Summaries of Recent Court Decisions of Interest to Law Enforcement Officers

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

2014 CASE LAW UPDATE

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Maine Criminal Justice Academy
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This publication and the 2014 New Law Update constitute the training outline of the Maine Criminal Justice Academy for recertification training in law updates for the year 2014.

Preparers' Note

The preparers 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 as they relate to criminal procedure for the period September 2013 through August 2014, 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 preparers, and do not represent legal opinions of the Maine 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.

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Questions, suggestions, or other comments?

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UNITED STATES SUPREME COURT

Fourth Amendment – Search Incident to Arrest – Cellular Telephones

Search of Cell Phone Not Permissible as Search Incident to Arrest

A cellular device may not be searched incident to arrest. Exigency may justify a search without a warrant, but the possibility of a remote wipe or data encryption is insufficient to establish an exigency.

The U.S. Supreme Court considered two cases involving the search of a cell phone incident to arrest. In the first case, Riley was convicted for his involvement in a gang shooting after police searched his cell phone's photos, contacts, and messages incident to an arrest for possession of a concealed, loaded weapon. The California Court of Appeal affirmed his conviction, and the California Supreme Court denied review. In the second case, after seizing respondent Wurie's cell phone incident to his arrest for drug dealing, police discovered Wurie's home address by checking his cellphone contact list. Police then executed a valid search warrant to search Wurie's home where they discovered 215 grams of crack cocaine and other contraband. The trial court denied Wurie's motion to suppress the evidence seized at his home as fruit of the poisonous tree. The First Circuit reversed and vacated his conviction.

In a unanimous opinion by Chief Justice Roberts, the Supreme Court held that the searches of Riley's and Wurie's cell phones violated their Fourth Amendment rights. Although acknowledging its previous holding in *Chimel v. California* (1969) that police do not need a warrant to search a suspect incident to his arrest, the Court distinguished that case—in which police searched a cigarette pack found on the suspect—from the search of a cell phone. The Court emphasized two reasons that searching the digital information contained on a cell phone is different from a simple search and seizure of ordinary physical objects. First, the digital data does not present either of the risks *Chimel* sought to address, namely *officer safety and destruction of evidence*. Second, the Court emphasized the heightened privacy interests at stake when dealing with digital information stored on a cell phone.

This case is one of several cases that have arisen in more recent times responding to advances in technology and its role in criminal investigations. For example, in *U.S. v. Jones* (2012), the Court held that installing a GPS tracking device on a person's car constituted a search under the Fourth Amendment; and in *Kyllo v. U.S.* (2001), the Court held that the use of a thermal imaging device from a public vantage point to monitor the radiation of heat from a person's home was a search within the meaning of the Fourth Amendment.

Riley v. California. (January 25, 2014)
http://www.law.cornell.edu/supremecourt/text/13-132

Fourth Amendment – Consent Search

Disputed Home Search Upheld Where Co-tenant Refused Consent

Although police generally need a warrant to search a person's home, homeowners and tenants may consent to a police search. In 2006, the Court held in Georgia v. Randolph that where one co-tenant objects to a search, that objection overrides the consent of any other co-tenants. The Court has now expressly held that a co-tenant's objection is only valid when the co-tenant is physically present on the scene, even when the objecting co-tenant is not present because he was arrested.

In the 2006 case of *Georgia v. Randolph*, the U.S. Supreme Court held that when one occupant of the premises consents to a warrantless search, a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him. In this 2014 case, Fernandez v. California, the Court held that the result is not the same when an occupant objects to police entry into the premises, is later arrested and removed from the premises, and then a co-occupant consents to the police's entry. The Court concluded that Randolph went to great lengths to make clear that its holding was limited to situations in which the objecting tenant is present.

In Fernandez, police officers observed a suspect in a violent robbery run into an apartment building and heard screams coming from one of the apartments. They knocked on the apartment door, which was answered by a woman, who appeared to be battered and bleeding. When the officers asked her to step out of the apartment so that they could conduct a protective sweep, the defendant, Fernandez, came to the door and objected to the search. Suspecting that he had assaulted the woman, the officers removed Fernandez from the apartment and placed him under arrest. He was then identified as the perpetrator in the earlier robbery and taken to the police station. An hour later, an officer returned to the apartment and, after obtaining the woman's verbal and written consent, searched the premises, where he found several items linking Fernandez to the robbery. Fernandez was subsequently convicted for robbery, and his conviction was affirmed by the California Supreme Court.

Fernandez v. California. (February 25, 2014)
http://www.law.cornell.edu/supremecourt/text/12-7822

Fourth Amendment – Reasonable Suspicion – Vehicle Stop

Vehicle Stop Based on Anonymous 911 Caller Upheld as Reasonable

The police may stop a vehicle based on an anonymous tip about reckless driving even where the police did not personally observe reckless driving. The Court found that under the totality of circumstances, the officer had reasonable suspicion that the driver was intoxicated. In reaching that conclusion, the Court pointed to various indicia of reliability in the anonymous call.

A woman called 911 and reported that a silver Ford pickup had run her off the road. She gave the vehicle's plate number and stated that the vehicle was traveling south on a particular highway. Shortly thereafter, a highway patrol officer located the truck on the named highway and pulled it over. As the officer approached the truck, he smelled marijuana. He searched the truck, found 30 pounds of marijuana in the bed, and arrested the truck's occupants. The occupants were charged with drug offenses. They moved to suppress the marijuana, contending

that the initial stop was not supported by reasonable suspicion. It's not completely clear whether the 911 caller gave her name, so the trial court treated the report as an anonymous tip, but ruled that it was reliable enough to provide reasonable suspicion. The defendants pled guilty and appealed the suppression ruling. California's appellate courts affirmed. The Supreme Court agreed to review the case.

The Court affirmed, dividing 5-4. The majority opinion stated that anonymous tips alone seldom provide reasonable suspicion, but that "under appropriate circumstances," they may do so. The Court concluded that the tip was reliable, for the following reasons:

- The caller provided her basis of knowledge, i.e., explained how she came to know about the dangerous driving: she "necessarily claimed eyewitness knowledge" when she stated that the truck ran her off the road.
- The call was contemporaneous with the dangerous driving, which made the report "especially reliable" and unlikely to be fabricated.
- The report came via the 911 system, which "has some features [like recording and caller ID] that allow for identifying and tracing callers, and thus provide some safeguards against making false reports with immunity."

Having concluded that the tip was likely accurate, the Court then ruled that it provided reasonable suspicion that the driver of the pickup was impaired. The opinion said that running another vehicle off the road "suggests lane positioning problems, decreased vigilance, impaired judgment, or some combination of those recognized drunk driving cues."

Justice Scalia wrote the dissent, characterizing the majority opinion as a "freedom-destroying cocktail" of errors. He first argued that the tip was not reliable, and could have been fabricated or embellished, given that it was anonymous and that the caller may well have been unaware of the call-tracing features of the 911 system. Then he contended that even if the tip was reliable, it couldn't support reasonable suspicion because there are many explanations other than impaired driving for one vehicle running another off the road. He also noted that the officers "followed the truck for five minutes" before stopping it and saw no signs of impairment. In his view, this "affirmatively undermined" whatever reasonable suspicion the tip offered

Navarette v. California. (April 22, 2014)
http://www.law.cornell.edu/supremecourt/text/12-9490

Fourth Amendment – Deadly Force – Qualified Immunity

Deadly Force to End Vehicle Chase was Constitutionally Reasonable

An officer's attempt to terminate a dangerous high-speed chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. The chase was not over when the car came to a temporary standstill and officers began shooting. When the shots were fired, all that a reasonable officer could have concluded from the driver's conduct was that he was intent on resuming his flight, which would again pose a threat to others on the road. The officers did not fire more shots than necessary to end the public safety risk. It makes sense that, if officers are

justified in firing at a suspect in order to end a severe threat to public safety, they need not stop shooting until the threat has ended.

On July 18, 2004, around midnight, a police officer conducted a traffic stop on a car driven by Rickard because it had only one operating headlight. When Rickard failed to produce his driver's license, the officer asked him to step out of the car. Instead, Rickard sped away. The officer pursued Rickard on an interstate highway along with officers in five other cruisers. During the pursuit, Rickard was swerving through traffic at speeds over 100 miles per hour. After Rickard exited the interstate highway, he made a sharp turn causing contact between his car and one of the cruisers. This contact caused Rickard's car to spin out into a parking lot and collide with Officer Plumhoff's cruiser. Officers Evans and Plumhoff got out of their cruisers and approached Rickard's car. Evans, with gun in hand, pounded on the passenger side window of Rickard's car. Rickard's tires started spinning and his car was rocking back and forth, an indication that Rickard was using the accelerator even though his bumper was flush against the cruiser in front of him. Plumhoff fired three shots into Rickard's car, but Rickard put his car in reverse and turned around, forcing Evans to step to the side to avoid being struck. As Rickard accelerated down the street away from the officers, two other officers fired 12 shots towards the fleeing suspect. Rickard lost control of the car and crashed into a building. Both Rickard and his passenger died from a combination of gunshot wounds and injuries suffered in the crash.

Rickard's daughter sued Plumhoff and five other police officers claiming they violated the Fourth Amendment by using excessive force to stop Rickard. The court held the officers were entitled to qualified immunity. Rickard led the officers on a chase with speeds exceeding 100 miles per hour that lasted over five minutes. During the chase, Rickard passed more than two dozen other vehicles, several of which were forced to alter their course. After Rickard's car collided with a cruiser and appeared to be stopped, Rickard resumed maneuvering his car in an attempt to escape. The court found Rickard's outrageously reckless driving posed a grave public safety risk. As a result, a reasonable officer could have concluded that Rickard was intent on resuming his flight, and if he were allowed to do so, he would once again pose a deadly threat for others on the road. Consequently, the court held the police officers acted reasonably by firing at Rickard to end that risk.

The court added the officers were justified in firing 15 shots at Rickard, stating, "If police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." Here, during the ten-second span when the officers fired their shots, Rickard continued to flee until he crashed. In addition, the court stated that the passenger's presence in the car had no bearing in the analysis of whether the officers acted reasonably by firing at Rickard.

Plumhoff v. Rickard (May 27, 2014)
http://www.supremecourt.gov/opinions/13pdf/12-1117_1bn5.pdf

First Circuit Court of Appeals

Fourth Amendment – Probable Cause – Exclusionary Rule – Extraterritorial Arrest

Probable Cause is the Dispositive Factor in the Constitutionality of an Arrest

As long as there is probable cause, an arrest that violates a statute does not violate the Fourth Amendment's prohibition against unreasonable seizures so as to exclude evidence.

Ryan was driving in the Charlestown Navy Yard, which is part of the Boston National Historic Park, when a U.S. Park Ranger saw Ryan's car driving over the centerline of the road. The ranger followed Ryan but by the time the ranger pulled Ryan over, he and Ryan were no longer on federal land. The ranger arrested Ryan who was charged with three alcohol-related offenses. Ryan moved to suppress the evidence arising from his arrest, arguing the ranger had no statutory authority to arrest him outside the park.

The Supreme Court has not spoken to this precise issue, but it did hold in 2008 that the Fourth Amendment does not require the exclusion of evidence obtained in a search incident to an arrest that violated state law. The appeals court determined here that even though the ranger lacked statutory authority to arrest Ryan, he established probable cause for the arrest. Because Ryan's arrest was supported by probable cause, there was no Fourth Amendment violation; therefore, the court was not required to suppress the evidence obtained after Ryan's arrest.

U.S. v. Ryan, (September 30, 2013)
http://media.ca1.uscourts.gov/pdf.opinions/11-2341P-01A.pdf

Fourth Amendment – Vehicle Stop – Vehicle Search - Standing
Fifth Amendment – Custodial Interrogation

Vehicle Stop Lawful; Miranda not Required in Investigative Stop

A warrantless traffic stop satisfies the reasonableness requirement if the officers have a reasonable suspicion of unlawful activity. The Supreme Court has held that Miranda warnings are not required during investigatory stops. The issue is whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.

Campbell and Porteous pleaded guilty to conspiracy to possess, possession of, and use of counterfeit access devices. They appealed the denial of their motion to suppress evidence obtained in connection with the stop and search of their vehicle, arguing (1) officers lacked reasonable suspicion for the stop; (2) the warrantless search of the vehicle and the ensuing search warrant obtained for the vehicle were not based on probable cause; (3) officers violated the Fifth Amendment by failing to inform them of their *Miranda* rights; and (4) evidence and statements obtained through the stop and interrogation should be suppressed as fruits of the poisonous tree.

The appeals court affirmed the denial of the suppression motion, holding (1) the stop of the vehicle did not violate the Fourth Amendment, and accordingly, the warrant issued for the search of the vehicle was not tainted by an illegal stop; (2) Campbell and Porteous could not object to the search or seek suppression of the evidence obtained in the search because they

failed to establish they had a reasonable expectation of privacy in the vehicle searched after the stop; and (3) the admission of statements obtained through the questioning of the pair did not violate the Fifth Amendment.

On May 21, 2011, officers responded to a report of suspicious activity at Bull Moose, an electronics store in Scarborough, Maine. The store clerks told the officers that three black men had come to the store, and that each one entered separately and then departed before the arrival of the next man. Each of the three men had attempted to purchase video game systems. The first man successfully used a credit card to pay $700 for two systems. The second man attempted a similar purchase, but both credit cards he presented were declined. The name on both of the declined credit cards was Shawn Collins, the same name that was on the credit card presented earlier by the first man. The third man entered the store, and expressed an interest in purchasing video game systems; he was told that Bull Moose could not sell him a game system and it was suggested that he go to the Toys "R" Us store in South Portland. According to the store clerks, the three men departed together in the same SUV, which had New York license plates. The clerks also told the officers the vehicle's license plate number, and said that the men were probably on their way to Toys "R" Us in South Portland. A description of the vehicle, its occupants, and that it might be located in the Toys "R" Us parking lot, was broadcast. A South Portland officer located the vehicle in the Toys "R" Us parking lot, and watched the three black males leave Toys "R" Us carrying bags of merchandise. According to the South Portland officer, the men got into the vehicle and left the store parking lot. They were stopped a short distance away. Officers separated and interviewed the three men. None of the defendants were given *Miranda* warnings at any time during the stop.

Vehicle Stop

The court found that the stop of the suspect's vehicle in this case was supported by reasonable articulable suspicion. A warrantless traffic stop satisfies the reasonableness requirement if the officers have a reasonable suspicion of wrongdoing—a suspicion that finds expression in specific, articulable reasons for believing that a person may be connected to unlawful activity. Here, the stop occurred after the police had received a report from store employees that suggested that the defendants may have engaged in, or attempted to engage in, credit card fraud. The store clerks worked for an established business within the officers' jurisdiction and, as part of the store's sales force, their work undoubtedly included being alert for fraudulent activity at the store. Moreover, in a face-to-face situation, the officers had an opportunity to judge the credibility of the clerks and the accuracy of their report. The store clerks gave the officers specific information, describing their encounters with the defendants and specifically told the officers that two different defendants had attempted to use credit cards bearing the same name in the store to purchase merchandise. Additionally, the store clerks gave the police a description of the defendants' vehicle, including the license plate number. They also provided, on the basis of their conversation with the defendants, the probable location of the defendants' next stop. Although this encounter with the store clerks gave the police officers a great deal of information upon which to formulate a suspicion of illegal activity, the officers went a step further. Following a radio broadcast of the information from the store clerks, a South Portland police officer went to Toys "R" Us where, according to the clerks, the defendants might next appear. The officer found a vehicle matching the suspect vehicle with an out-of-state license plate number matching, with the exception of two inverted numerals, the number reported by the store

clerks. Shortly after locating the suspect vehicle, the officer observed the defendants approach the vehicle from Toys "R" Us carrying bags, suggesting that they had purchased items in Toys "R" Us, as the Bull Moose store clerks predicted they might do. The men were in the right place at the right time and fit the suspects' descriptions.

Miranda Warnings

The court concluded that the defendants were not in custody at the time of their questioning. Accordingly, there was no requirement to inform them of their *Miranda* rights. The Supreme Court has held that *Miranda* warnings are not required during investigatory stops. The issue is whether there was "a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." Four factors come into play in making such a determination: (1) whether the suspect was questioned in familiar or at least neutral surroundings; (2) the number of law enforcement officers present at the scene; (3) the degree of physical restraint placed upon the suspect; and (4) the duration and character of the interrogation. The court concluded that the circumstances in this case would not be viewed by a reasonable person as the functional equivalent of a formal arrest. The court went on to explain that the defendants were questioned in a neutral location (a hotel parking lot), that there were four or five police officers on the scene questioning three defendants, that each defendant was questioned by at most two officers, and that the defendants were not physically restrained at the time of the questioning. The court added that the duration and character of the interrogation weigh in favor of finding that the defendants were not in custody because there was no indication that the stop lasted for an inappropriately long period of time or that the officers acted with hostility toward the defendants.

U.S. v. Campbell & Porteous. (December 23, 2013)
http://caselaw.findlaw.com/summary/opinion/us-1st-circuit/2013/12/23/268860.html

Fourth Amendment – Arrest Warrant – Good Faith Exception

Good Faith Exception to Exclusionary Rule Applied to Arrest Warrant

Even assuming evidence was seized in violation of the Fourth Amendment, it will be suppressed only when the police conduct is "sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system."

On September 25, 2010, Hiram Echevarría–Ríos was involved in a pre-dawn shooting at a gas station in Puerto Rico. About a year later, a warrant was issued for Echevarría–Ríos's arrest after a probable cause hearing in the Puerto Rico Superior Court. After receiving a tip, officers went to Echevarría–Ríos's mother's home and arrested him. After being given Miranda warnings, and in response to the officers' questions, Echevarría-Rios indicated that he had a gun under his pillow. The officers found a pistol that was used to convict Echevarría-Rios of the charge of being a felon in possession of a firearm. Echevarría–Ríos challenged the validity of the arrest warrant and the court in Puerto Rico ultimately concluded that because of a procedural defect the warrant was invalid under Puerto Rican law. Echevarría–Ríos argued that the pistol should be suppressed because it was obtained pursuant to an invalidated arrest warrant. The trial court denied the motion to suppress. Echevarría–Ríos's principal argument to the appeals court was that the pistol was improperly seized because his arrest warrant was invalid. He argued that

without a valid warrant, any search incident to his arrest violated his Fourth Amendment rights and that any evidence discovered because of that arrest should be suppressed.

The court pointed out that the Fourth Amendment has never been interpreted to forbid the use of all illegally seized evidence. It went on to say that illegally seized evidence will be suppressed only when police conduct is "sufficiently deliberate" and "sufficiently culpable" to make exclusion worth the price paid by the justice system. According to the court, the facts of the case provide a prime example of the good faith exception to the exclusionary rule. It concluded that the government carried its burden of showing that the officers acted in good faith, that the officers relied on a warrant that was facially valid at the time they arrested and detained the defendant, and that the Fourth Amendment violation did not call for exclusion because the officers' conduct was not deliberate, reckless, or grossly negligent. In other words, a reasonable officer could have reasonably relied on the validity of the warrant.

United States v. Echevarría–Rios (March 26, 2014)
http://media.ca1.uscourts.gov/pdf.opinions/12-1804P-01A.pdf

Fourth Amendment – Vehicle Stop – Terry Frisk
Fifth Amendment – Miranda

Vehicle Stop and Terry Frisk Supported by Reasonable Suspicion

A traffic stop constitutes a seizure of both the stopped vehicle and its occupants. Objective reasonableness for a Terry stop must be gauged in two phases: (1) police must have a reasonable, articulable suspicion about an individual's involvement in unlawful activity, and (2) if the initial stop passes muster, actions undertaken during the course of the stop must be reasonably related in scope to the stop itself unless the police have a basis for expanding their investigation.

While conducting a wiretap, police officers intercepted a call between Brichetto and Leavitt, in which Leavitt sought to purchase oxycodone pills. After Brichetto and Leavitt agreed to meet in a parking lot to conduct the transaction, officers set up surveillance. The officers saw Brichetto arrive in a pick- up truck and park next to a car. A man, later identified as Leavitt, got out of the passenger side of the car and got into Brichetto's truck. After a few minutes, Leavitt returned to the car, and both vehicles drove away. The surveillance officers followed the car containing Leavitt. After the officers saw the car roll through a stop sign, they requested a patrol officer conduct a traffic stop. The patrol officer stopped the car and requested identification from the driver, Arnott, and Leavitt, who was in the passenger seat. Leavitt told the officer his name was "William Young," and that he did not have any identification. Arnott, appearing extremely nervous, gave the officer his driver's license, but gave vague answers in response to the officer's questions. The officer ordered Arnott out of the car and conducted a *Terry* frisk for weapons. The officer felt a hard object in Arnott's pocket, which the officer believed was a knife. The officer reached into Arnott's pocket and removed a bag of tightly wrapped pills that Arnott admitted were oxycodone. When the officer asked Arnott if there were any other drugs in the car, Arnott told the officer there was marijuana in the trunk. The officer arrested Arnott and the government indicted him for two drug related offenses.

Arnott filed a motion to suppress the oxycodone pills, arguing the *Terry* frisk was unlawful because the officer did not have reasonable suspicion to believe he was armed and dangerous. Arnott also argued his incriminating statements should have been suppressed because the officer failed to advise him of his *Miranda* rights. The trial court ruled that both the stop and the search were justified because the police had probable cause to believe that the defendant had committed a drug-trafficking offense, and that *Miranda* was not required before handcuffing Arnott because the questioning up to that point was noncustodial.

The appeals court agreed with the ultimate result reached by the trial court concerning the stop and the frisk, but for different reasons. The court noted that the trial court probable cause analysis was misplaced (though likely supportable) because it elevated the bar higher than necessary. The appeals court said that this case is appropriately treated as a *Terry* stop, which requires only reasonable suspicion as a predicate for the officer's actions. After speaking with the surveillance officers, the patrol officer knew it was likely the occupants of the car had just completed a drug transaction. In addition, when questioned by the officer, Arnott appeared extremely nervous and could barely hold onto his driver's license because his hands were shaking so badly. Finally, the court commented, "the connection between drugs and violence is legendary." Consequently, the court found the totality of the circumstances supported reasonable suspicion to believe Arnott might be armed; therefore, the *Terry* frisk was justified.

The court further held the seizure of the oxycodone pills was reasonable. After the officer felt a hard object he believed was a knife, the officer was allowed to remove that object from Arnott's pocket. Even though the hard object turned out to be tightly packaged oxycodone pills and not a knife, contraband discovered during a lawful *Terry* frisk is not subject to suppression. The court held that the officer's questions concerning the presence of other drugs were within the scope of the *Terry* stop because they related to the discovery of the oxycodone pills. Finally, the court held Arnott was not in custody for *Miranda* purposes when he made the incriminating statements. During the brief period of questioning, prior to arrest, Arnott was on a public roadway, being questioned by a single officer who made no show of force.

United States v. Arnott (July 2, 2014)
http://media.ca1.uscourts.gov/pdf.opinions/13-1881P-01A.pdf

Fourth Amendment – What Constitutes Reasonable Suspicion?

Terry Stop was Supported by Reasonable, Articulable Suspicion

The protection against unreasonable searches and seizures extends to temporary investigatory detentions falling short of arrest, commonly called a Terry stop. Such a stop or detention must be justified at its inception and reasonable in scope. To be justified at its inception, a Terry stop must be accompanied by a reasonable, articulable suspicion of an individual's involvement in unlawful activity. Such suspicion is more than a visceral hunch about the presence of illegal activity, but less than probable cause. The focus is on what a reasonable officer, armed with the same knowledge, would have thought.

The reasonable suspicion that is needed to justify a minimally intrusive police stop is hard to quantify, and there is sometimes a fine line between that degree of suspicion and mere paranoia or a hunch plucked out of thin air. This case required the First Circuit Court of Appeals to examine

that line and, after conducting such an examination, the court concluded that the trial court did not err in finding that the police conduct in this case fell on the right side of the line.

On October 31, 2011, two armed men robbed a cell phone store in Boston. Within a matter of minutes, a Boston police officer, Timothy Golden, spotted two men matching the general description of the suspects. He stopped the pair, later identified as Ronald Brown and Lynch Arthur, and questioned them. During this conversation, Officer Golden received additional information from other officers that bolstered his suspicions. The men were brought to the scene of the crime and identified by the store clerk in a "show-up" procedure. Arrests followed. A federal grand jury subsequently returned an indictment charging both men with robbery, possessing firearms and ammunition after felony convictions, and carrying firearms during and in relation to a crime of violence. Arthur moved to suppress. The trial court concluded that the stop was justified by reasonable suspicion.

On appeal, Arthur argued that there was no reasonable suspicion supporting Officer Golden's initial stop. In this case, as in virtually all such cases, the existence of reasonable suspicion is determined by the particular facts. The robbery of the cell phone store took place in midday, and the robbers fled on foot. The store clerk, who had been bound during the robbery, hopped to the front counter, hit the panic alarm, and initiated a 911 call. This call prompted a radio dispatch that alerted police in the area to the robbery. Officer Golden headed for the store. He then monitored a second dispatch informing him that two black men were involved in the robbery and were fleeing on foot down Moultrie Street. The officer proceeded down Moultrie Street and saw a resident raking leaves. The resident told Officer Golden that he had just seen two black men running down the street and heading away from the store. A third dispatch noted that the robbers were armed and wearing dark, heavy clothing. Officer Golden noticed two black pedestrians walking in a direction that led away from the crime scene. They matched the general description of the two robbers. The officer stopped his marked cruiser in the middle of the street, emergency lights flashing, and approached the two men. He did not draw his weapon, but he placed his hand on his holster. He told the duo that a robbery had taken place at a nearby cell phone store and explained that they matched the description of the suspects. He ordered them to show their hands and they complied. The parties agree that, at this juncture, the men were seized within the meaning of the Fourth Amendment.

The protection against unreasonable and seizures extends to temporary detentions falling short of arrest, commonly called a *Terry* stop. Such a stop or detention must be justified at its inception and reasonable in scope. Arthur challenged only the justification for the initial stop. To be justified at its inception, a *Terry* stop must be accompanied by a reasonable, articulable suspicion of an individual's involvement in unlawful activity. Such suspicion is more than a hunch about the presence of illegal activity, but less than probable cause. The focus is on what a reasonable officer would have thought. In this case, the totality of the facts was sufficient to give rise to a reasonable suspicion that Arthur and his companion were the robbers. The court said that in light of the attendant circumstances, a failure to stop the men and question them would have verged on a dereliction of duty.

U.S. v. Arthur (August 22, 2014)
http://media.ca1.uscourts.gov/pdf.opinions/13-1892P-01A.pdf

MAINE SUPREME JUDICIAL COURT

Fifth Amendment – Miranda – Custody – Waiver – Voluntariness

Confession was Voluntary and Given after Valid Waiver of Miranda Rights

If the defendant was not in custody, then his Fifth Amendment rights could not have been invoked to bring about a constitutionally-required end to questioning. When in custody, the defendant voluntarily waived his rights under Miranda. The defendant's oral and written statements were voluntary beyond a reasonable doubt.

Thayne Ormsby was convicted in Aroostook County Superior Court on three counts of murder and one count of arson. He appealed, contending, among other things, that the trial court erred in denying his motion to suppress statements that he made to two Maine State Police detectives when they questioned him in New Hampshire. Discerning no error, the Law Court affirmed the judgment.

Three persons were found murdered on June 23, 2010, in Amity. The deputy chief medical examiner testified that all three died as a result of multiple sharp-force injuries, and one victim's throat had been cut. Three days after the bodies were discovered, another victim's burned pickup truck was located in Weston. The investigation of the murders soon focused on Thayne Ormsby. Two Maine State Police detectives interviewed Ormsby twice in New Hampshire. He was thereafter charged with three counts of murder and one count of arson, and returned to Maine after he waived extradition. The trial court denied Ormsby's motion to suppress the statements he made to the State Police detectives during the second interview in New Hampshire. Ormsby contended that (1) the interview, lasting more than five hours, was custodial in its entirety and he unambiguously invoked his Fifth Amendment rights to remain silent and to counsel during that custodial interrogation; (2) he did not effectively waive his rights following *Miranda* warnings on either of the two occasions when those warnings were read to him; and (3) his statements were not voluntary.

Custody

Ormsby was given *Miranda* warnings at the beginning of the interview. He contends that almost two hours into the questioning, he asserted his rights to remain silent and to speak to counsel three times. The State had the burden at the suppression hearing to prove by a preponderance of the evidence that Ormsby was not in custody during the first portion of the second interview. If Ormsby was in custody before the break in this second interview, and clearly asserted his rights that were ignored by the detectives, then his confession following the break is subject to suppression. If Ormsby was not in custody, then his Fifth Amendment rights could not have been invoked to bring about a constitutionally-required end to questioning.

The trial court found that Ormsby was not in custody before the break, but was in custody after the break when he told detectives, "Your search is over." In determining whether custody existed, the ultimate inquiry is whether a reasonable person standing in the shoes of the defendant would have felt he or she was not at liberty to terminate the interrogation and leave or if there was a restraint on freedom of movement of the degree associated with a

formal arrest. The test for custody is an objective one, taking into consideration a number of factors in their totality, not in isolation. Accordingly, the subjective intent or beliefs of either the police or the suspect play no role in the legal determination except to the extent that they manifest themselves outwardly and would affect whether a reasonable person would feel constrained to a degree commensurate with police custody. Although not an exhaustive list, factors that may be considered in determining whether a person is in custody for Fifth Amendment purposes include:

(1) the locale where the defendant made the statements;
(2) the party who initiated the contact;
(3) the existence or non-existence of probable cause to arrest (to the extent communicated to the defendant);
(4) subjective views, beliefs, or intent that the police manifested to the defendant to the extent they would affect how a reasonable person in the defendant's position would perceive his or her freedom to leave;
(5) subjective views or beliefs that the defendant manifested to the police, to the extent the officer's response would affect how a reasonable person in the defendant's position would perceive his or her freedom to leave;
(6) the focus of the investigation (as a reasonable person in the defendant's position would perceive it);
(7) whether the suspect was questioned in familiar surroundings;
(8) the number of law enforcement officers present;
(9) the degree of physical restraint placed upon the suspect; and
(10) the duration and character of the interrogation.

The Law Court agreed with the trial court in concluding that during the first part of the second interview, a reasonable person standing in Ormsby's shoes would have felt that he could terminate the interview and leave if he wished. Because Ormsby was not in custody, references he made to his right to remain silent and to speak to counsel, assuming that they constituted an unambiguous invocation of those rights, did not require an end to questioning.

Waiver Following *Miranda*

After the break in the second interview, Ormsby was read *Miranda* warnings for the second time and told that he was being given the warnings because of his previous comments concerning possibly talking to a lawyer and "invoking the fifth." When Ormsby asked if "this time I am under arrest," the detective told him he was not under arrest. Following the *Miranda* warnings, Ormsby said that he wanted to answer questions. During this second portion of the interview, Ormsby confessed to the murders. The trial court found that Ormsby voluntarily waived his rights under *Miranda*. The Law Court concurred with this determination. Ormsby's statements made during the second part of the interview included his confession.

Voluntariness

The trial court found beyond a reasonable doubt that Ormsby's oral and written statements were voluntary. A confession is admissible in evidence only if it was given voluntarily, and the State has the burden to prove voluntariness beyond a reasonable doubt. It is well

established that "[a] confession is voluntary if it results from the free choice of a rational mind, if it is not a product of coercive police conduct, and if under all of the circumstances its admission would be fundamentally fair." The Law Court found in this case that the lengthy video conclusively supported the trial court's determination. Ormsby presented throughout the interview as intelligent and in full control of his faculties, emotions, and decision-making. He neither showed nor expressed any indication of being under duress or under the influence of any substance. He became emotional at the beginning of the second part of the interview, but not overly so. No promises of leniency were made by either detective, nor did either make any threats. After Ormsby returned from the break, he told the lead detective that "out of free will I will give you what you want," and later told him that he and the other detective "have been gentlemen." He acknowledged that, "I could have not said anything, I could have asked for a lawyer, I didn't have to tell you shit." During the second part of the interview encompassing his oral and written confessions, Ormsby was afforded several breaks for the restroom, cigarettes, and coffee, and he was offered food. Finally, during the interview, he was twice formally advised of his right not to make any statements. The Law Court determined that "there is simply no indication that Ormsby's free will was overborne or that the admission of his statements would be fundamentally unfair."

State v. Thayne Ormsby (October 29, 2013)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2013/13me88or.pdf

Fifth Amendment – Probationer – Custodial Interrogation – Voluntariness

Probationer Summoned to Appear not in Miranda Custody

The State's exercise of its authority to require a probationer to appear at a specific place to discuss matters related to his probation does not, standing alone, place the probationer in custody.

Another Fifth Amendment case in which the defendant appealed the trial court's denial of a motion to suppress incriminating statements because *Miranda* was not given and his statements were not voluntary is *State v. Karl Kittredge*. Kittredge was on probation and was summoned to the office of his probation officer where two state troopers questioned him without *Miranda* warnings about a burglary and theft. He confessed and thereafter appealed a motion to suppress his statements. He contended that he was in custody for purposes of *Miranda* because he was required by his probation officer to appear at the probation officer's office. The Law Court concluded that the State's exercise of its authority to require a probationer to appear at a specific place to discuss matters related to his probation does not, standing alone, place the probationer in custody. It also concluded that the statements made by Kittredge were done so voluntarily.

State v. Karl Kittredge (July 10, 2014)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2014/14me90ki.pdf

Fourth Amendment – Probable Cause – Good Faith Exception – Fruit of Poisonous Tree

Search Warrant Affidavit Lacked Probable Cause; No Good Faith Exception

In issuing a search warrant, the magistrate must determine whether probable cause exists based on the totality of the circumstances test adopted in Illinois v. Gates (1983). This test requires a practical, commonsense determination whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place at the time of the proposed search.

The State appealed from an order of the Aroostook County Superior Court granting Christopher Johndro's motion to suppress evidence. The Superior Court found that search warrants for Johndro's house, garage, and car were not supported by probable cause. The court further found that, because the initial affidavit was so lacking in indicia of probable cause, officers did not rely on the warrants in objectively reasonable good faith. Finally, the court concluded that evidence seized pursuant to the third search warrant must be excluded as fruit of the poisonous tree. The Law Court affirmed the order granting Johndro's motion to suppress.

On April 15, 2009, an officer of the Limestone Police Department was called to investigate a burglary at 257 Long Road in Limestone. Several footprints were found near the garage, and a footprint inside the house appeared to match the footprints outside. At the officer's request, a State Police trooper arrived on scene with his dog and conducted a search of the area. The dog followed footprints from the driveway to Blake Road, located to the east of the residence. The officer was called to the scene of another burglary in Limestone later that day, this time at 646 Blake Road. A footprint found inside the residence appeared to match the footprints found at the scene of the Long Road burglary. The following day, April 16, a Limestone resident informed the officer that he had observed a "strange" vehicle driven by a male operator at 257 Long Road around noon the previous day. He described the vehicle as a Dodge Intrepid bearing the license plate 2196MD. Later in the day, a local resident named Vinal Paul Chasse informed the officer that Chasse's stepfather, a trash collector in Limestone named Carl Morin, had observed a vehicle on Blake Road, also around noon the previous day. According to Chasse, Morin saw the vehicle pull in and out of " a couple" of driveways, which made him nervous. Morin had written down the license plate number, which Chasse provided to the officer. The number, 2196RD, was assigned to a 2002 Dodge Intrepid registered to Christopher Johndro. The officer ran a criminal history check on Johndro and found that he had multiple burglary convictions.

The officer immediately completed an affidavit containing only the above facts and submitted it, along with a proposed search warrant for Johndro's house and car, to a justice of the peace on April 16, 2009. The affidavit did not mention what items, if any, had been taken from the homes, nor did it provide any other information regarding the reason for which a search was requested. The draft search warrant did include a list of items that purportedly constituted evidence of burglary, including loose change, a green pillowcase, shoes, jewelry, firearms, and safes. The justice of the peace signed and issued the proposed warrant that same day, and the officer, along with other officers, executed it at Johndro's residence. They seized several items, including marijuana, loose change, and a diamond ring. Later that day, using the same affidavit, the officer applied to the same justice of the peace for a second warrant to

search a shed behind the house. The justice of the peace granted the warrant. The search of the shed did not produce any further evidence.

Five days later, the officer applied to the same justice of the peace for a third warrant authorizing another search of Johndro's house. The affidavit in support of this warrant was from another officer, who had observed a gold wristwatch inside Johndro's house during the first search and had later learned that it matched the description of a watch connected to a burglary in Caribou. The affidavit further stated that officers had learned that Johndro might have hidden evidence in an area of the house that was not searched during the execution of the first warrant. The justice of the peace issued the third warrant, pursuant to which the police seized additional evidence.

Johndro was indicted on five counts of burglary (Class B), two counts of theft (Class B), and three counts of theft (Class C). Johndro entered not guilty pleas on all counts, and later filed a motion to suppress the evidence obtained pursuant to the three search warrants. The trial court granted the motion, finding that the first affidavit did not establish probable cause for a search, and that evidence seized pursuant to the third search warrant must be suppressed as fruit of the poisonous tree. The State appealed. The Law Court concluded that the first affidavit provided an insufficient basis for a finding of probable cause, and that the second affidavit was tainted by the illegality of the first search.

In issuing a search warrant, the magistrate must determine whether probable cause exists based on the "totality of the circumstances" test adopted in *Illinois v. Gates*, (1983). This test requires a practical, commonsense determination whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Further, the affidavit must set forth some nexus between the evidence to be seized and the locations to be searched. In this case, the veracity of the witnesses was not a concern. They were disinterested "citizen informants" whose accounts were not inherently unreliable. The Law Court observed, however, that even if the State's contention that the suspect vehicle was in fact Johndro's car, the affidavit failed to provide a substantial basis for a finding of probable cause. The affidavit provided no information about what items, if any, were stolen during the burglaries. The State argued that because the affidavit must be afforded a commonsense review, the list of items to be seized in the proposed warrant should be viewed as the items stolen in the burglaries. However, the affidavit still lacked enough information to establish probable cause.

The Law Court acknowledged that innocent behavior frequently will provide the basis for a showing of probable cause. However, without a specific allegation of criminal activity to color the noncriminal behavior described in the affidavit, there is no information from which to conclude that evidence of criminal activity would be found *at the time of the search*. In this case, the affidavit indicated that both witnesses saw a "suspicious car" in the area of the burglarized homes around noon on the day the burglaries were discovered. It provides no indication as to what time the burglaries occurred, or what time they were reported. A vehicle being driven down the road in the middle of the day, and even pulling in and out of several driveways, without more, is not a sufficient nexus to criminal activity, notwithstanding the subjective feelings of the witnesses who observed this behavior. This is not a case where

innocent behavior is used to corroborate an informant's specific allegation of criminal activity. Nothing in either the witnesses' statements or the officer's affidavit links the noncriminal behavior to the burglaries.

While the Law Court acknowledged that it is required to draw all reasonable inferences in favor of a finding of probable cause, the inferences the State argued were so attenuated as to exceed the bounds of reasonableness. "We cannot say that observation of a car driving in the vicinity of a crime scene gives rise to a fair probability that evidence of that crime will be found inside the home of the car's registered owner." Accordingly, there was no substantial basis for the finding of the justice of the peace that the affidavit demonstrated probable cause sufficient to justify a search of Johndro's home, car, and shed.

The Good Faith Exception

Under *U.S. v. Leon* (1984), the Fourth Amendment does not require suppression of evidence seized pursuant to a facially valid warrant if officers relied on the warrant based on an *objectively reasonable belief* in the existence of probable cause. However, an officer's *subjective* good faith is not the appropriate inquiry. An officer cannot manifest objective good faith in relying on a search warrant based on an affidavit so lacking in indicia of probable cause as to render belief in its existence entirely unreasonable. Although the affidavit in this case indicated that two burglaries occurred, the only activity that could potentially be linked to Johndro – his car having been seen driving in the area – is entirely noncriminal and unsuspicious on its own. Moreover, there is no specific allegation that Johndro, or anyone with ties to his residence, engaged in suspicious or criminal activity. The affidavit in this case was based entirely on noncriminal behavior and failed to explain how such behavior provided a basis for suspecting that evidence of the burglaries would be found in Johndro's home or vehicle.

Fruit of the Poisonous Tree

The exclusionary rule applies to evidence obtained as a direct result of an illegal search and seizure, as well as to evidence later discovered and found to be derivative of an illegality. Illegally seized evidence need not be excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is so attenuated as to dissipate the taint. However, any evidence obtained through the exploitation of police illegality must be excluded as fruit of the poisonous tree. The third warrant, which permitted officers to search Johndro's house again five days after the initial search, relied heavily on observations officers made while executing the first warrant. Had officers not been illegally present inside of Johndro's home, they would not have observed the gold wristwatch matching the description of a watch that had been stolen during a burglary. The third warrant undoubtedly exploited information gleaned from the illegal search; therefore, evidence seized pursuant to that warrant must be suppressed as well.

State v. Christopher Johndro (December 5, 2013)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2013/13me106jo.pdf

Fourth Amendment – Probation Search

Searches of Murder Suspect's Residence were Lawful

When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable.

Arnold Diana was convicted by a jury of murder. He appealed, contending, among other things, that the trial court erred in denying his motion to suppress the evidence resulting from three searches of his residence by law enforcement officers. The Law Court affirmed the conviction.

In November 2010, John Savage began dating Katrina Windred. They planned to have dinner at Windred's home the evening of November 20, 2010, so that they could meet each other's children. That day, Windred took several phone calls from Arnold Diana, a former boyfriend whom she had recently stopped seeing. She left her home in the afternoon to pick up her son from his father's house and to drop off groceries for Diana, telling Savage that she would see him in an hour. When she did not return that night and could not be reached by phone, Savage called the police. Tiffany Walker, Windred's close friend, knew Diana. When Walker awoke on the morning of November 21, she had phone messages from Diana saying that Windred's son was with him but Windred was not there. Walker later spoke to Diana; he told her that Windred's car was at his apartment with her dog locked inside. Diana said that Windred had gone out to meet a boyfriend the previous night, leaving her son with him, and never returned. Fearing that something had happened to Windred, Walker also called the police.

Windred's 12-year-old son testified that Diana had once been his mother's boyfriend. On the last day he saw his mother, she picked him up and they went to the grocery store, planning to drop groceries off at Diana's residence and then go home to have dinner with Savage. They drove to Diana's apartment and he came out to meet them. Windred went inside with Diana but the boy stayed in the car reading comic books. After a long time, Diana came out and told him that his mother was upstairs sleeping, which the boy thought was unusual because she had not slept at Diana's apartment before. The boy went up to Diana's apartment, leaving the dog in the car, which was also unusual. Once in the apartment, Windred's son saw that the bedroom door was closed. Diana told him that Windred was sleeping and he should be careful not to wake her. As the boy watched a movie, Diana went in and out of the bedroom frequently. That evening Diana took him to the bank where Diana withdrew cash. When they returned to the apartment, the bedroom door was still closed. The boy resumed watching movies.

When it became quite late, Windred's son and Diana went into the dark bedroom to go to sleep. The boy saw what he described as "[t]he form of what looked like my mother on the bed" with a blanket pulled completely over her head. Both of those observations struck him as very unusual because his mother was a cancer patient who had to fall asleep in a sitting position with her arm propped up on pillows to prevent swelling, and she never had covers over her face. Windred's ex-husband confirmed Windred's sleeping habits when he testified. The

boy tried to sleep beside Diana on the floor next to the bed. When the boy could not get to sleep, Diana sent him out of the room and closed the door. When Diana let the boy back in, he told him to sleep on the bed; the "form" that the boy believed was his mother was then on the floor. When the boy awoke the next morning, Diana was already up and the form was gone; Diana told him that his mother had gone out with friends.

A deputy and a detective from the Knox County Sheriff's Office were assigned to try to locate Windred on the morning of November 21. They found her car locked in the parking lot outside Diana's apartment building with her dog inside. Eventually, they made contact with Diana and conducted a 20-minute search of his apartment at the request of Diana's probation officer. The deputies saw, but did not seize, a pillow with a red-brown stain on a closet shelf. That evening, Diana was interviewed by a State Police detective and his apartment was searched again after he signed a consent form. Diana agreed to give the detective the pillow that had been seen earlier, and another detective located a second stained pillow. The stains on both pillows proved to be blood that a forensic DNA analyst at the State Police crime laboratory matched to Windred. On November 23, a State Police detective located, in a dumpster area outside Diana's building, a bag of trash that contained a purple towel, a note with the word "Arnold" written on it, cigarette butts containing Diana's DNA, and a jacket containing hair and blood that were later DNA-matched to Windred. That day, a man walking his dog about two miles from Diana's apartment discovered Windred's body wrapped in a quilt in the woods near a quiet road. An expert testified at trial that, in his opinion, two strips of purple towel that were tied around the quilt came from the purple towel found in the trash bag outside Diana's building. The Chief Medical Examiner testified that Windred died from asphyxia due to strangulation, most likely a manual strangulation. The degree of rigor mortis was consistent with a time of death three days before the body was discovered. On November 24, a search warrant was executed at Diana's apartment. Inside a seat cushion found in a kitchen trash can, detectives discovered Windred's eyeglasses, cell phone, driver's license, social security card, medical and debit cards, and a wallet containing one of her checks.

Diana was interviewed for a third time on November 27. He was charged with Windred's murder following the interview. Diana filed motions to suppress statements he made to police and any evidence derived from the searches of his apartment. While some of Diana's statements were suppressed, his motion to suppress evidence resulting from the searches was denied.

Diana challenged three searches of his residence in his motion to suppress at the trial level: (1) a warrantless search conducted by the deputy and the detective from the Knox County Sheriff's Office on the afternoon of November 21, 2010, which the trial court found was authorized by Diana's probation conditions; (2) a warrantless search conducted by Maine State Police detectives on the evening of November 21, which the trial court found was justified by Diana's consent; and (3) a search conducted on November 24 pursuant to a search warrant, which Diana unsuccessfully challenged as a *Franks*[1] violation.

[1] In *Franks v. Delaware* (1978), the U.S. Supreme Court held that where a criminal defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in a search warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be

On appeal, Diana primarily challenged the first search, asserting that the subsequent searches were tainted by its illegality. The Law Court concluded that all three searches at issue were lawful, including the first search, which was conducted by the Knox County deputies at the request of Diana's probation officer. The conditions of Diana's probation included a provision requiring him to submit to random search and testing for alcohol, drugs, firearms, and dangerous weapons at the direction of a probation or law enforcement officer. The Knox County detective called Diana and reached him at the Salvation Army in Rockland. Another Knox County detective went to the Salvation Army and found Diana, who agreed to return to his apartment to discuss where Windred might be. When they arrived at Diana's residence, Diana pointed out Windred's vehicle, which was still in the parking lot. After talking to Diana about Windred's whereabouts, the officers either asked if they could do a probation search or advised him that they were going to do so; Diana responded "sure." The court found that Diana's response was not a consent to the search, but rather a recognition of the officers' authority to conduct it. The officers conducted a search lasting less than 20 minutes that consisted of looking in closets, under beds, and in some containers. Although they found a pillow that appeared to be bloodstained, they did not take the pillow with them when they left. One of the deputies acknowledged at the suppression hearing that when he and the other deputy undertook the search, they did not have any reason to believe that alcohol, drugs, or firearms would be found, but he did know that Windred had last been seen at Diana's apartment.

In *U.S. v. Knights* (2001), the U.S. Supreme Court explained that a probationer has a "significantly diminished" expectation of privacy in comparison to an ordinary citizen and, partly for that reason, a search conducted pursuant to a probation condition requires a lower standard of justification than the usual Fourth Amendment standard of probable cause. The Court articulated the test for assessing a warrantless probation search when a suspicion of wrongdoing exists: "When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." Here, noted by the Law Court, the record supports the trial court's finding that the probation search of Diana's apartment was justified by a reasonable suspicion that Diana had engaged in criminal activity connected to Windred's disappearance. In addition to the reports from Savage, Walker, and Windred's ex-husband, Diana told one of the Knox County detectives that he was with Windred the previous day, that at about 5:00 p.m. Windred took a call and then laid down to rest, that an unknown friend called her at about 10:45 p.m. and she left 15 minutes later, leaving her car behind with the dog inside and her son in Diana's care, and she did not say how long she would be gone, only that she would be back before her son woke up. Diana said that he, too, was concerned about Windred's welfare because she did not drink or go to bars, and he had called her cell phone at 3:00 a.m. and then called her house without reaching her. The trial court found, and the Law Court agreed, that the officers'

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held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

reasonable suspicion of criminal activity was sufficient to justify a warrantless search, and that they had secured the authority of Diana's probation officer to conduct the search. And, because the Fourth Amendment test is a purely objective one, the fact that at the time of the search the officers did not have a subjective belief that they would find alcohol, drugs, or firearms in the apartment in violation of Diana's probation conditions is irrelevant. A police officer's subjective motive, even if improper, cannot sour an objectively reasonable search.

State v. Arnold Diana (March 20, 2014)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2014/14me45di.pdf
Fifth Amendment – Miranda Custody – Voluntariness of Confession

Fifth Amendment – Miranda Custody - Voluntariness

Defendant was Subjected to Custodial Interrogation in Violation of Miranda

The question was whether a reasonable person in the suspect's situation would have felt she was not at liberty to terminate the interrogation. For individuals whose mobility is limited for reasons unrelated to restraint by law enforcement, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.

Eighteen-year-old Kristina Lowe was badly injured in a single-vehicle accident. While she lay sedated at the hospital, a state trooper, without providing *Miranda* warnings, questioned Lowe about the crash, seeking information as to who was driving. After a pause in the questioning, the trooper told Lowe that two of her friends, who had been in the car, were dead. Lowe subsequently made inculpatory statements. She was indicted on two counts of manslaughter, two counts of aggravated criminal OUI, and one count of leaving the scene of an accident that resulted in serious bodily injury. Lowe moved to suppress the statements she made to the trooper. The trial court granted the motion as to all statements Lowe made after the pause in the interview, concluding that, at that point, she became a suspect, was in custody because she reasonably did not believe that she was free to terminate the interview, and, consequently, should have been given *Miranda* warnings. The State appealed. The Law Court affirmed the lower court ruling that found that Lowe's statements throughout were voluntary, but that she was in custody after the break in the interview. The State appealed the custody ruling.

Shortly after midnight on January 7, 2012, Lowe was badly injured in a single-vehicle accident. She and three other young people were in the car. She was taken by ambulance from Stephens Memorial Hospital in Norway to Maine Medical Center. Lowe was sedated with morphine and fentanyl for several hours at Stephens Memorial Hospital and while being transported to Maine Medical Center. She had suffered a compression fracture of her vertebrae, a broken nose, a possible concussion, multiple contusions, a lacerated knee, an abdominal injury, and frostbite from walking some distance in the snow with only one shoe on to seek help after the accident. Soon after Lowe arrived at Maine Medical Center, a state trooper began to interview her. Present in the room were Lowe, the trooper who was conducting the interview, a State Police sergeant, and nurses and other medical personnel who were in and out frequently to monitor Lowe's condition. The trooper took notes and tape-recorded her conversation with Lowe. The trooper told Lowe that she could stop the interview at any time, but she did not read *Miranda* warnings because she did not consider Lowe to be in custody.

Lowe agreed to be interviewed. During the interview, despite being sedated and vomiting twice, Lowe appeared to understand the questions that were asked, and she gave appropriate answers. The trooper took a five-minute break and learned that two people had died in the accident. Upon returning to Lowe's hospital room, she informed Lowe that the police now believed that one of the deceased may have been in the front passenger seat, not the driver's seat. In addition, the trooper told Lowe that her friends had died. Immediately thereafter Lowe cried uncontrollably and made inculpatory statements. After another pause, and without *Miranda* warnings, the trooper continued the interview for several minutes.

There being no dispute in the facts, the question was whether those facts demonstrated as a matter of law that a reasonable person in Lowe's situation would have felt she was not at liberty to terminate the interrogation. For individuals whose mobility is limited for reasons unrelated to restraint by law enforcement, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter. Many courts have considered whether patients were in custody during hospital-room interrogations; overwhelmingly, they have held that voluntarily hospitalized patients are not in custody by virtue of that hospitalization. Moreover, a determination that a person is in custody requires more than that the hospitalized person is a focus of the investigation. That, standing alone, does not trigger the need for *Miranda* warnings. To create custody, additional police conduct is necessary. In this case, the Law Court said that the trial court properly determined that the hospitalization did not, in itself, create a custodial situation and that the question was whether Lowe felt free to stop answering questions. Considering all the circumstances, the trial court did not err in determining that Lowe was in custody after the pause in the interview. When the trooper took a break to confer with the investigators, she gained sufficient information to consider Lowe a suspect in a criminal case. Consequently, the trooper's questioning became more focused, aggressive, and insistent. She told Lowe that Jake was not likely the driver. She urged Lowe to tell the truth. She did not repeat that Lowe was free to stop speaking. Along with the exclusion of Lowe's mother from the room, when the trooper told Lowe that the backseat passengers had died, the trooper conveyed to Lowe that she should consider herself the focus of a criminal investigation. Viewed objectively, the Law Court concluded, the information that the trooper learned during the break and communicated to Lowe produced a change in Lowe's liberty to end the interview. A reasonable person in Lowe's position would not have felt at liberty to end the interrogation.

State v. Lowe, (October 31, 2013)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2013/13me92lo.pdf