Recent Court Decisions Relevant to Maine Law Enforcement Officers

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

2019 CASE LAW UPDATE

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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 2019 New Law Update constitute the training outline of the Maine Criminal Justice Academy for recertification training in law updates for the year 2019.

Preparers' Note

The preparers of this document reviewed the published decisions of the United States Supreme Court, the United States Court of Appeals for the First Circuit, and the Maine Supreme Judicial Court Sitting as the Law Court as they relate to criminal procedure for the period September 2018 through August 2019. 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 particular decision is of interest to the reader, the entire text of the decision is available by clicking on the relevant Internet link. Given that court decisions are generally very fact specific, this is highly recommended 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 offered meaningful comments and suggestions, and who is always available throughout the year 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

First Amendment – Retaliatory Arrest – Probable Cause

Does Probable Cause Defeat a Retaliatory Arrest Claim under 42 U.S.C. 1983?

The existence of probable cause for an arrest will ordinarily bar a claim that the arrest was in retaliation for protected First Amendment speech. The Court's opinion provided for a small exception to this general rule where officers have probable cause to make arrests, but typically exercise their discretion not to do so, particularly with arrests made for very minor offenses.

The U.S. Supreme Court ruled that an arrestee's claim that two police officers retaliated against him for his protected First Amendment speech by arresting him for disorderly conduct and resisting arrest could not survive summary judgment.

The incident occurred during a winter sports festival, "Arctic Man," a raucous winter sports festival held in a remote part of Alaska. One of the officers was speaking with a group of attendees at the festival when the intoxicated plaintiff started shouting at them not to talk to the police. When the officer approached him, the plaintiff began yelling at the officer to leave. Rather than escalate the situation, the officer left. Minutes later, the plaintiff approached a second officer in an aggressive manner while he was questioning a minor, stood between him and the teenager, and yelled with slurred speech that the officer should not speak with the minor. When the plaintiff stepped toward the officer, the officer pushed him back.

The first officer saw the confrontation and arrested the plaintiff after which the plaintiff claimed that the first officer said, "Bet you wish you would have talked to me now." This alleged statement was the only evidence of retaliatory animus identified by the U.S. Court of Appeals for the Ninth Circuit. But that allegation said nothing about what motivated the second officer, who had no knowledge of the plaintiff's prior run-in with the first officer. In any event, the Court found that the retaliatory arrest claim against both officers could not succeed because the officers had probable cause to arrest him. The existence of probable cause to arrest defeated his First Amendment claim as a matter of law.

Under the Court's analysis, the existence of probable cause for an arrest will ordinarily bar a claim that the arrest was in retaliation for protected First Amendment speech. The Court's opinion did provide for a small exception to this general rule where officers have probable cause to make arrests, but typically exercise their discretion not to do so, particularly with arrests made for very minor offenses. The presence of probable cause will not bar a claim that the arrest was in retaliation for protected First Amendment speech when there is objective evidence that the plaintiff was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech were not.

Nieves v. Bartlett (May 28, 2019)
https://www.supremecourt.gov/opinions/18pdf/17-1174_m5o1.pdf

Fourth Amendment – Warrantless Blood Draw – Unconscious Motorist

Is a Warrantless Blood Draw from an Unconscious Motorist Constitutional?

When a drunk-driving suspect is unconscious and cannot take a breath test, the exigent circumstances doctrine generally permits a blood test without a warrant.

After a preliminary breath test registered a BAC triple Wisconsin's legal limit for driving, police took Mitchell to a police station for a more reliable breath test. By the time Mitchell reached the station, he was too lethargic for a breath test, so the officer drove him to a nearby hospital for a blood test. Mitchell was unconscious by the time he arrived at the hospital, but his blood was drawn anyway under a state law that presumes that a person incapable of withdrawing implied consent to BAC testing has not done so. The blood analysis showed Mitchell's BAC to be above the legal limit. Mitchell moved to suppress the results of the blood test claiming that it violated his Fourth Amendment right against "unreasonable searches" because there was no warrant.

Relying on the exigency exception to the warrant requirement, the U.S. Supreme Court found that the delay created by circumstances attendant to an unconscious impaired driver and the unavailability of a breath test in that situation, justifies a warrantless blood draw. Thus, it appears that under the Fourth Amendment, warrantless blood draws are now an exigency exception when the impaired driver is unconscious. BAC tests are Fourth Amendment searches and a warrant is normally required but the "exigent circumstances" exception allows warrantless searches to prevent the imminent destruction of evidence when there is a compelling need for official action and no time to secure a warrant. The Court went on to say that there is clearly a "compelling need" for a blood test of a drunk-driving suspect whose condition deprives officials of a reasonable opportunity to conduct a breath test.

Mitchell v. Wisconsin (June 27, 2019)
https://www.supremecourt.gov/opinions/18pdf/18-6210_2co3.pdf

United States Court of Appeals for the First Circuit

Fourth Amendment – Vehicle Inventory – Sufficiency of Evidence to Support Verdict

Search of Vehicle was Legitimate Exercise of Vehicle Inventory Exception

The handgun was the fruit of a legitimate vehicle inventory following the defendant's arrest in the vehicle. Where vehicle impoundment is reasonable for the circumstances, the fact that the police may also have an investigatory motive or a less intrusive means of addressing the vehicle does not render the seizure and inventory impermissible. The government satisfies its burden to show knowing possession by showing that the defendant had constructive possession of the weapon.

Charged in federal court in New Hampshire with being a felon in possession of a firearm, Davis moved to suppress the evidence of a handgun found in a vehicle he was operating. The trial court denied the motion, ruling that the handgun was the fruit of a legitimate vehicle inventory following Davis' arrest. The court's determination was based on testimony of officers that the vehicle was illegally parked and posed a traffic hazard, and that no willing person was available to remove the vehicle at the time of Davis' arrest. The court also noted that when one of three officers at the scene discovered the handgun in the vehicle, he was reaching back into the car to place the keys in the ignition to facilitate a tow, rather than acting with an investigatory purpose. Accordingly, the court said that handgun's discovery was pursuant to the community caretaking exception. Davis appealed the denial.

The First Circuit Court of Appeals concurred with the trial court's finding. Of note was the officers' compliance with a departmental written policy providing guidelines for conducting an inventory search of a vehicle. The court also noted that where vehicle impoundment is reasonable for the circumstances, the fact that the police may also have an investigatory motive or a less intrusive means of addressing the vehicle does not render the seizure and inventory impermissible.

Davis also argued that the evidence presented at trial was insufficient because both the weapon and the vehicle belonged to his fiancée and that he had no knowledge that his fiancée owned the weapon or that it was in the vehicle. The appeals court rejected the argument, stating the government satisfies its burden to show "knowing possession" by showing that the defendant had "constructive possession" of the weapon by exercising dominion or control over the area in which contraband is found, and that there was some action, word, or conduct that linked the person to the contraband. The court said that evidence presented at trial supported the reasonable inference that Davis constructively possessed the weapon in that he enjoyed a close relationship with the vehicle's owner and had regular access to the car, and his post-arrest statements that he or his fiancée had a permit for the weapon and that he was "only driving" with it could reasonably be interpreted as demonstrating his awareness of both the handgun's existence and its presence in the vehicle. There was also evidence presented at trial that indicated that Davis attempted to conceal the area of the handgun with his scarf.

U.S. v. Davis (November 20, 2018)
http://media.ca1.uscourts.gov/pdf.opinions/17-1692P-01A.pdf

Fourth Amendment – Consensual Encounter – Terry Stop

Was the Officer's Initial Contact Consensual or an Unlawful Seizure?

While the initial interaction in asking the occupants of the vehicle for their names and what they were doing in the parking lot so late at night constituted a consensual encounter, a seizure occurred at the point when there was reasonable suspicion that the vehicle was stolen, which was based on the defendant's response that he carried no identification and that the vehicle did not belong to him.

Shortly after midnight, an officer saw a vehicle parked in a mall apart from any other vehicle and 100-150 feet from a Taco Bell restaurant that was still open. The officer drove by a second time about 20 minutes later and the vehicle was still there. The officer drove up to the vehicle and, without blocking it, illuminated the vehicle, and activated the cruiser's rear-facing blue lights, which the operator of the vehicle did not observe. He approached the vehicle and illuminated the interior with a flashlight and asked the operator and a passenger their names, which they provided. The officer recognized the driver's name – Eric Tanguay – as that of the name of a reported drug user and dealer. He asked the occupants what they were doing in the parking lot so late at night, and they responded that they were eating food from Taco Bell. The officer asked both for their driver's licenses and both said that they were not carrying identification. Tanguay also said that he did not own the vehicle. When the officer went back to his cruiser to run a records check, he noticed the passenger crouch down and reach for something under the front passenger seat. The officer immediately returned to the vehicle and again asked Tanguay for identification. This time, Tanguay said his license was in a backpack in the trunk of the vehicle, and he requested permission to get it. The officer agreed that Tanguay could show him where he could find the license in the trunk but, for safety purposes, the officer would be the one to retrieve it.

When Tanguay opened his door to accompany the officer, the officer saw what appeared to be the butt end of a gun stashed in the driver-side door. Tanguay and the officer walked to the rear of the vehicle and opened the trunk. The officer retrieved Tanguay's license from a wallet stowed in a small pocket of a backpack found in the trunk. While getting the license, the officer noticed that the wallet contained a considerable sum of cash (later determined to be $2,800) and that the large, main compartment of the backpack was padlocked. When asked about the gun in the driver-side door, Tanguay said it was a BB gun. The officer ordered the passenger out of the vehicle and confirmed that the weapon was in fact a BB gun. The officer obtained Tanguay's consent to search the vehicle. Under the passenger seat, he found a partially open sunglasses case, containing a loaded hypodermic needle, a pill, and Narcan. When confronted with this discovery, Tanguay informed the officer that his passenger was a drug user and was likely carrying drugs. The officer next asked about the padlock on the backpack. Tanguay became visibly nervous and stated that an unknown individual had placed the padlock there. At this point, the officer arrested Tanguay for possession of a controlled substance.

At the police station, the officer again asked Tanguay about the backpack. Tanguay admitted that it was his but maintained that someone else had padlocked it. He also stated that he believed some other person had put illegal items in the bag. Tanguay consented to a search of the backpack and after removing the lock with bolt cutters, the officer searched the backpack and found prescription pills, fentanyl, methamphetamine, a scale, baggies, rubber bands, a marker, and mail posted to Tanguay. A federal grand jury in New Hampshire indicted Tanguay for possession with intent to distribute a controlled substance. Tanguay filed a motion to

suppress the evidence, arguing that the officer lacked reasonable suspicion to initiate and continue the inquiries that led to the discovery of the evidence. The district court denied the motion and Tanguay appealed.

The motion to suppress raised two questions: (1) When did the officer's interaction with Tanguay become a non-consensual, investigatory stop? (2) When did the officer acquire the requisite reasonable suspicion to conduct such a stop?

The appeals court noted that it previously held that a driver's inability to provide identification and a legible vehicle registration provides a sufficient basis to suspect that a vehicle is stolen. Accordingly, the defendant's failure to produce a driver's license, coupled with his admission that he was not the owner of the vehicle, provided the officer with reason to believe that something was amiss, and that the vehicle may have been stolen. The fact that the officer did not claim to believe that the vehicle was stolen is immaterial. The court found that when Tanguay initially failed to produce a driver's license and indicated he was not the owner of the vehicle, the officer was justified in conducting a non-consensual, investigative *Terry* stop and the officer did not exceed the permitted scope of that investigation before he acquired probable cause to arrest Tanguay.

U.S. v. Tanguay (March 8, 2019)
http://media.ca1.uscourts.gov/pdf.opinions/18-1271P-01A.pdf

Fourth Amendment – Third Party Doctrine – No Reasonable Expectation of Privacy

Warrantless Acquisition of Internet Provider Subscriber Information and IP Addresses

The "third-party doctrine" holds that when a person voluntarily shares information with a third party – in this instance the service provider – the person loses any reasonable expectation of privacy in the information.

An agent of Homeland Security in Portland obtained without a warrant or subpoena subscriber and IP addresses from Kik, an application used for instant messaging, pursuant to a child pornography investigation. Location information from two internet providers, obtained via an administrative summons, resulted in the arrest of Hood.

Hood moved to suppress the evidence gathered from Kik and the two internet providers, claiming that the government violated the Fourth Amendment by acquiring the information without a warrant. In response, the government argued that the third-party doctrine obviated the need for a warrant. The "third-party doctrine" holds that when a person voluntarily shares information with a third party, in this instance the service provider, the person loses any reasonable expectation of privacy in the information. The trial court agreed and rejected Hood's motion to suppress. Hood appealed to the First Circuit, where the government argued that the trial court correctly ruled that Hood lacked a reasonable expectation of privacy in information he previously and voluntarily provided to third parties. Hood agreed that he voluntarily disclosed the information but argued that the Supreme Court's recent decision in *Carpenter*[1] declared such information to be exempt from the third-party doctrine.

[1] *Carpenter v. United States*, 138 S. Ct. 2206 (2018) – See the 2018 Case Law Update.

However, the Appeals Court pointed out that the contested information in *Carpenter* was cell-site location, which traced the defendant's movements across nearly 13,000 specific location points during a 127-day span. The Supreme Court held in *Carpenter* that the government's acquisition of the cell-site location information from the carrier constituted a search for which the government needed a warrant, because the defendant retained a reasonable expectation of privacy in the information. The Appeals Court also rejected Hood's argument that the IP address data that the government obtained from Kik without a warrant was not materially different from the cell-site location information that was at issue in *Carpenter*. The court noted that an internet user generates IP address data only by making the affirmative decision to access a website and, further, the IP address data that the government acquired from Kik did not itself convey any location information. By contrast, as noted in *Carpenter*, every time a cell phone receives a call, text message, or email, the cell phone pings cell-site location information to the nearest cell site tower without the cell phone user doing anything, and even a cell phone sitting untouched in a person's pocket is continually chronicling that user's movements throughout the day.

U.S. v. Hood (April 3, 2019)
http://media.ca1.uscourts.gov/pdf.opinions/18-1407P-01A.pdf

Fourth Amendment – Curtilage – Exigent Circumstances – Validity of Search Warrant Affidavits

Was Warrantless Entry into Curtilage Constitutional? Were Warrants Valid?

When law enforcement deals with the type of evidence that naturally dissipates over time in a gradual and relatively predictable manner, exigent circumstances obviate the need for a search warrant. The defendant failed to show intentionality and materiality for any single misstatement or omission contained in the affidavits.

Gregory Owens of Londonderry, New Hampshire, was convicted in federal court in Maine on charges of interstate domestic violence and discharge of a firearm during and in relation to a crime of violence. In the middle of the night, he entered a home in Saco where his wife was staying with friends and shot her three times and another resident several times, while a third resident hid in a locked bedroom that Owens was unable to breach. Suspecting that Owens was the assailant, police in Maine contacted police in Londonderry and two officers went to the Owens residence to verify the presence of two vehicles. Under the cover of darkness, one of the officers entered the driveway to Owens' residence and placed his hand on a vehicle belonging to Owens, finding the hood and grill to be warm.

After his indictment, Owens filed a motion to suppress evidence gathered as the result of the entry into his property, as well as a motion to suppress the fruits of warrants obtained and executed for his vehicles and house. He argued that the New Hampshire officer's entry into his driveway and touching his parked vehicle constituted an illegal search of the curtilage. He also claimed that the affidavits on which four search warrants were based contained false or misleading information The trial court denied the motions to suppress, and Owens appealed those decisions to the First Circuit Court of Appeals.

The entry into the driveway. While reviewing the factors traditionally considered by a court to determine curtilage[2], the appeals court said there was no need to address the factors because the action by the New Hampshire officer was based on an exigency. While the search of a home or its curtilage generally requires a warrant, there are exceptions to the warrant requirement including that of exigent circumstances. The court said that the New Hampshire officer faced such circumstances when he entered the driveway and placed his hand on Owens' vehicle. The court pointed out that it is not unprecedented to make a finding of exigency based on a naturally occurring event's destructive consequence over critical evidence. Here, law enforcement dealt with the type of evidence that naturally dissipates over time in a gradual and relatively predictable manner. Accordingly, it was reasonable for the New Hampshire officer to believe that any warmth emanating from the vehicle – the evidence – would dissipate before he could obtain a search warrant.

The search warrants. The appeals court noted that affidavits supporting search warrants are presumptively valid, and a defendant may rebut this presumption and challenge the veracity of a warrant affidavit at a pretrial hearing commonly known as a *Franks* hearing.[3] The appeals court concurred with the trial court's denial of the motion to suppress and its denial to convene a hearing. Its decision was based on the trial court's detailed assessment of Owens' claims as to each misstatement and omission he identified in the affidavits. The trial court concluded that Owens failed to show intentionality and materiality for any single misstatement or omission contained in the affidavits. Specifically, it found that the misstatements and omissions were either the result of negligence or innocent mistakes or had no bearing on the probable cause determinations.

U.S. v. Owens (February 26, 2019)
http://media.ca1.uscourts.gov/pdf.opinions/16-1945P-01A.pdf

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[2] In determining whether a specific part of a house falls within its curtilage, the court considers (1) the proximity of the area claimed to be curtilage to the home, (2) whether the area is included within an enclosure surrounding the home, (3) the nature of the uses to which the area is put, and (4) the steps taken by the resident to protect the area from observation by people passing by.

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

Maine Supreme Judicial Court

Fourth Amendment – Search Warrant – Staleness – Particularity of Descriptions

Was Information Stale and Were the Descriptions of Places and Items Sufficient?

Whether probable cause still exists at the time police request a warrant is determined not by the mere passage of time but by the nature of the evidence and considering the unique facts and circumstances of the case at hand. The warrant's description of electronic devices was not overly broad.

A detective with the State Police Computer Crimes Unit obtained a warrant to search for child pornography on the premises of Christopher Roy 13 days after learning the IP address of a computer used on a file-sharing network to download child pornography files was that of a computer at Roy's residence. The address matched that of Roy on file with the Bureau of Motor Vehicles. The police executed the warrant and seized nearly 600 sexually explicit images of children, ages 1-9 years, stored on digital devices.

A grand jury charged Roy with eight counts of child pornography. He moved to suppress the evidence seized pursuant to the search warrant. The court denied the motion. Thereafter, Roy entered a plea to three counts and the State dismissed the remaining five, while also leaving Roy free to appeal the motion to suppress. He did so, arguing that the trial court was wrong in not suppressing the seized evidence because the information in the warrant affidavit was stale, failed to describe items presumptively protected by the First Amendment under a "scrupulous exactitude" standard, and failed to describe the places to be searched and the items to be seized with sufficient particularity.

Staleness. The Law Court reiterated that probable cause exists when, based on the totality of the circumstances, there is a *fair probability* that contraband or evidence of a crime will be found in a particular place. The court added that to meet this standard, the affidavit supporting the warrant must set forth some "nexus" between the information upon which the warrant relies and the location of the property to be seized. Whether probable cause still exists at the time a warrant is requested is determined not by the mere passage of time but by the nature of the evidence and considering the unique facts and circumstances of the case at hand. As cited in other child pornography cases, the opinions of experts support the assertion that those who collect child pornography are "likely to retain the images" for prolonged periods, sometimes "indefinitely." In this case, the detective included in his affidavit his training and investigatory experience in child pornography cases and a description of how electronic forms of child pornography are commonly received, collected, and retained for considerable lengths of time. The Law Court determined that the trial court had a substantial basis on which to conclude that the computer files of interest identified in the affidavit would still be in Roy's possession on his computer or accessible by his electronic devices. The information in the affidavit and relied upon by the issuing judge was not stale.

Roy next argued that the search warrant was constitutionally deficient in that (1) it did not describe the items to be seized with "scrupulous exactitude," resulting in the seizure of material protected by the First Amendment for the ideas they contained, and (2) it otherwise failed to describe the places to be searched and the items to be seized with sufficient particularity.

Scrupulous Exactitude. The Fourth Amendment requires "the most scrupulous exactitude" when the First Amendment may protect the things police wish to seize, such as images, books, or magazines. Put simply, when the First Amendment protects such items, meticulous accuracy is the standard for describing the items. However, the scrupulous exactitude standard is not an issue when, as in this case, the materials the police wish to seize are sought as evidence of a crime and not for the ideas that they contain. The Law Court pointed out that the warrant authorized the seizure of certain items because there was probable cause to believe they contained evidence of Roy's illegal possession and dissemination of sexually explicit depictions of minors, not because of any particular ideas they might contain.

Sufficient Particularity. Roy also argued that, even if the scrupulous exactitude standard did not apply, the warrant was overbroad because it (1) authorized an expansive search of all "computers, portable electronic devices and digital media of any kind" located on any person or at any place on Roy's property at the time of the search, and (2) it authorized a search for and seizure of collections of photographs or magazines containing images of children and or adolescents. The court disagreed with Roy's characterization, finding that the warrant's description of materials and electronic devices was not overly broad.

State v. Roy (January 29, 2019)
https://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2019/19me016.pdf

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Fourth Amendment – Warrantless Blood Draw – Exigent Circumstances

Were Two Warrantless Blood Draws after Three Failed Breath Tests Constitutional?

The exigent circumstances justification for warrantless searches applies when there is a compelling need to conduct a search and insufficient time in which to secure a warrant. The State has the burden of proving, by a preponderance of the evidence, that exigent circumstances existed, and that the exigency was not one engineered by law enforcement.

At the time of his arrest for OUI, Christopher Martin was in possession of a large amount of money, which the arresting officer began counting in Martin's presence. Martin regularly interrupted the counting process and repeatedly requested that the officer count the money again in what the officer believed was an attempt to prolong the time it took to complete the count. An hour passed from the time of the arrest until arrival at the police station and three failed attempts to obtain a valid breath test. Martin belched during the first monitoring period, requiring the officer to restart the period. Martin belched during a second waiting period and complained of indigestion, although he had not exhibited any signs of digestive upset until that point. After Martin belched again during a third waiting period, the officer took Martin to a hospital for a blood draw. Martin was compliant and signed a consent form. Thereafter, upon arrival at the county jail, the officer learned that the blood draw was potentially contaminated. Back at the hospital, Martin remained compliant and signed a second consent form for a second blood draw. By this time, more than two hours had elapsed since Martin's arrest. Charged with OUI, Martin moved to suppress the evidence from the second blood draw. The trial court denied the motion, concluding that exigent circumstances justified both warrantless blood draws. A jury convicted Martin of OUI. He appealed, arguing that the trial court was wrong in finding that exigent circumstances justified the warrantless blood draws.

In its decision, the Maine Supreme Judicial Court noted that, ordinarily, a law enforcement officer must obtain a search warrant before taking a sample of a defendant's blood. Otherwise, the search is unreasonable unless covered by an exception, such as when the defendant consents or when there are exigent circumstances. Here, the court did not reach the issue of Martin's consent because it concurred with the trial court that exigent circumstances justified the warrantless blood draws.

The exigent circumstances justification for warrantless searches applies when there is a compelling need to conduct a search and insufficient time in which to secure a warrant. The State has the burden of proving, by a preponderance of the evidence, that exigent circumstances existed, and that the exigency was not one engineered by law enforcement. The U.S. Supreme Court has held that the natural metabolization of alcohol does not *per se* create exigent circumstances, but there may be instances in which this natural bodily process creates exigent circumstances justifying a blood draw without a warrant. An example of just such an instance decided by the Maine court involved a malfunctioning Intoxilyzer.[4] In that case, the court ruled that it was reasonable for an officer to become concerned that further delay caused by a malfunctioning Intoxilyzer would result in the loss of evidence due to the metabolization of the alcohol in the defendant's body, and that the warrantless blood draw was justified by the exigent circumstances. Similarly, in this case, it was reasonable for the officer to be concerned that further delay would result in the loss of evidence. The officer was not responsible for the delays in obtaining the blood samples and, when the officer ended his attempts to secure a breath test, approximately an hour-and-a-half had passed from the time of the arrest. It was reasonable for the officer to be concerned that further delay would result in the loss of evidence. The exigency became more acute when, after the passage of even more time, the officer learned that the first blood draw may have been contaminated and that a second draw would be necessary.

State v. Martin (October 23, 2018)
https://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2018/18me144.pdf

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Fourth Amendment – Vehicle Stop – Reasonable Suspicion of Additional Wrongdoing

Is a Vehicle Stop Concluded when the Reason for the Stop Dissipates?

The reasonableness of an officer's actions after an initial seizure is not limited to the reason for the seizure if, during an otherwise valid stop, an officer discovers additional evidence of possible wrongdoing.

A trooper, with reasonable suspicion of vehicle operation by a man under the influence, stopped the vehicle. It turned out that a different person, a woman, was the driver. He ultimately arrested the woman for OUI. He also charged her with operating without a license. She moved for suppression of the evidence of the stop, arguing that the trooper lacked a reasonable and articulable suspicion to initiate the stop and to order her from the vehicle to conduct field sobriety tests. The trial court granted a suppression order, concluding that the initial seizure – the vehicle stop – was valid, but the subsequent investigatory seizure – the license check and the trooper's order that the defendant get out of the vehicle – was not. The order suppressed all

[4] State v. Arndt, 2016 ME 133 A.3d 587

evidence gathered from the point at which the trooper determined the driver of the vehicle to be a woman. The trial court reasoned that, as soon as the trooper realized that the driver was a woman, the basis for the stop ceased to exist because his concern that an intoxicated man was operating the vehicle was unsupported by the facts then available to him. The State appealed.

The Maine Supreme Judicial Court concluded that the trial court was wrong in restricting its legal analysis to evidence of the events and circumstances occurring at and prior to the moment that the trooper realized that the driver was not the person he suspected. The court said that the reasonableness of an officer's actions after an initial seizure is not limited to the reason for the stop if, during an otherwise valid stop, an officer discovers additional evidence of possible wrongdoing. The court pointed to earlier decisions in which it decided that post-seizure suspicion of a violation of law separate from the reason for the initial stop justified extending the stop if the suspicion was reasonable. In this case, the appeals court said that the trial judge was wrong in not determining the reasonableness of the prolonged detention by considering the additional information obtained by the trooper during the license and registration check after he initiated the valid stop.

State v. Bennett-Roberson (April 4, 2019)
https://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2019/19me049.pdf

Fourth Amendment –Nexus – Judicial Deference – Reasonable Inferences - Standing
Did Probable Cause Establish Nexus Between Evidence Sought and Crimes?
Probable cause is satisfied when, based on the totality of the circumstances, the warrant application sets forth some nexus between the evidence sought and the locations to be searched. The nexus need not, and often will not, rest on direct observation, but rather may be inferred. Defendant had not reasonable expectation of privacy in the cellphone data of a co-defendant and, thus, no standing to object to a search of the data.

Warner, charged with two others with a string of high-end burglaries, moved to suppress two search warrants, one that sought his cellphone location information, the other the cellphone location information of a co-defendant. The trial court granted the motion with respect to both warrants, ruling that there was not probable cause to connect the cellphone information to the alleged crimes in that the affidavits failed to articulate the nexus between the crime and the place to be searched, i.e., the cellphone records. The court also said that, because it found that the warrants were "facially deficient," the good faith exception to the exclusionary rule did not apply. The State appealed the ruling, arguing that the trial court was wrong in determining that probable cause was absent with respect to the two warrants, and that Warner lacked standing to challenge the warrant issued for the co-defendant's information.

The State argued that the suppression court failed to grant appropriate deference to the judge who issued the search warrant for Warner's cell phone account data. When reviewed with that proper deference, the State argued, the affidavit provided a substantial basis for the warrant judge's findings that there was probable cause to believe that Warner's cellphone account data contained evidence of a crime. The appeals court noted that probable cause is satisfied when, based on the totality of the circumstances, the warrant application sets forth some nexus between the evidence sought and the locations to be searched. The nexus need not, and often will not, rest on direct observation, but rather may be *inferred* from the type of crime, the nature

of the items sought, the extent of an opportunity for concealment and normal inferences as to where a criminal would hide evidence of a crime. The appeals court said that its limited role in reviewing the issue of probable cause was to determine whether the issuing magistrate had a "substantial basis" to issue the warrant, *drawing all reasonable inferences in favor of probable cause*.

The appeals court also determined that Warner had no standing to object to the evidence discovered in the second warrant for the co-defendant's cellphone location information. While Warner argued on appeal that he had standing to challenge the admissibility of evidence discovered in the second search because it was through an illegal search of his own account data that law enforcement obtained some of the information that it provided in the affidavit for the second warrant, the court said there was no illegality in the search of Warner's data and, given that Warner did not otherwise assert any reasonable expectation of privacy in the co-defendant's data, Warner lacked standing to challenge the search.

State v. Warner (August 29, 2019)
https://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2019/19me140.pdf

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