**AG Supremes CLE, 8/2/18**

**Summary of Noteworthy Criminal Cases**

**August 2017- July 2018**

***AAGs Don Macomber & Laura Yustak, Criminal Division***

**Supreme Court**

1. ***Carpenter v. United States*, 16-402:**

**Fourth Amendment & cell site location information**

By a 5-4 vote, the Court held that “the Government conducts a search under the Fourth Amendment when it accesses [at least seven days of] historical cell phone records that provide a comprehensive chronicle of the user’s past movements.” Quoting *United States v. Jones*, 565 U.S. 400 (2012), the Court found that “‘society’s expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual’s car for a very long period.’” The Court ruled that the “third-party doctrine” — under which “a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties” — should not be extended “to cover these novel circumstances.” And it rejected the contention that “the warrant requirement simply does not apply when the Government acquires records using compulsory process.” Rather, it held, “a warrant is required in the rare case where the suspect has a legitimate privacy interest in records held by a third party.”

1. ***Byrd v. United States*, 16-1371**:

**Fourth Amendment & rental cars**

The Court unanimously held that, for Fourth Amendment purposes, “as a general rule, someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver.” The Court therefore vacated a Third Circuit decision holding that state troopers did not need probable cause (or even reasonable suspicion) to search a car driven by petitioner, whose girlfriend had rented the car and who was not named in the rental agreement. (The troopers found 49 bags of heroin in the car.) The Court remanded to allow the lower courts to address the Government’s argument that the general rule does not apply here, for petitioner “should have no greater expectation of privacy than a car thief because he intentionally used a third party as a strawman in a calculated plan to mislead the rental company from the outset, all to aid him in committing a crime.”

**3*. Collins v. Virginia*, 16-1027:**

**Fourth Amendment & automobile exception searches in the curtilage**

By an 8-1 vote, the Court held that the Fourth Amendment’s automobile exception does not “permit[] a police officer, uninvited and without a warrant, to enter the curtilage of a home in order to search a vehicle parked therein.” The Court explained that “the rationales underlying the automobile exception are specific to the nature of a vehicle and the ways in which it is distinct from a house.” The exception therefore “does not justify an intrusion on a person’s separate and substantial Fourth Amendment interest in his home and curtilage.”

**Law Court**

***1. State v. Simons,* 2017 ME 180:**

**Jury voir dire**

Defendant was convicted in the trial court, York County ([*Driscoll*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0211420801&originatingDoc=I57c6f93081de11e794a1f7ff5c621124&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) *and* [*Fritzsche*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0151876001&originatingDoc=I57c6f93081de11e794a1f7ff5c621124&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))*, JJ*.) of operating under the influence. Defendant appealed.

The Law Court ([*Mead*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0375087801&originatingDoc=I57c6f93081de11e794a1f7ff5c621124&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))*, J*.) affirmed, holding that there was neither an abuse of discretion in the way the trial court conducted voir dire, nor obvious error in the court's conclusion that jurors were impartial.

**2. *State v. Roby,* 2017 ME 207:**

**Jury questionnaires**

Defendant was convicted in the trial court, Sagadahoc County ([*Billings*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0403804401&originatingDoc=Ia992bdb0b36311e7b38a81315a4346f0&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))*, J*.) of domestic violence assault. Defendant appealed.

The Law Court ([*Gorman*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0135904101&originatingDoc=Ia992bdb0b36311e7b38a81315a4346f0&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))*, J*.) affirmed, holding that the trial court's rejection of defendant's proposed questionnaire for potential jurors did not deny defendant his state constitutional right to a fair and impartial jury.

1. ***State v. Bean,* 2018 ME 58:**

**Direct appeal after guilty plea**

Following guilty plea, which included agreement that sentence would not exceed agreed upon sentencing cap, defendant was convicted in the trial court, Oxford County ([*Clifford*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0263990901&originatingDoc=I79b51d9049ae11e888d5f23feb60b681&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))*, J.)* of aggravated criminal operating under the influence (OUI), and possession of a firearm by a prohibited person, and was sentenced, consistent with recommendation of state as provided for in plea agreement. Defendant filed application for leave to appeal from sentence, which was granted.

The Law Court (*[Saufley](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0128911701&originatingDoc=I79b51d9049ae11e888d5f23feb60b681&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), C.J.)* affirmed, holding that the trial court was required to undertake an analysis of sentencing procedures when accepting state's recommended sentence, but the error in failing to undertake analysis was harmless.

[Alexander](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0117705401&originatingDoc=I79b51d9049ae11e888d5f23feb60b681&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), J., filed concurring opinion.

**4*. State v. Adams,* 2018 ME 60:**

**Direct appeal after guilty plea**

Defendant pled guilty in the trial court, Androscoggin County (*MG Kennedy, J.)* to manslaughter. Defendant appealed.

The Law Court ([*Mead*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0375087801&originatingDoc=I390b172049b011e8a70fc9d8a0b2aef5&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))*, J.)* held that dismissal of defendant's appeal was warranted because he did not move to withdraw his unconditional plea before the court imposed the sentence and does not assert that the trial court lacked jurisdiction or that it imposed an excessive, cruel or unusual sentence.

**5. *State v. Blum,* 2018 ME 78:**

**Interstate PFAs & Violence Against Women Act (VAWA)**

Defendant was indicted for violation of a protective order, based on allegations that he had been arrested and charged in New Hampshire with criminal threatening and domestic violence, that he had been released on bail subject to protective order prohibiting him from possessing weapons, that four days after his arrest and imposition of protective order he went to store in Maine and purchased a knife, and that he was thereafter stopped by police and found to be in possession of three knives. The District Court, York County ([*Cashman*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0495700199&originatingDoc=Ia898992073e811e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))*, J*.) granted defendant's motion to dismiss. State appealed.

The Law Court ([*Gorman*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0135904101&originatingDoc=Ia898992073e811e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))*, J*.) vacated and remanded, holding that procedures by which New Hampshire bail commissioner issued protective order were sufficiently similar to those through which protection from abuse order could have been imposed in Maine, and thus permitting prosecution in Maine of defendant's alleged violation of protective order did not violate defendant's due process rights; A protective order issued by New Hampshire bail commissioner constituted “order issued by a court of…another state” for purposes of Maine statute permitting prosecution of a violation of such orders; and New Hampshire protective order was a “similar order” for purposes of Maine statute permitting prosecution of a violation of “a similar order issued by a court of…another state[.]”

**6. *State v. Lemunier-Fitzgerald,* 2018 ME 85:**

**Warrantless blood test & implied consent**

After the Superior Court, Kennebec County (*Marden, J*.) denied defendant's motion to suppress the results of a blood test for alcohol, defendant entered conditional guilty plea in the Superior Court ([*Mullen*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0174186701&originatingDoc=Idc34ee207eef11e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))*, J*.) to operating under the influence and operating beyond a license condition or restriction. Defendant appealed.

The Law Court (*[Saufley](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0128911701&originatingDoc=Idc34ee207eef11e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), C.J*.) affirmed, holding that defendant's consent to warrantless blood test was voluntary and was not induced by unconstitutional coercion or misrepresentation.

[Gorman](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0135904101&originatingDoc=Idc34ee207eef11e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), J., filed dissenting opinion, in which [Jabar](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0149623401&originatingDoc=Idc34ee207eef11e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), J., joined, and [Hjelm](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0111888301&originatingDoc=Idc34ee207eef11e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), J., joined in part.

[Jabar](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0149623401&originatingDoc=Idc34ee207eef11e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), J., filed dissenting opinion.

[Hjelm](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0111888301&originatingDoc=Idc34ee207eef11e8b29df1bcacd7c41c&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), J., filed dissenting opinion.

**7. *State v. Hollis,* 2018 ME 94:**

**Jury selection & race**

Defendant was convicted in the trial court, Androscoggin County ([*Stokes*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0486363301&originatingDoc=I5bc4a390846f11e8a5b89e7029628dd3&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))*, J*.) of reckless conduct with a dangerous weapon and criminal threatening with a dangerous weapon. Defendant appealed.

The Law Court ([*Humphrey*](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0196678601&originatingDoc=I5bc4a390846f11e8a5b89e7029628dd3&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))*, J*.) affirmed, holding that prosecutor did not engage in purposeful discrimination when she struck the only person of color from the jury pool.