecourt.gov/opinions/11pdf/10-680.pdf

Fourth Amendment – Exclusionary Rule – Good Faith Exception – Civil Liability

The Good Faith Exception to the Exclusionary Rule at Work

The officers were entitled to qualified immunity for executing a search warrant for firearms and evidence of gang activity in a home after a victim reported that the suspect had threatened her with a gun. A reasonably competent officer could have relied on the validity of the warrant in that it was facially valid, albeit possibly overbroad.

Issue: Would a reasonably competent officer have concluded that a warrant should not issue on the basis of the affidavit?

Facts: Officers obtained a warrant that was facially valid, but possibly overbroad, to search Millender's home after Jerry Ray Bowen threatened to kill his girlfriend and then fired a sawed-off shotgun at her when she fled from him. The officers confirmed that Bowen had been arrested and convicted for numerous violent and firearms related offense, that he was a member of two gangs, and that he was staying at Millender's home. The warrant authorized the officers to search for all firearms and ammunition as well as evidence of gang membership. The Ninth Circuit Court of Appeals refused to grant the officers qualified immunity. While the officers had probable cause to search for a sawed-off shotgun, the court held that they did not have probable cause to search for the broad class of firearms, ammunition, and gang related material that was listed in the warrant. As a result, the court held that the warrant was so invalid on its face that no officer could have reasonably relied on it.

Holding: The Supreme Court reversed the Ninth Circuit, holding that the officers were entitled to qualified immunity. Given Bowen's possession of one illegal gun, his gang membership, and willingness to use the gun to kill someone, it was reasonable for the officers to conclude that Bowen owned other guns. An officer could also reasonably believe that seizure of firearms was necessary to prevent further assaults on Bowen's girlfriend. California law allowed the officers to seize items, such as firearms, that Bowen could potentially use to harm another person, and the officers referenced this statute in their search warrant application. The Court also held that it was permissible for the officers to search for gang-related materials. A reasonable officer could view Bowen's attack on his girlfriend as motivated by a concern that she might disclose his gang activities to the police and not solely as a domestic dispute. As a result, it would reasonable for an officer to believe that evidence of Bowen's gang affiliation would be helpful in prosecuting him for the attack on his girlfriend. Finally, the officers sought and obtained approval of the warrant application from a superior officer and a deputy district attorney before submitting it to the magistrate. This provided further support for the conclusion that the officers could reasonably have believed that the scope of the warrant was supported by probable cause.

Messerschmidt v. Millender, 132 S.Ct. 1235 (2012)
http://www.supremecourt.gov/opinions/11pdf/10-704.pdf

First Circuit Court of Appeals

Fourth Amendment – Stop and Frisk – Consent Search

Weapons Frisk and Search that Led to Discovery of Drugs was Lawful

There was reasonable suspicion with respect to both the stop and the pat-down. With respect to the stop, the 911 caller had reported the presence of a man with a handgun at the residence making threats and that a fight seemed imminent. With respect to the search, there is no indication that Brake was coerced in any fashion to pull the bag out of his pocket and open it for the police officer to see its contents.

Issue: Did the officers have the authority – was there reasonable suspicion that the defendant was armed and dangerous – to conduct a stop and frisk, and was the search of the defendant a product of the defendant's valid consent?

Facts: An officer stopped and frisked Brake after seeing him walk away from a van parked near a residence where it had been reported a man was threatening others with a gun. During the frisk, the officer felt a "squishy" object in the front pocket of Brake's sweatshirt that felt like a plastic bag. Realizing that it was not a weapon, the officer asked Brake what he had in his pocket. Brake told him it was a plastic bag he had found in the bushes. The officer asked Brake if he would mind taking the bag out of his pocket. Brake said "sure" and without hesitation, he took the bag out of his pocket. After asking Brake if he was curious about the bag's contents, Brake opened the bag revealing hundreds of OxyContin tablets. Brake dropped the bag and disclaimed ownership of its contents.

Holding: The Court held that the officer lawfully detained Brake after he saw him stop at a parked van, open the door, do something inside and then walk away from the officer. The court concluded that Brake's proximity to the residence, baggy clothing and activity at the van gave the officer reason to believe that he may have retrieved or deposited a weapon. The Court held that the officer conducted a lawful *Terry* frisk for weapons on Brake. Brake did not immediately respond to the officer when the officer tried to get his attention, but rather kept walking away from him. Brake's failure to heed the officer's attempt to stop him supported the officer's concerns for his safety and the eventual frisk. Brake's cooperative demeanor and lack of any threatening or furtive gestures after he finally stopped did not lessen the officer's concern that Brake may have posed a risk to him. Finally, the Court held that Brake voluntarily consented to removing the plastic bag from his pocket and opening it for the officer to see its contents. The officer did not coerce Brake in any way. Instead, Brake chose to cooperate with the officer of his own free will, having decided to pursue a strategy of cooperation and ignorance about the origin and contents of the bag.

U.S. v. Brake, 666 F.3d 800 (2011)
http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=11-1215P.01A

Fourth Amendment – Terry Stop – Stop and Frisk

Initial Unlawful Detention Renders Subsequent Frisk Unlawful

Defendant was stopped and detained near a street "rumble" involving the Latin Kings, but there was nothing that justified the inference that he was a member of the Latin Kings or even involved in the brawl. "Tapping" defendant's waist with an open palm was a frisk, and it violated the Fourth Amendment because it was the fruit of the unlawful stop.

Issue: Was there reasonable suspicion that Camacho was engaged in criminal activity, thus making his initial detention a valid Terry stop? Was the frisk justified under the Fourth Amendment?

Facts: A series of 911 calls reported a fight in progress in the North End of New Bedford, Massachusetts. One of the 911 callers identified "most" of the combatants as members of the Latin Kings. Members of the New Bedford Police Department's gang unit arrived at the scene. A sergeant saw 12 to 15 people scatter from what appeared to be a street brawl. Another officer at the scene recognized some of the people fleeing the area as members of the Latin Kings. The sergeant saw two men that he did not recognize walking down the street and he directed two other officers to intercept and question the two men. The officers followed the two men in an unmarked cruiser. The officers pulled ahead of the two men and turned into a driveway in a manner that partially blocked the path of the two men. An officer stepped out of the car and approached Camacho while the other officer ordered the other man to put his hands on the hood of the car. The officers did not recognize the two men. The first officer noticed that Camacho's clothing was wet and his breathing was labored. He asked Camacho where he was coming from and Camacho replied Nye Street. Camacho stated that he had seen the Nye Street fight but denied any involvement. He was wearing a hooded sweatshirt and he held his hands in the front pocket of the sweatshirt. The officer told Camacho to remove his hands from the front pocket and Camacho did so slowly and deliberately, and then clasped his hands in front of his waistband appearing to be protecting his midriff. Because the officer found Camacho's movement and hand placement unusual, he tapped Camacho with his opened palm, and immediately felt the butt of a gun and yelled, "Gun!" In response, Camacho shoved the officer, and the other officer drew his service revolver and aimed it at the second man. The first officer and Camacho started struggling. The struggle ended when the officer hit Camacho in the head with his flashlight, knocking him to the ground. The officer seized a .40 caliber Glock with a live round in the chamber and eight rounds in the magazine from beneath Camacho's belt.

Camacho was indicted by a federal grand jury for unlawful possession of a firearm and ammunition by a felon, and possession of a firearm with an obliterated serial number. Camacho moved to suppress the firearm and ammunition arguing that they were obtained through an illegal search and seizure. The trial court judge agreed with Camacho that the officers did not have the reasonable suspicion necessary for a *Terry* stop. However, the judge concluded that the gun was seized only after Camacho shoved Officer Sousa and only after other officers succeeded in wrestling Camacho to the ground and placing him under arrest. The judge reasoned that the acts of shoving the officer and resisting arrest were intervening crimes giving the officers independent grounds to arrest Camacho, and

that the gun was seized under the "search incident to arrest" exception. Camacho appealed the trial court's denial of his motion to suppress the firearm and ammunition.

Holding: The Court held that the initial detention of Camacho by the police constituted a seizure under the Fourth Amendment in that a reasonable person in Camacho's stead would not feel free to disregard the police and go about his business. The Court said that this initial detention was not a valid Terry stop, but was an unreasonable seizure in violation of the Fourth Amendment. The fact that the two men were observed in a high crime area walking away from the area of a street fight that one caller reported as involving Latin Kings fell short of an objectively reasonable, particularized basis for suspecting Camacho of criminal activity. The Court concluded that the discovery of the gun was so tainted by the illegal stop that it should have been suppressed as "fruit of the poisonous tree." Discovery of the gun flowed directly from the original unlawful seizure of Camacho and was not "so attenuated as to dissipate the taint" of the initial unlawful stop. Moreover, the gun was not discovered by a search incident to arrest as decided by the trial court; it was discovered during the frisk that preceded the actions resulting in Camacho's arrest.

U.S. v. Camacho, 661 F.3d 718 (2011)
http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=09-2415P.01A

Maine Case – Fourth Amendment – Sufficiency of Search Warrant

Affidavits of Probable Cause Established "Fair Probability"

The affidavits established a fair probability that Farlow's computer and other digital devices held much more evidence than just the bodybuilder image. Most notably, Farlow could have saved transcripts or screenshots of his sexual solicitation chats, and these could have been stored on any form of digital media—CDs, DVDs, flash drives, disconnected hard drives, and so on. Probable cause therefore supported a warrant authorizing police to search broadly for evidence directly related to Farlow's New York crimes, and the warrant here did just that.

Issue: Did the affidavits to search the defendant's computer and related digital devices establish the necessary probable cause that evidence would be found at the time of the search?

Facts: While in an online chat room, Farlow sent explicit messages to an undercover police officer who was posing as a 14-year-old child. Farlow proposed meeting for sex and sent the undercover officer a non-pornographic image of a bodybuilder, claiming it was an image of himself. Officers executed a search warrant on Farlow's computer for evidence related to his online chats with the undercover officer, to include the bodybuilder image. During this search, the officers discovered several images of child pornography. The officers sought and obtained a second search warrant specifically for child pornography and discovered over three thousand such images. Farlow argued that the officers did not have probable cause to search for any electronic image other than the single bodybuilder image; therefore, all the evidence seized from his computer, from both warrants, should have been suppressed. Farlow also argued that officers should have employed a limited search for the bodybuilder image by using

the image's hash value. He claimed that the image's hash value would have led the officers to that specific image and its precise location on the computer and, as a result, they would not have discovered the images of child pornography.

Holding: The Court disagreed, holding that the affidavits in support of the first search warrant established a *fair probability* that Farlow's computer and other digital devices contained more evidence than just the bodybuilder image. Farlow could have saved transcripts or screenshots of his sexual solicitation chats with the undercover officer and he could have stored them on any form of digital media. As to Farlow's argument of limiting the search by using the hash value of the bodybuilder image, the Court said that the search warrant did not need to be so narrowly drafted. The Court noted that specific identifying information, such as hash values, could be mislabeled; a file's extension could be changed or it could be converted to a different file type. In addition, a limited hash value search would not have allowed the officers to search for any of the chat transcripts, for which they were clearly entitled to search.

U.S. v. Farlow, 2012 U.S. App. LEXIS 11121
http://caselaw.findlaw.com/us-1st-circuit/1602104.html

Fifth Amendment - Miranda

Questioning of Defendant Required No Miranda Warning

Everyone pretty much knows that the Miranda rule tells police not to question a suspect in custody unless they first advise him of his right to remain silent, among other things. Given the totality of the circumstances here, a reasonable person in the suspect's shoes would not have believed that he was in custody. Consequently, no Miranda warnings were required.

Issue: Were the defendant's statements to the agents inadmissible because he had not been advised of his *Miranda* rights?

Facts: Federal agents suspected that Guerrier was involved in a robbery at a crack house. The agents asked Guerrier's parole officer to help them set up a meeting with Guerrier. At his next scheduled parole meeting, the parole officer told Guerrier that some men wanted to talk to him. The two agents were in plain clothes and had their weapons concealed. They told Guerrier that they wanted to speak to him about a matter unrelated to his parole status, that he was not under arrest, and that he did not have to talk to them. Guerrier agreed to speak with the agents. Guerrier, the parole officer, and the two agents got into the agents' police car and went to a fast food drive-thru where they bought Guerrier a drink. The agent drove the group to a nearby strip-mall parking lot to conduct an interview. The agents again told Guerrier that he did not have to say anything to them, that he was not under arrest, and that they would drive him anywhere he wanted if he wanted out. Guerrier agreed to talk to the agents and during the 20-25 minute interview; he made several incriminating statements concerning his involvement with the crack house robbery. The agents had not provided Guerrier *Miranda* warning before interviewing him. Guerrier claimed that his statements to the agents were inadmissible because he had not been advised of his *Miranda* rights.

Holding: The Court held that Guerrier was not in custody for purposes of *Miranda* when the agents interviewed him. The agents wore plain clothes, had their weapons concealed, and on more than one occasion told Guerrier that he was not under arrest, that he did not have to answer any questions, and that he was free to go at any time. Although the interview occurred in a police car, the agents left the doors unlocked and parked in a busy public parking lot. The interview lasted a relatively short time and no one badgered Guerrier for answers or menaced him in any way. This encounter did not rise to the level of a custodial interrogation.

U.S. v. Guerrier, 669 F.3d 1 (2011)
http://www.ca1.uscourts.gov/pdf.opinions/10-2315P-01A.pdf

Maine Case – Fourth Amendment – Vehicle Stop – Search Warrant – Good Faith Exception

Vehicle Stop Supported by RAS; Evidence of Search Admissible

Every step of the trooper's investigation was supported by reasonable articulable suspicion of criminal activity and with every step the suspicion grew. The roadside detention was supported by reasonable articulable suspicion prior to the defendant's disclosure that he did not have a valid driver's license; with his disclosure the trooper had probable cause to arrest him. Even if the warrant was deficient in its description of things to be seized, it could hardly be called so overbroad or lacking in probable cause as to render an official belief in its validity entirely unreasonable. In other words, a reasonably well trained officer would not know the search was illegal, allowing admission of the evidence as a "good faith exception" to the exclusionary rule.

Issue: Was there reasonable articulable suspicion of a violation of law to justify the vehicle stop? Did the affidavit for a warrant to search the vehicle establish probable cause that the evidence sought – "contraband to include weapons, firearms, explosives or illegal drugs" – would be found in the vehicle at the time of the search?

Facts: Maine State Trooper Robert Cejka was patrolling a stretch of Interstate 295 between Brunswick and Gardiner. He observed a vehicle with what appeared to be a glinting blue light mounted on or behind the windshield. The trooper signaled the driver to pull over. The driver did not pull over immediately but continued traveling for about half a mile. While he was following the vehicle, Trooper Cejka observed the driver make a number of motions, such as reaching in front of the passenger seat and behind it while tapping his brakes several times as the vehicle weaved to the left. The vehicle eventually came to an abrupt stop in the breakdown lane. The driver's unusual behavior led Trooper Cejka to order him to place his hands outside the driver's side window. When Trooper Cejka looked inside the vehicle, he saw a television screen on the dashboard playing a movie, a large blue suction cup attached to the windshield, and a blue handicapped placard hanging from the rearview mirror. Trooper Cejka speculated that what he previously supposed was a blue light was a blue reflection from light being redirected by a chrome-backed mirror through the blue suction cup or placard.

Trooper Cejka asked the driver about his movements and the driver told him that he had dropped his cell phone and picked it up. The driver demonstrated his explanation by reaching between his legs to retrieve a DVD remote. Trooper Cejka found the story

implausible, since he had seen the driver reaching over the passenger seat. The driver could not provide a driver's license or a registration for the vehicle, stating that he left his license and the registration at home. The driver provided what turned out to be a false name. None of the identification information provided by the driver matched any record in the BMV database. The driver supplied additional false information before admitting that he did not have a valid license. Trooper Cejka arrested the driver for driving without a license, and took him to a nearby jail where he continued to provide false information, and refused to be fingerprinted. Trooper Cejka left the driver at the jail and went to apply for a search warrant for the vehicle.

While Trooper Cejka was working on the affidavit for the warrant, he received a call from the jail informing him that the driver had finally identified himself as Joseph Jenkins and admitted that he was wanted for kidnapping in New Mexico. A judge issued the warrant for the search of Jenkins' vehicle. A 9 mm pistol, holster, clips of ammunition, and a marijuana roach were seized during the search. Jenkins was charged with the federal offense of unlawful possession of a firearm following a felony conviction. The district court denied his motion to suppress the evidence seized in the van.

Holding: The Court held that the traffic stop that led to the trooper finding the illegal firearm in Jenkins' car was supported by reasonable suspicion. When the trooper saw a large blue disc behind the windshield of Jenkins's car, it was reasonable for him to suspect that Jenkins was in violation of Maine's law against civilian blue lights and reasonable for him conduct a traffic stop to get a better look at Jenkins' car. Even though the officer eventually discovered that Jenkins did not have an illegal blue light in his car, he had established reasonable suspicion that Jenkins could be involved in other criminal activity. Jenkins did not immediately pull over after being signaled to do so by the officer, and he reached in front of and behind the passenger seat as if he was hiding something. Jenkins gave the officer an implausible explanation for his furtive movements and he was not able to provide the officer with a valid driver's license. The officer had ample grounds for suspecting that Jenkins was trying to hide evidence of something unlawful such as illegal drugs or other contraband. The Court further held that the warrant obtained to search Jenkins' car was supported by probable cause.

Additionally, the officers were not required to establish probable cause to search the car for a specific type of contraband. It was sufficient that the warrant authorized the officers to search Jenkins's car for any illegal drug and weapons that may have been inside it. Finally, even if the warrant were deficient, it could hardly be called so overbroad or lacking in probable cause as to render official belief in its validity entirely unreasonable. Because a reasonably well trained officer would not have known that the search was illegal despite the judge's authorization in the warrant, the good-faith exception to the exclusionary rule would support admission of the evidence found in Jenkins's van.

U.S. v. Jenkins, 2012 U.S. App. LEXIS 10431 (2012)
http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=11-1302P.01A

Fourth Amendment – Search Warrant for Computer – Sufficiency of Affidavit

Affidavit Established "Fair Probability" that Evidence would be Found

The IP address used by the defendant to accomplish his crimes was a dynamic and not a static one. He argued that because the IP address was dynamic, rather than static, that the affidavit in support of the search warrant was not adequate. The court rejected the argument stating that the question was whether, given all the circumstances set forth in the affidavit, there was a fair probability that contraband or evidence of a crime would be found in the defendant's residence.

Issue: Did the affidavit for the search warrant establish probable cause that the evidence sought would be found in the place described at the time of the search?

Facts: Kearney sent child pornography images and videos to an undercover police officer over the internet through Yahoo messenger in May 2008. Investigators also connected the Yahoo messenger screen name to a MySpace account. The investigators established that those accounts belonged to Kearney and that he accessed them on May 21 and 22, 2008, from a particular IP address. Based on this information, investigators executed a search warrant at Kearney's house. Kearney agreed to talk with the officers during the search, and made a variety of statements, including that he knew the images and videos he sent to "Julie" depicted children under the age of 18. He also admitted to downloading child pornography and storing it on his computer. The officers seized five computers and a variety of associated equipment. Kearney pled guilty to all 18 counts while reserving his right to appeal the denial of his motion to suppress the evidence based on the argument that the affidavit submitted in support of the search warrant application did not demonstrate the existence of probable cause.

Holding: The court held that the officers had established probable cause in their search warrant application. Although Kearney's IP address was "dynamic," it was undisputed that his Yahoo and MySpace accounts were the conduits for the child pornography he transmitted to the undercover officer. Kearney's Yahoo account was accessed from that same IP address 288 times from April to May 21, 2008. Kearney's own expert witness testified that Internet service providers sometimes keep dynamic IP addresses for months or even years. It was reasonable to infer that whoever accessed these accounts on May 21 and 22, 2008, was also the user of these accounts earlier that month and in June 2008, when they were used to engage in communications with the undercover officer. Further supporting the existence of probable cause was the sheer number of times the Yahoo! account was accessed from IP address 68.116.165.4 during the period April 7, 2008, to May 21, 2008 – 288 times. The high number of accesses of the Yahoo! account from the same IP address over a relatively short period of time shortly before the May 20 to 22 period when it was clear that Kearney possessed the IP address supports a finding of probable cause here. Also noteworthy is that during a chat on June 13, 2008, "padraigh8" told "Julie" that his last name was "Carney" – a variant of "Kearney". The Court said that it was true the affidavit could have been drafted to make it indisputably clear that Kearney accessed the accounts on May 21 and 22, but that does not mean that there was a failure to establish probable cause.

U.S. v. Kearney, 672 F.3d 81 (2012)
http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=10-2434P.01A

Fourth Amendment – Plain View

Seizure of Marked $20 Bill Lawful under Plain View Doctrine

In this case, the object in question was visible to the naked eye during a lawful entry into the premises. Thus, the officer's handling of the bill satisfies the first prong of the plain view test. His actions also satisfy the third prong of the test; the bill was out in the open, and his access to it was unrestricted. The decisive requirement is the second prong: whether he had probable cause to manipulate the object. The probable cause standard was satisfied here. Even if it was assumed that the officer's lifting of the bill to eye level constituted a search, he had probable cause to handle the bill.

Issue: Was the seizure of a $20 bill lawful under the Plain View Doctrine?

Facts: A Providence, R.I., plain clothes detective purchased a $20 bag of crack cocaine from Dwight Paneto. The purchase was arranged through a middle man, Owens. Owens directed the detective to a house located at 103 Laura Street. The detective gave Owens a $20 bill that he had pre-marked with a small ink slash through the zero in the figure "20" appearing in the upper right corner of the bill. When Owens returned to the detective's car, he had a clear plastic bag containing crack cocaine which he gave to the detective. Owens was taken into custody and the detective and two other officers returned to the house at 103 Laura Street. The officers decided to conduct a "knock and talk," and they knocked on the door of the defendant's apartment, identified themselves, and were invited in by the defendant, Dwight Paneto. From the doorway, Paneto ushered the officers into a side room where the detective noticed a $20 bill on a coffee table. The detective immediately believed that the $20 bill was the marked bill that he had given Owens to fund the drug buy and said as much. He bent to pick it up the $20 bill, confirmed the presence of the slash mark through the zero, and seized the $20 bill. Paneto told the officers that the money was not his, and that they were free to search the apartment. Paneto later argued that both the consent to search and the fruits of the search itself were tainted by the detective's earlier manipulation of the $20 bill.

Holding: In its analysis, the Court pointed out that when an officer without a search warrant seeks to manipulate an object in plain sight, the relevant inquiry becomes whether the plain view doctrine would have sustained a seizure of the object itself. In this case the officers were invited into Paneto's apartment thus satisfying the "lawful entry" prong of the plain view test, and the $20 bill was out in the open and visible to the naked eye satisfying the third prong of the plain view test. What remained was whether the detective had probable cause to manipulate the object. The court stated that in the plain view context probable cause exists when the incriminating character of the object is *immediately apparent* to the police. The officer must have a belief based on a practical, nontechnical probability that the object is evidence of a crime. In this case, the detective immediately identified the $20 bill as his marked money by bending over the $20 bill, but before lifting it up. The $20 bill stood out and there is no evidence that any other currency was in sight. In addition, the detective knew that Owens had gone into the apartment with the marked $20 bill and returned with drugs.

The Court also noted that Owens had identified his source by an initial "D," and that when the defendant opened the door he referred to himself as "D." The court added that the denomination of the bill was clearly visible and the denomination of the bill matched

the denomination of the marked bill that the detective gave to Owens to purchase drugs. These facts and the fact that people usually keep bills of large denominations in wallets or purses, not simply lying around, added to the reasonableness of the detective's belief. All these factors gave rise to a reasonable degree of probability that the $20 bill was evidence of a crime, and even if the police officer's action of picking up a $20 bill from a coffee table in the defendant's apartment and lifting the bill to eye level constituted a search, the officer had probable cause to handle the bill. The seizure of the $20 bill was therefore lawful and the defendant's consent to the ensuing search was untainted.

U.S. v. Paneto, 661 F.3d 709 *(2011)*
http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=10-2412P.01A

Maine Case – Fourth Amendment – Terry Stop

Stop Predicated on Mistaken, but Reasonable Conclusions Lawful

The suspicion was predicated on two mistaken conclusions: that the officer said "the suspect" rather than "a subject," and that the defendant was someone other than who the officers thought him to be. These mistakes were objectively reasonable, made in good faith, and did not undermine the reasonableness of the suspicion.

Issue: Can reasonable suspicion of a violation of law, necessary to engage a *Terry* stop, be predicated on mistaken conclusions?

Facts: Police officers in Lewiston, Maine, responded several times to 26 Knox Street to deal with a domestic disturbance involving Gary Austin and Sherry Boston. At 2:50 a.m., officers responded to a call that Austin had returned to 26 Knox Street and was trying to gain access to his ex-girlfriend's apartment. Austin was located in front of the apartment complex and was given both a disorderly conduct warning and a criminal trespass warning. About 15 minutes later, Lewiston Officer Tyler Michaud spotted Austin in a closed park and served him with a civil citation. During both contacts, officers found Austin to be visibly agitated. A short time later, Officer Michaud and Officer Larry Maillet responded to an unrelated call on Main Street and Officer Maillet, who was unfamiliar with Austin, took the opportunity to ask Officer Michaud about Austin. During this conversation, Officer Michaud described Austin as a black male standing about six feet tall and weighing approximately 200 pounds. While the two officers were conversing, a police dispatcher reported that a man identifying himself as "Tyrone Miller" had called from a payphone proclaiming that he had killed a woman at 26 Knox Street.

Based on the events that had already taken place during the night, both Officer Michaud and Officer Maillet assumed "Tyrone Miller" was Gary Austin. In their separate vehicles, both officers responded to Knox Street. Officer Michaud arrived first and parked at an intersection about 200 feet from 26 Knox Street. While positioning his cruiser, he noticed a man crossing the street. The man appeared to be of average build and about five feet ten inches or six feet tall. Officer Michaud thought that this man might be Austin, but the dim lighting prevented him from making a positive identification. Officer Michaud radioed that he had seen "a subject" walking out of 26 Knox Street. Officer Maillet heard this broadcast and understood Officer Michaud to

have said that "the suspect" was on the street. After hearing the broadcast, Officer Maillet saw a lone pedestrian fitting the general description of Gary Austin on Knox Street. There was no one else in the immediate area and Officer Maillet stopped his car, stepped out with his gun drawn, and ordered the man to raise his hands, get down on his knees, and lie flat. The man complied. When the man was lying flat on his stomach, Officer Maillet handcuffed the man and performed a pat down frisk. This protective search revealed a 9 mm handgun tucked into the man's waistband. The weapon had not been visible when the officer first confronted the man. Officer Michaud ran up while Officer Maillet was conducting the pat-down search; he observed Officer Maillet remove the gun from the suspect's waistband, and only after Officer Maillet handed him the suspect's gun did he realize that the person in handcuffs was not Gary Austin. The individual stopped by Officer Maillet was Gregory Pontoo who was described as a 24–year–old black male of medium build, standing six feet tall, and weighing 185 pounds. Pontoo was arrested for possession of a concealed weapon.

A federal grand jury later indicted Pontoo on a charge of being a felon in possession of a firearm. Pontoo moved to suppress the gun, arguing that the stop was not justified at its inception because the officer lacked a reasonable suspicion that Pontoo was involved in criminal activity. Pontoon also argued that the stop was so intrusive as to constitute a *de facto* arrest for which no probable cause existed, and that even after discovering the concealed handgun, there was no probable cause to arrest.

Holding: The Fourth Amendment does not prohibit all searches and seizures, but only those that are unreasonable. Consistent with this view, a brief investigatory stop based on a reasonable suspicion that criminal activity may be afoot does not violate the Fourth Amendment, even in the absence of probable cause. A Terry stop must be accompanied by reasonable suspicion to be justified at its inception. Before the confrontation with Pontoo, Officer Maillet was aware of the domestic disturbance at 26 Knox Street, he knew that Austin's ex-girlfriend had called the police to report ongoing harassment by Austin, he was also aware that during that same overnight shift that Officer Michaud personally responded to two calls involving Austin and found Austin to be agitated. Officer Maillet also knew that a short time after the police received the harassment call from Austin's ex-girlfriend; they also received a call from a man identifying himself as "Tyrone Miller," proclaiming that he had killed a woman at 26 Knox Street. Both officers suspected that "Tyrone Miller" was in fact Gary Austin. As Officer Maillet proceeded down Knox Street, he spied the lone pedestrian and he noticed that the man fit the general description of Austin that he had been given minutes earlier by Officer Michaud. Officer Maillet had also heard Michaud's broadcast that he saw "a subject," but mistakenly thought Michaud had said "the suspect" and believed that Michaud was referring to Austin. Based on these facts, when Officer Maillet stopped his car, stepped out with his gun drawn, and ordered Gregory Pontoo to raise his hands, get down on his knees, and then lie flat, he had reasonable suspicion to believe that the man was Gary Austin, and that Austin may have committed the crime of murder.

It was also reasonable for the officer to conclude that the suspect was armed and dangerous and that a pat down for weapons was warranted. The fact that Officer Maillet's suspicion was predicated on two mistaken conclusions: that Officer Michaud

had said "the suspect" rather than "a subject," and that Pontoo was Austin did not undermine the reasonableness of his suspicion. Pontoo argued that there was nothing suspicious about his conduct; he was simply strolling down the sidewalk at 3:30 in the morning. But the lawfulness of the conduct that Officer Maillet observed does not dispel the reasonable suspicion supporting the stop. Pontoo may have been merely walking down the street when stopped, but Officer Maillet had a reasonable suspicion, based on the events of the evening, to stop a specific individual and his mistake that Pontoo was that individual was based on the description of Austin that the officer had been given.

It was a valid Terry stop and the discovery of the concealed handgun after performing a Terry stop furnished probable cause for arresting Pontoo. In cases in which the individual stopped is suspected of having just committed a murder, it is reasonable for an officer to conclude that he may be armed and dangerous; a pat-down for weapons is, therefore, warranted.

U.S. v. Pontoo, 666 F.3d 20 (2011)
http://caselaw.findlaw.com/us-1st-circuit/1587309.html

Maine Case – Fifth Amendment – Miranda – Custodial Interrogation

Naval NCO in Custody for Miranda Purposes; Admissions Suppressed

Any member of the armed services would reasonably have felt that he lacked free choice to end a conversation with police in the position of defendant, who was a member of the military, and therefore, defendant was in custody for Miranda purposes at his house at time he gave statements to police, where defendant's commander ordered defendant to return home where defendant found three police officers in control of his house under authority of a warrant and questioning his pregnant wife.

Issue: Was the suspect in custody for purposes of Miranda when he made incriminating statements to the police? Were Miranda warnings given to the suspect at the police station adequate to distinguish the later questioning from the unwarned interrogation at the house?

Facts: Rogers sold a computer in which the buyer found what he believed to be child pornography. He gave the material to the local police who contacted the Naval Criminal Investigative Service (NCIS) because Rogers was a non-commissioned naval officer at the Brunswick Naval Air Station. While Rogers was on duty, local officers obtained a search warrant for his home. Rogers's commanding officer ordered him to report to two NCIS agents, and then to return to his home. Once at home, Rogers remained outside in his driveway, spoke to the officers and admitted to downloading the child pornography. Rogers then agreed to go the police station for more questioning. At the police station, an officer read Rogers his *Miranda* rights; he waived them and made more incriminating statements. Rogers was charged with unlawful possession of child pornography. He moved to suppress the statements he made to the police arguing that the statements were given without the warnings required by *Miranda* while he was in police custody. The district court concluded that Rogers was not in custody at the house or at the police station, making *Miranda* inapplicable. Rogers pleaded guilty while reserving the right to appeal the district court's denial of his motion to suppress.

Holding: The Appeals Court disagreed, stating that Rogers was in custody for purposes of *Miranda*. Because the officers did not provide him with *Miranda* rights, the Court held that Rogers's statements made to the officers at the house should have been suppressed. The Court said that the officers deliberately planned to subject Rogers to questions, without the benefit of *Miranda* warnings under circumstances that would make it difficult for him to avoid answering them. They chose to execute their search warrant when Rogers was not home, then arranged for his commanding officer to order him to go home. A member of the armed services would not reasonably believe that he could disregard such an order, and once at his house would have felt that he had to answer the officers' questions. The court did not rule on whether or not Rogers's subsequent statements to the officers, at the police station, after he had been *Mirandized* were admissible. The court remanded the issue to the trial court to determine if the *Miranda* warnings given to Rogers at the police station were sufficient to convey to him that he was not required to speak to the officers, notwithstanding his earlier admissions.

The Court found that the most significant element in analyzing the situation was that the military had made certain that Rogers did not walk into the situation voluntarily. The Court explained that not only was Rogers under a military order to be at his home at the time the warrant was executed, but a reasonable person could not have doubted that the commanding officer had been aware of what was ahead for Rogers and was purposely ordering his subordinate into the company of the police and the Naval investigators who gave him his particular instructions at the Air Station to go home. Nor was anything said or done at the house to remove the force of the order and the fact that the Navy's own investigator (who took part in the later police station interrogation) refrained from joining in the questioning at the house prompts the supposition that she held back to avoid giving *Miranda* warnings.

U.S. v. Rogers, 659 F.3d 74 (2011)
http://caselaw.findlaw.com/us-1st-circuit/1581689.html

Maine Supreme Judicial Court

Fifth Amendment – Right to Counsel – Reinitiating Interrogation – Voluntariness of Waiver

Lawfulness of Admissions Dependent on Who Reinitiated Interrogation

The suppression court was wrong in evaluating the evidence and rendering its findings through the lens of the Shatzer 14-day standard. Because the break in custody central to the application of the 14-day standard was absent from this case, the Court should have employed the framework of other precedence in determining whether the defendant voluntarily reinitiated interrogation.

Issue: Whether a MDEA agent initiated interrogation of a criminal defendant who had asserted his right to counsel, while in the agent's custody, in violation of the Fifth Amendment, and article I, section 6 of the Maine Constitution.

Facts: MDEA agent William Campbell investigated the importation of methamphetamine and other drugs from Canada. During the investigation, Agent Campbell received information that Scott Knowlton was involved in a drug-trafficking operation. Agent Campbell approached Knowlton at his place of work, told him that he needed to speak with him, and asked Knowlton to accompany him to the Caribou Police Department. The agent read Knowlton his *Miranda* rights and Knowlton asked to speak to an attorney. Knowlton was placed under arrest for aggravated trafficking of scheduled drugs and, about 2½ hours after arriving at the police station, Knowlton was placed in a car for the drive to the jail in Houlton. About 45 minutes into the hour-long drive to the jail, Knowlton asked Agent Campbell for the use of his cell phone to call his mother. When the telephone call ended, Knowlton told Agent Campbell that his mother had encouraged him to speak with the police and that he wanted to cooperate, but he was scared.

When they reached Houlton and were just a couple of blocks away from the jail, Agent Campbell raised the issue again about speaking with the police, telling Knowlton that if after speaking with an attorney he wanted to speak with the police, to let the police know and he would arrange it. A few moments later Knowlton said, "You know, screw it. I want to talk." Agent Campbell asked Knowlton if that meant he was prepared to speak with him without an attorney present and Knowlton acknowledged that was what he meant. Agent Campbell took Knowlton to the MDEA offices located a short distance from the jail, and prepared a written waiver of rights form for him to sign. On the form that Knowlton signed, he indicated that he had previously invoked his right to counsel, but that after speaking with his mother, he had changed his mind and was now prepared to speak with the officer without an attorney. The time period between Knowlton invoking his right to counsel at the Caribou Police Department and his subsequent written waiver at the MDEA offices in Houlton was approximately five hours. During those five hours, Knowlton was continuously in police custody and at no time during this period did he confer with a lawyer. After signing the waiver, Knowlton made incriminating statements which he later moved to suppress.

The Superior Court granted the motion to suppress the statements concluding that it was Agent Campbell who had initiated an exchange about interrogation with Knowlton, finding that Knowlton "remained emotionally vulnerable;" that it was "Agent Campbell who first spoke of the issue after Knowlton had invoked his rights;" and that during the first 45 minutes of the ride to Houlton, Knowlton had not initiated further communication about speaking with the police. The court also noted that it was "difficult to know whether Knowlton truly had a change of heart or whether he remained subject to the inherently coercive and mounting pressures of his custodial circumstance when he signed the *Miranda* waiver." The Superior Court concluded that the State had failed to prove that Knowlton's waiver of his right to counsel was voluntary because Agent Campbell had resumed his questioning of Knowlton just a few hours after Knowlton had invoked his right to counsel, far less than the 14-day standard required by the U.S. Supreme Court's 2010 *Shatzer* decision. The State appealed the court's decision to suppress Knowlton's statements, arguing that the court erred in applying the Shatzer 14-day standard because it only applies to situations where there is a break in custody, which did not occur in this case.

Holding: The Law Court agreed with the State's argument and held that the Superior Court was wrong when it evaluated the evidence and based its findings on the *Shatzer* 14-day standard. Precedence dictates that the basis upon which Knowlton's suppression motion rests is whether it was Knowlton who initiated an interrogation by telling Agent Campbell that he wanted to cooperate with the police. This statement can be viewed as having "initiated" a dialogue about the investigation, similar to a defendant asking what was going to happen to him. Although the question of whether Knowlton's statement initiated interrogation is ultimately a question of law, it can only be answered after a careful examination of all relevant facts and the reasonable inferences that can be drawn from them. If the Superior Court concludes on remand that Knowlton did "initiate" the reopening of the interrogation, the inquiry then turns to whether Knowlton's subsequent waiver of his *Miranda* rights was voluntary in the sense of it being knowing and intelligent. Accordingly, the Law Court vacated the judgment of the Superior Court and remanded the case for the Superior Court to reconsider the evidentiary record and to apply the appropriate standards of precedence – not *Shatzer* – in determining whether the defendant initiated a dialogue with the agent during the drive to the jail.

State v. Knowlton, 2012 ME 3, 25 A.3d 1139 (2012)
http://www.courts.state.me.us/opinions_orders/opinions/2012_documents/12me3kn.pdf

Summary of Reinterrogation Rules after Invocation of Right to Counsel

When a suspect in Miranda custody invokes the right to counsel, all questioning by the police must immediately cease until:

• Legal counsel is actually present at any subsequent interrogation, Miranda warnings are repeated, and a valid waiver is obtained; or

• The suspect initiates further communications with the police and police give fresh Miranda warnings and obtain a valid waiver; or

• There is a break in Miranda custody that lasts at least 14 days, and police give fresh Miranda warnings and obtain a valid waiver.

Fourth Amendment – Vehicle Stop – Reasonable Suspicion of Violation of Law

Vehicle Stop found to be Lawful after Suppression by District Court

The threshold for demonstrating an objectively reasonable suspicion necessary to justify a vehicle stop is low, in that 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.

Issue: Was the vehicle stop supported by a reasonable suspicion of a violation of law?

Facts: At about 12:30 a.m., Officer Eric McLaughlin of the Bar Harbor Police Department turned onto Eagle Lake Road in Bar Harbor and began following a vehicle driven by Cory LaForge. Officer McLaughlin testified that the weather and visibility that night were both good. Eagle Lake Road, which McLaughlin described as a "twisting, winding road with quite a few hills," is approximately five miles long. McLaughlin followed LaForge's vehicle for approximately four miles before stopping it; during that time there was no other traffic that he could recall. Over the course of the four-mile stretch, McLaughlin observed six "line violations" occurring in three groups: (1) On a "straighter" section of the road, the vehicle went onto, but not over, the double-yellow centerline, then corrected, then went onto the centerline again; (2) "some distance later," the vehicle's passenger-side tires completely crossed the white fog line; the vehicle then returned to its lane, then immediately crossed the fog line again; (3) farther on, the vehicle's driver-side tires completely crossed the double-yellow centerline, the vehicle corrected, then it crossed the centerline again.

After observing the six line violations, McLaughlin stopped LaForge's vehicle. The stop was not based on speed or any other factor apart from the line violations. The officer was unable to testify as to where along the four-mile stretch of Eagle Lake Road the violations had occurred, or how much time or distance separated the three groups of violations. He wrote a report the same night with the aid of contemporaneous notes. The district court found McLaughlin's testimony at the suppression hearing credible. LaForge was charged with criminal operating under the influence. His motion to suppress any evidence obtained as a result of the stop of his vehicle was granted by the district court, which found that given the totality of the circumstances, which included both McLaughlin's observations and the absence of other indicia of impairment, all of the driving errors appeared trivial. The district court said that even when taken together, and even given the low standard of justification for an investigatory stop, the stop of LaForge was objectively unreasonable. The State appealed.

Holding: Finding that the officer indeed articulated a reasonable suspicion of a violation of law, the Law Court vacated the suppression order and remanded the case back to the district court for reconsideration consistent with the Law Court's finding. The decision noted that a reasonable suspicion of a violation of law is much less than a preponderance, or even probable cause; the suspicion need only be more than speculation or an unsubstantiated hunch. The officer's articulated observations, made here in three distinct groups, amounted to considerably more than bare speculation or an

unsubstantiated hunch that LaForge was impaired. Accordingly, the Law Court concluded that, as a matter of law based on the facts found by the district court judge, that the stop of LaForge's vehicle was justified based on an objectively reasonable articulable suspicion.

State v. LaForge, 2012 ME 65 (2012)
http://www.courts.state.me.us/opinions_orders/opinions/2012_documents/12me65la.pdf

Fifth Amendment – Voluntariness of Confession

Incriminating Statements were Voluntary, thus Admissible

A voluntary confession is one that is the result of a free choice of a rational mind, that is not a product of coercive police conduct, and whose admission, under all the circumstances would be fundamentally fair.

Issue: Were the defendant's incriminating statements coerced and, thus, inadmissible?

Facts: State Police Detective Joshua Haines questioned Gould about allegations that Gould had sexually abused his step-daughter. The interview took place in Haines's police car, which was parked at Gould's parents' house, and was recorded. A DHHS caseworker was present for the first half of the interview. Gould was not handcuffed, and he was not impaired by drugs or alcohol. Haines read Gould his *Miranda* rights, asking whether he understood each one. Gould said yes and agreed to answer Haines's questions, even though Haines was clear that Gould did not have to talk to him and that he could stop answering questions at any time. Until about 30 minutes into the interview, Gould denied having had any sexual contact with the victim, and at that point, the caseworker departed. The questioning continued, with Haines telling Gould that he had no doubt that Gould had engaged in sexual activity with the victim and that he wanted to understand why it happened. Haines said he knew that Gould's DNA would be found on items collected for testing. He asked if Gould was "man enough" to admit what happened and that he needed help, stating "we'll give you all the help we can get," and asked if the victim had done anything to provoke him. Gould responded that the victim had initiated sexual contact with him. He made further incriminating statements, acknowledging that his sexual activity with the victim had begun before she turned 14 and continued until two days before the interrogation, when she was sixteen. (The victim later testified at trial that the sexual abuse occurred from the time she was 11 until she was 16.) Haines suggested to Gould that he should write an apology letter to the victim, which Gould then wrote on paper provided by Haines. Gould was arrested and indicted for gross sexual assault. He pleaded not guilty, and moved to suppress the statements he made to Haines as involuntary. After a hearing, the trial court denied the motion, finding that the interview was "conversational and relaxed," Gould "participated freely," his demeanor did not change throughout the questioning, and he was not promised leniency in exchange for confessing. Gould appealed, contending that his confession was involuntary because it was induced by Detective Haines telling Gould that he would "get him help" and that the State would have DNA evidence that would establish his guilt.

Holding: The Law Court held that the record supported the trial court's findings that Detective Haines was not confrontational or aggressive with Gould and that "[t]he interview was conducted in a very conversational and relaxed manner." Gould was not in custody during the questioning. Haines read Gould his *Miranda* rights nevertheless, and Gould waived them. The Court found that Gould "participated freely in the interview and volunteered a substantial amount of what he apparently believed was relevant information." Further, Detective Haines "never made any threats to Gould nor did he make any promises of leniency or favorable treatment in his case if Gould admitted his guilt." Detective Haines's suggestions that the State would get Gould help, and that he expected to have DNA evidence to prove Gould's guilt at trial, were neither unfairly coercive nor misleading. Because the record supports the court's findings, and the totality of the circumstances demonstrates that Gould's confession was voluntary, the trial court properly denied the motion to suppress.

State v. Gould, 2012 ME 60 (2012)
http://www.courts.state.me.us/opinions_orders/opinions/2012_documents/12me60go.pdf

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

Fourth Amendment – Screening at Sobriety Checkpoint

Standard for Checkpoint Secondary Screening is Reasonable Suspicion

When the defendant in her vehicle approached the checkpoint at 2:00 a.m., traveling at a rate that was ten miles per hour over the speed limit, and then admitted to consuming alcohol, she created an objectively reasonable suspicion that she was driving while impaired, and a detention for further investigation was justified under the Fourth Amendment.

Issue: What constitutional standard applies when deciding whether a motorist who has been lawfully stopped at a sobriety checkpoint may be detained for secondary screening?

Facts: Between the hours of about 9 P.M. and 3 A.M., the Old Town Police Department conducted an OUI roadblock, or sobriety checkpoint, on Stillwater Avenue in Old Town. The six officers assigned to the detail were under instructions to stop every vehicle traveling in both the directions on Stillwater Avenue. The officers were instructed to approach each vehicle as it stopped at the roadblock, and engage in a brief"\ conversation with the operator that, in most cases, did not extend beyond two minutes. At approximately 2 A.M., Officer Christine McAvoy observed a vehicle approaching the roadblock faster than usual. She estimated its speed at 35 M.P.H. in an area where the

posted speed was 25 M.P.H. The vehicle stopped properly, and Officer McAvoy introduced herself to the driver, Mallory McPartland, and explained that the Old Town Police Department was conducting an OUI checkpoint. Officer McAvoy did not observe the smell of alcohol, slurred speech, open container, watery eyes, or any other of the usual indicia of alcohol consumption. In conversing with Officer McAvoy, however, McPartland stated that she had been to a Bangor restaurant or pub and consumed "a martini" at about 10:00 P.M. Based on McPartland's admission that she had consumed alcohol and the observation by the officer that McPartland had been speeding as she approached the checkpoint, the officer directed her to pull to the side of the road for additional questioning and screening. Her arrest for OUI followed. McPartland filed a suppression motion in which she challenged Officer McAvoy's authority to refer her to the side of the roadway for additional screening. (McPartland did not challenge the constitutional validity of the roadblock.) The suppression court denied her motion to suppress the evidence resulting from the stop, and McPartland appealed.

Holding: The Law Court decided that in order for the officer to direct McPartland to pull to the side of the road for additional questioning and screening at such a checkpoint, the officer must have an objectively reasonable suspicion that the driver was driving while impaired, and an admission of consuming "a martini," the time of night, and the speed at which McPartland approached the checkpoint at 2:00 A.M. created an objectively reasonable suspicion that she was driving while impaired. The Court pointed out that in prior decisions where a motorist has been stopped, it has required that the officer have a reasonable articulable suspicion of impairment before extending a motorist's detention in order to undertake field sobriety tests. The State has the burden of demonstrating that an officer's actions during the course of a traffic stop "were objectively reasonable under the circumstances." An objectively reasonable articulable suspicion that a driver is operating her vehicle under the influence, even to the slightest degree, is sufficient to refer the driver for secondary screening for impairment. A driver's admission that she has consumed alcohol may be considered by a police officer in determining whether the officer has a reasonable articulable suspicion that the driver might be impaired. In addition, operation of a vehicle during the early hours of the morning, and speeding can both be suggestive of impairment.

State v. McPartland, 2012 Me 12(2012)
http://www.courts.state.me.us/opinions_orders/opinions/2012_documents/12me12mc.pdf