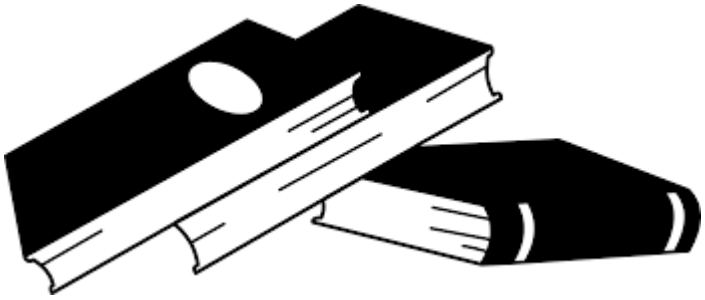
Recent Court Decisions Relevant to Maine Law Enforcement Officers

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

2018 CASE LAW UPDATE



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Maine Criminal Justice Academy
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United States Supreme Court

Fourth Amendment – Cell-site Location Information – Data Search

Is a Warrant Required to Obtain Cell-site Location Information?

When law enforcement obtains long-term cell site location information from a suspect's service provider, it conducts a Fourth Amendment search that requires a warrant.

Background

Carpenter was suspected of participating in store robberies in Michigan and Ohio. The FBI obtained two court orders requiring Carpenter's cell phone service providers to produce records about Carpenter's account, including cell-site location information. One order covered 152 days, and the second order covered seven days. The cell-site location information put Carpenter near several robberies and became important evidence against him. Carpenter moved to suppress the records, arguing that he had a reasonable expectation of privacy in the records and in the location information that they revealed, that the FBI had therefore engaged in a search when agents obtained the records, and that the agents had acted without a warrant or an exception to the warrant requirement. The agents had obtained the orders under 18 U.S.C. § 2703(d), which allows investigators to get a court order for telecommunication records when they can provide "specific and articulable facts showing that there are reasonable grounds to believe that the . . . records or other information sought are relevant and material to an ongoing criminal investigation." The "specific and articulable facts" standard is something like reasonable suspicion – less than probable cause – and the orders were not the functional equivalent of a warrant.

The trial court denied Carpenter's motion. He went to trial, was convicted, was sentenced to over 100 years in prison, and appealed. The Sixth Circuit affirmed, ruling that Carpenter had no reasonable expectation of privacy in the cell-site location information because he had shared that information with the service providers while using his phone. In other words, the third-party doctrine applied to cell-site location information just as the Supreme Court has ruled that it applies to bank records and pen register information.

Held

The U.S. Supreme Court decided that when law enforcement obtains cell-site location information for longer than 6 days from a suspect's service provider, it conducts a Fourth Amendment search that requires a warrant. The Court said that requests for cell-site records lie at the intersection of two lines of cases. One is the third-party doctrine, which 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 other set of cases concern a person's expectation of privacy in his or her physical location and movements. Of significance on this front is *United States v. Jones*, 565 U.S. 400 (2012), a GPS tracking case where the Court held that installing the tracking device on a suspect's vehicle was a search under the Fourth Amendment. Also, in *Jones*, five justices expressed concern that long-term electronic location tracking might intrude upon a person's reasonable expectation of privacy, although the Court did not decide on the expectation of privacy issue.

The Court determined that the third-party doctrine is not absolute and that law enforcement access to cell-site location information is such a severe threat to privacy that the third-party doctrine should not be extended to cover it.[1] The Court noted that such information offers "an all-encompassing record of the holder's whereabouts" and "provides an intimate window into a person's life." Therefore, the Court reasoned that whether the Government employs its own surveillance technology as in *Jones* or leverages the technology of a wireless carrier, an individual maintains a legitimate expectation of privacy in the record of his or her physical movements. The location information obtained from Carpenter's wireless carriers was the product of a search. Because accessing cell-site location information is a search, law enforcement needs a warrant, or an exception to the warrant requirement, to collect it. The Court remanded the case to the Sixth Circuit, presumably to consider questions like whether suppression is an appropriate remedy given that the officers acted in conformity with then-existing case law and the pertinent federal statute.

Note: *Agencies in Maine should already be following the practice of obtaining a warrant for cell-site location information – real time, short-term, and/or long-term – given the requirements of state law that a warrant is needed, with certain exceptions, to obtain such information. Suppression of the evidence is the remedy if such information is obtained outside the law. See 16 M.R.S. § 647, et seq.*

Carpenter v. U.S. (Decided June 22, 2018)
https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf

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Fourth Amendment – Automobile Exception – Curtilage

Is a Warrant Required to Enter Private Property to Search a Vehicle?

While the automobile exception allows for a warrantless search when there is probable cause, it does not permit a warrantless entry into a home or its curtilage to conduct a vehicle search.

Background

On two occasions, a police officer attempted to stop a motorcycle after the driver committed traffic violations. On both occasions, the driver eluded the officers by speeding over 100 miles per hour. After the officers compared notes, they concluded that the two incidents involved the same motorist. A camera in the officer's patrol vehicle was able to record the motorcycle's license plate number. Further investigation revealed that the motorcycle likely was stolen and in the possession of Ryan Collins. The motorcycle in question was orange and black and had distinct modifications to it, including chrome accents, and an extended frame with a "stretched out" rear wheel. After discovering photographs on Collins' Facebook profile that featured an orange and black motorcycle parked at the top of the driveway of a house, one of the officers tracked down the address of the house, drove to his residence, and parked on the street. From

[1] Obtaining financial records and pen register information from third party institutions like banks and service providers remains covered by the third-party doctrine and is not a search. The majority was clear that the third-party doctrine survives, and that prior case law regarding such records continue to govern the types of information at issue in each of those cases.

his vantage point, the officer saw parked at the top of the driveway in a partially enclosed area what appeared to be a motorcycle with an extended frame covered with a tarp. The officer took a photograph of the covered motorcycle from the sidewalk, and then walked up the driveway to where the motorcycle was parked. He lifted the tarp and uncovered the motorcycle, which revealed a motorcycle that looked like the one involved in the two incidents. The officer conducted a computer search of the vehicle identification number (VIN), which revealed that the motorcycle had been stolen several years before. The officer took a picture of the uncovered motorcycle, put the tarp back on, left the property, and returned to his car to wait for Collins. When Collins returned home, the officer walked up to the front door of the house and knocked. When Collins answered, he agreed to speak to the officer and admitted that the motorcycle was his and that he bought it without a title. The officer arrested Collins for receiving stolen property.

Collins filed a motion to suppress the VIN information, arguing that the officer violated the Fourth Amendment when he walked up the driveway, without permission or a search warrant, and removed the motorcycle tarp to reveal the VIN. The trial court denied the motion and Collins was convicted. When Collins appealed, both the Court of Appeals and the Supreme Court of Virginia affirmed Collins' conviction. The Virginia Supreme Court held that the officer's entry onto Collins' driveway and lifting the tarp was a valid warrantless search under the automobile exception. The court commented that the U.S. Supreme Court had never limited the automobile exception such that it would not apply to vehicles parked on private property. The Virginia Supreme Court also noted that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view. Collins appealed to the U.S. Supreme Court.

Held

The U.S. Supreme Court reversed and held that the automobile exception does not permit an officer to conduct a warrantless entry into a home or its curtilage to conduct a vehicle search. The Court said that the area where Collins' motorcycle was parked and subsequently searched was curtilage. When an officer physically enters upon curtilage to gather evidence, a search with the meaning of the Fourth Amendment occurs. The ability to observe inside curtilage from a lawful vantage point is different from the right to enter curtilage without a warrant to conduct a search to obtain information not otherwise accessible. The automobile exception requires that officers have a lawful right of access to a vehicle to search it.

Collins v. Virginia (Decided May 29, 2018)
https://www.supremecourt.gov/opinions/17pdf/16-1027_7lio.pdf

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Fourth Amendment – Reasonable Expectation of Privacy – Rental Vehicle

Does an Unauthorized Driver of Rental Vehicle have Expectation of Privacy?

As a general rule, a person 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.

Background

Latasha Reed rented a car in New Jersey while Terrence Byrd waited outside the rental facility. The rental agreement contained a provision that warned Reed that allowing an unauthorized driver to drive the car would violate the agreement. Reed listed no additional drivers on the form. Reed left the rental facility and gave the keys to the rental car to Byrd. Byrd got into the car and left by himself for Pittsburgh. In Pennsylvania, a police officer stopped Byrd for a traffic violation. Byrd told the officer the car was rented and gave the officer a copy of the rental agreement. The officer noticed the rental agreement did not list Byrd as the renter or as an authorized driver of the vehicle. During the stop, without probable cause or consent, the officer searched the car and found heroin and body armor in the trunk. The government charged Byrd with two offenses.

Prior to trial, Byrd filed a motion to suppress the evidence discovered in the trunk, arguing that the search violated the Fourth Amendment. The district court denied Byrd's motion. Without deciding whether the search was lawful, the court determined that Byrd had no expectation of privacy – and thus no standing to challenge the search of the vehicle – because he was not listed on the rental agreement. Byrd appealed to the Third Circuit Court of Appeals, which affirmed the judgment of the district court. Byrd appealed to the Supreme Court.

Held

The Court unanimously held that, as a general rule, a person 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 remanded to allow the lower courts to address the Government's argument that the general rule does not apply here because Byrd 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. The Court's remand also directed the lower courts to determine whether the officer had probable cause to search the vehicle. Because the lower courts determined that Byrd did not have a reasonable expectation of privacy in the vehicle, they never reached the issue of whether there was probable cause to search the vehicle under the automobile exception.

Byrd v. U.S. (Decided May 14, 2018)
https://www.supremecourt.gov/opinions/17pdf/16-1371_1bn2.pdf

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Fourth Amendment – Probable Cause – Qualified Immunity

Did Officers have Probable Cause for Arrests of Multiple Partygoers?

There was probable cause to arrest, thus the officers were entitled to qualified immunity. Even if the officers lacked probable cause to arrest the partygoers, they were still entitled to qualified immunity in that the plaintiffs could point to no precedent of similar circumstances where officers were determined not to have immunity.

Background

District of Columbia police officers responded to a complaint about loud music and illegal activities in a vacant house. When the officers entered the house, they smelled marijuana and saw beer bottles and cups of liquor on the floor. The officers found a makeshift strip club in the living room, and a naked woman and several men in an upstairs bedroom. Many of the individuals ran when they saw the officers; those that remained gave the officers inconsistent stories. Two women identified "Peaches" as the house's tenant and told the officers that she had invited them to a party at the house. Peaches was not at the house, but the officers were able to contact her by phone. Peaches initially told the officers she was renting the house and that she had given the others permission to be there, but she eventually told the officers that she did not have permission to use the house. The officers contacted the homeowner who confirmed that he had not given anyone permission to be in his house. The officers arrested everyone in the house for unlawful entry. Sixteen arrestees sued the officers for false arrest. The district court found that the officers lacked probable cause to arrest the partygoers for unlawful entry. The District of Columbia Circuit Court of Appeals affirmed the district court. The officers appealed to the U.S. Supreme Court.

Held

The Court held that the police officers had probable cause to arrest the individuals. The house's lawful owner told the officers he had not authorized entry by anyone. The key issue was whether the officers had sufficient basis to conclude – as required by D.C. trespass law – that the partygoers knew their presence was unwanted. The Court concluded that the totality of the circumstances — including the "near-barren" condition of the house, the partiers' turning the living room "into a make-shift strip club," the presence of drugs, and the partiers' reaction to the officers — permitted the officers to infer that the partygoers knew their party was not authorized. The Court also held unanimously that the officers were entitled to qualified immunity from the partygoers' § 1983 action against them. The Court said that *even if the officers lacked probable cause* to arrest the partygoers, they were still entitled to qualified immunity in that the plaintiffs could point to no precedent of similar circumstances where officers were determined not to have immunity.

D.C. v. Wesby (Decided January 22, 2018)
https://www.supremecourt.gov/opinions/17pdf/15-1485_new_8n59.pdf

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Fourth Amendment – Deadly Force – Qualified Immunity

Was Qualified Immunity Appropriate for Use of Deadly Force?

Qualified immunity is appropriate when an officer's conduct does not violate a clearly established statutory or constitutional right of which a reasonable officer would have known. "Clearly established law" is not defined at a high level of generality, but instead it is "particularized" to the facts of the case. The lower court failed to identify a case where an officer acting under similar circumstances violated the Fourth Amendment.

Background

In May 2010, a person called 911 and reported that a woman was hacking a tree with a kitchen knife. When Officer Kisela and another officer responded, the 911 caller down flagged them. The caller gave the officers a description of the woman and told them the woman had been acting erratically. During this time, a third officer arrived. The three officers saw a woman, later identified as Susan Chadwick, standing next to a car in the driveway of a nearby house. A chain-link fence with a locked gate separated Chadwick from the officers. The officers then saw another woman, later identified as Amy Hughes, emerge from the house carrying a large knife at her side. Hughes matched the description of the woman who had been seen hacking the tree earlier. Hughes walked toward Chadwick and stopped approximately six feet from her. All three officers drew their guns and twice Hughes was ordered to drop the knife. Hughes appeared calm, but she did not acknowledge the officers' presence or drop the knife. The top bar of the chain-link fence blocked Officer Kisela's line of fire, so he dropped to the ground and shot Hughes four times through the fence. Afterward, the officers jumped the fence, handcuffed Hughes, and called paramedics, who transported her to a hospital. Less than a minute had elapsed from the time the officers saw Chadwick until the time Officer Kisela shot Hughes. Hughes sued Officer Kisela, claiming excessive force. The District Court granted Officer Kisela qualified immunity, but the Ninth Circuit Court of Appeals reversed. Officer Kisela appealed to the U.S. Supreme Court.

Held

The Court reversed the Ninth Circuit Court of Appeals, holding that Officer Kisela was entitled to qualified immunity. An officer is entitled to qualified immunity when his conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. In this case, the court did not decide whether Officer Kisela violated the Fourth Amendment when he shot Hughes; however, even assuming a Fourth Amendment violation occurred, the Court concluded that Officer Kisela did not violate clearly established law. Although a plaintiff is not required to provide case law that is directly on point for a right to be clearly established, an officer cannot violate a clearly established right unless the right was sufficiently defined so that a reasonable officer in the defendant's shoes would have understood that he or she was violating it. The Court noted that it has repeatedly told courts – and the Ninth Circuit in particular – not to define clearly established law at a high level of generality. The Court added that the general rules set out in *Tennessee v. Garner* and *Graham v. Connor* do not by themselves create clearly established law outside an "obvious case." Instead, the Court reiterated that specificity is important in the Fourth Amendment context, as it is sometimes difficult for an officer to determine how the relevant legal doctrine concerning excessive force will apply to the situation facing the officer.

When Officer Kisela encountered Hughes, he suspected that Hughes was the woman the 911 caller had seen hacking a tree with a large kitchen knife. In addition, Hughes was within striking distance of Chadwick; ignored the officers' commands to drop the knife; the officers were separated from Hughes and Chadwick by a chain-link fence; and the situation unfolded in less than a minute. Based on these facts, Officer Kisela testified that he shot Hughes because he believed that Hughes posed a threat to Chadwick. The court concluded that this was far from an "obvious case" in which any competent officer would have known that shooting Hughes to protect Chadwick would violate the Fourth Amendment.

Kisela v. Hughes (Decided April 2, 2018)
https://www.supremecourt.gov/opinions/17pdf/17-467_bqm1.pdf

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United States Court of Appeals for the First Circuit

Fourth Amendment – Terry Stop – Stop-and-Frisk

Did "Show of Authority" Constitute a Fourth Amendment Seizure?

Approaching the defendant, calling his name, and asking him a question did not amount to a Fourth Amendment seizure. The officer did not seize the defendant until he grabbed Belin's arm.

Background

The Boston Police Department transmitted a radio broadcast of a fight in a Boston neighborhood. Two officers responded to the call. They saw a group of five men walking down the sidewalk. The officers pulled over in front of the men to block the sidewalk. One of the men, King Belin, hurried away from the officers. One of the officers recognized Belin because he had arrested him three years earlier for having a firearm in his car. The officer also knew that Belin was a member of a local gang. The officer following Belin said, "Yo, King, what's going on?" Belin looked at him, smiled, and continued walking. The officer caught up to Belin, who stopped, and turned around. The officer asked Belin if he had anything on him and Belin became unusually nervous, his demeanor and facial expression changed, he took a deep breath, and then his breathing became quick and shallow. He looked around "as if searching for a means of escape." The officer grabbed one of Belin's arms with one hand and reached toward Belin's waist with the other to frisk his waistband. Both of Belin's hands moved toward his waist, and the officer grabbed them. A struggle ensued, other officers came to help, and they took Belin to the ground. The officers handcuffed Belin, searched him, and discovered a gun, marijuana, and five rounds of ammunition. Convicted at trial of being a felon in possession of a firearm, Belin filed a motion to suppress the evidence seized during the search. The district court denied the motion, and Belin appealed, arguing that he the officer's show of authority when approaching him constituted an unlawful seizure, and that the officer essentially engaged in a stop-and-frisk without reasonable suspicion that Belin was armed and dangerous.

Held

The Appeals Court disagreed. Even though Belin stopped when the officer called his name, the court determined that approaching Belin, calling his name, and asking him a question did not amount to a seizure. The court concluded that the officer did not seize Belin until he grabbed his arm. The court held that when the officer grabbed Belin's arm, he had reasonable suspicion to believe that Belin was involved in criminal activity, specifically, unlawful possession of a firearm. The officer knew Belin had previously possessed an unlawful firearm, and that Belin was a gang member. The location in which the officer encountered Belin was known for firearm-related offenses. When the officers approached the men walking on the sidewalk, Belin quickly walked away from the officers. During the encounter, but before the stop and frisk, Belin became extremely nervous. The court held that the officer's reasonable suspicion that Belin unlawfully possessed a firearm provided reasonable suspicion to believe that Belin was presently armed and dangerous, which justified frisking him for weapons.

U.S. v. Belin (Decided August 22, 2017)
http://media.ca1.uscourts.gov/pdf.opinions/15-2192P-01A.pdf

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Fourth Amendment – Court Jurisdiction – Exclusionary Rule – Good Faith Doctrine

Is Suppression the Remedy for a Mistake of the Court in Issuing Warrant?

The Exclusionary Rule was designed to deter misconduct by police officers. However, when police officers act with an objectively reasonable good-faith belief that their conduct is lawful, exclusion of evidence is not appropriate, as there is no bad conduct to deter.

Background

This case involved the use of software by the FBI called Network Investigative Technique ("NIT"). The FBI used NIT pursuant to a warrant issued by a magistrate judge in the Eastern District of Virginia. The FBI installed the NIT on "Playpen," a child pornography website it had taken over and was operating out of Virginia. The NIT attached itself to anything that was downloaded from Playpen, causing those computers that had downloaded material to transmit several specific items of information allowing the FBI to locate those computers. One computer the FBI located in this manner belonged to Alex Levin of Norwood, Massachusetts. A search warrant in Massachusetts was issued for Levin's computer and the FBI found child pornography on the computer. Levin was indicted and charged with possession of child pornography. He moved to suppress the evidence seized pursuant to the NIT warrant out of Virginia, and the warrant issued in Massachusetts. The district court found that, since the warrant purported to authorize a search of property located outside the federal judicial district where the issuing judge sat, the NIT warrant was issued without jurisdiction and was thus void. The district court determined that suppression was an appropriate remedy. The government appealed the suppression order.

Held

The Appeals Court noted that the Exclusionary Rule was designed to deter misconduct by police officers. When the police exhibit "deliberate, reckless, or grossly negligent" disregard for Fourth Amendment rights, the exclusion of evidence is warranted. However, when police officers act with an objectively reasonable good-faith belief that their conduct is lawful, exclusion of evidence is not appropriate, as there is no bad conduct to deter. In this case, the government presented the magistrate judge with a request for a warrant, containing an affidavit from an experienced officer, describing in detail its investigation, including how the NIT works, which places were to be searched, and which information was to be seized. Any mistake made in issuing the warrant was made by the magistrate judge and not by the executing officers. In addition, the executing officers had no reason to suspect that a mistake had been made and the warrant was invalid. Consequently, the court concluded there was no law enforcement conduct to deter and vacated the judgment of the district court suppressing the evidence.

U.S. v. Levin (Decided October 27, 2017)
http://media.ca1.uscourts.gov/pdf.opinions/16-1567P-01A.pdf

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Maine Case
Fourth Amendment – Duration of Vehicle Stop – Inevitable Discovery

Was Duration of Stop Unlawfully Extended?
Did Inevitable Discovery Exception Preclude Suppression?

The officer did not unreasonably extend the duration of the stop by asking Clark one minute of follow-up questions. The application of the inevitable discovery doctrine in this case would not create an incentive for future police misconduct.

Background

A Saco police officer stopped a vehicle for erratic driving and for running a red light. Megan Maietta was driving the vehicle and Joseph Clark was her sole passenger. Maietta provided her Maine driver's license and a damaged copy of her car's registration. The officer then asked Clark if he had any identification and Clark said he had an identification issued by the State of Georgia, but he had lost it. Clark also told the officer that he had lived in Maine for five years and he identified himself as "Joseph Leo Clark." Clark volunteered that his birthdate was August 6, 1986, making him 28 years old. The officer returned to Maietta's vehicle and spent approximately one minute asking Clark for additional information about where he lived and any past contact he might have had with police. During this time, Clark told the officer that his birthdate was August 25, 1986. Surprised by the different birthdate, the officer asked Clark to confirm the date a third time. Clark told the officer his birthdate was August 5, 1986. Based on the lack of a match, as well as Clark's failure to have Maine identification despite having been a resident for five years, the officer became concerned that Clark was trying to conceal his identity. Approximately 20 minutes after the initial stop, officers tentatively identified Clark as "Joseph Eugene Clark" from a photograph and learned there were three warrants for his arrest. The officers decided to take Clark to the police station to fingerprint him and, because of a departmental policy, an officer frisked him before transporting him to the police station. During the pat-down search, the officer felt a bump in Clark's waistband and pulled out the object, which turned out to be two plastic bags of heroin and ecstasy.

A federal grand jury indicted Clark for possession with intent to distribute a controlled substance and Clark filed a motion to suppress, arguing that the officer's seizure of him and search of his waistband violated the Fourth Amendment. The magistrate judge recommended that the motion to suppress be denied and, over Clark's objection, the district court affirmed the recommendation. Clark appealed arguing that (1) the officer unreasonably extended the duration of the traffic stop and thereby violated his rights under the Fourth Amendment, and (2) the admission of the drug evidence found during the resulting pat-down search, which the government conceded was unlawful, should have been suppressed.

Held

Duration of the Stop. The Appeals Court said that the tolerable duration of a traffic stop is determined by the seizure's mission, in this case to address the traffic violation and to attend to related safety concerns. During the stop, the officer is permitted to undertake those ordinary inquiries associated with a traffic stop, such as checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. In addition, due to the inherent dangers of a traffic stop, the police may request identification from passengers in the vehicle, so long as those requests do not measurably extend the duration of the stop. The court found that the officer did not

unreasonably extend the duration of the stop by asking Clark one minute of follow-up questions. The court concluded that the officer asked Clark to repeat his name and date of birth because he reasonably believed that he might have misheard Clark the first time. In addition, the officer asked follow-up questions because he was unable to verify Clark's information, including the information that Clark had provided voluntarily. The court commented that asking a passenger, for one minute, to confirm identifying information that the passenger volunteered to the officer is "one of these negligibly burdensome precautions justified by the unique safety threat posed by traffic stops."

Inevitable Discovery Exception.[2] On the second issue Clark argued that the inevitable discovery exception to the Exclusionary Rule should not apply to the evidence found during the pat-down search. On appeal, the government conceded that the officer exceeded the proper scope of a pat-down search for weapons but contended that the district court properly applied the inevitable discovery rule. The inevitable discovery rule comes with three questions: (1) whether the legal means by which the evidence would have been discovered was truly independent; (2) whether the use of the legal means would have inevitably led to the discovery of the evidence; and (3) whether applying the inevitable discovery rule would either provide an incentive for police misconduct or significantly weaken constitutional protections. Clark focused his argument solely on the third question and acknowledges that he would have been searched more thoroughly at the police station and the drugs would have been discovered through independent and lawful means. Clark's argument was that the pat-down search was not performed to protect officer safety but to find evidence of his identification. After a hearing the magistrate judge determined the officers "had mixed motives" for conducting the pat-down search, concluding that they searched Clark both because they wanted to find identification on him and because they were concerned for their safety. The magistrate judge also found that the problems with the pat-down search, including its illegal scope, was in part because of officer's inexperience, making the violation unintentional, and that the application of the inevitable discovery doctrine in this case would not create an incentive for future police misconduct. Because Clark raised no other arguments regarding the inevitable discovery rule, the Appeals Court affirmed the decision of the district court to deny the motion to suppress.

U.S. v. Clark (Decided January 3, 2018)
http://media.ca1.uscourts.gov/pdf.opinions/17-1125P-01A.pdf

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[2] The inevitable discovery exception to the Exclusionary Rule allows into evidence illegally seized items that would have been discovered lawfully anyway. This exception allows evidence to be admitted, even though it was seized in violation of the Constitution.

Maine Case
Fourth Amendment – Plain Feel – De Facto Arrest

Was Detention, Frisk, and Seizure from Defendant's Undershorts Lawful?

Officers had a reasonable basis to suspect that the suspect might be armed and dangerous; therefore, by entering the room with guns drawn and immediately handcuffing the suspect, the officers acted reasonably to ensure their safety during the search. When a frisk is limited, it does not automatically dispel a reasonable suspicion that the suspect may be armed; therefore, a second frisk may be justified. There was probable cause to arrest the suspect and to seize the object incident to his arrest.

Background

For some years, a DEA agent suspected that Todd Rasberry was a major player in the drug trade. With the help of a cooperating source, the agent was able to track down one of Rasberry's accomplices while she was making drug deliveries in Portland, Maine. When the accomplice was confronted, she surrendered the heroin she was carrying and told the agent that he would find Rasberry, along with more drugs, at a motel room she had rented in Scarborough. She gave the agent a key to the motel room and consented to its search. The agent knew Rasberry had a criminal history that included drug and weapons charges, and that Rasberry had been arrested a few months earlier at a party where guns were present. As a result, the agent and several other officers went to the motel room armed and wearing ballistic vests.

When the officers arrived at the motel, the room key did not work so they knocked; Rasberry opened the door and acknowledged that he was a guest in the motel room. The officers told Rasberry that they were there to search the premises and, although he was not under arrest, he would be detained while they conducted the search. The officers handcuffed Rasberry and patted him down for weapons only around his lower back where he might be able to reach while handcuffed. For about 20 minutes, the officers searched the motel room. They found plastic sandwich bags, needles, and a digital scale, but no drugs. With the search winding down, Rasberry asked if the handcuffs could be removed and he was told that before the handcuffs could be removed, he would have to be patted down again for weapons. During this pat-down, the agent felt a hard, round object about the size of a softball in the groin area of Rasberry's undershorts and inquired as to the nature of the object. Rasberry responded that it was part of his anatomy. The agent was confident that the object was contraband and placed Rasberry under arrest. Reaching into Rasberry's undershorts, the agent extracted a ball of baggies containing what later was tested to be heroin and cocaine.

Rasberry was indicted by a federal grand jury and moved to suppress the drugs seized from his person, arguing that the seizure and search violated the Fourth Amendment. The district court denied his motion to suppress, stating that what had transpired constituted a lawful *Terry* stop, that placing Rasberry in handcuffs was reasonably necessary to ensure the officers' safety, and that the duration of the detention was reasonable because the officers were diligently searching the room during that interval. The district court also upheld the seizure of the drugs from Rasberry's undershorts because the drugs were lawfully seized under the "plain feel" doctrine or the officers had probable cause to arrest Rasberry, search him incident to his arrest, and seize the drugs. Rasberry appealed the suppression order.

Held

De Facto Arrest. Rasberry claimed that by brandishing weapons, placing him in handcuffs, and searching the room for 20 minutes, the officers transformed a lawful *Terry* stop into a *de facto* arrest without probable cause. The Appeals Court disagreed, finding that the officers had a reasonable basis to suspect that Rasberry might be armed and dangerous; therefore, by entering the room with guns drawn and immediately handcuffing Rasberry, the officers acted reasonably to ensure their safety during the search. In addition, the agent told Rasberry that he was not under arrest, but rather, simply being detained while the officers searched the room. Finally, the court concluded that Rasberry's detention was proportional to the circumstances and lasted no longer than was reasonably necessary for the officers to search the room and dispel their suspicion that illegal drugs were hidden there.

The Two Frisks. Rasberry argued that the second frisk violated the Fourth Amendment because the initial frisk, performed when he was first handcuffed, was sufficient to dispel any suspicion that he might be armed. The court said that a police officer may frisk a suspect when the officer has reasonable suspicion that the suspect is armed and dangerous. In some situations, when the first frisk is limited, it will not automatically dispel a reasonable suspicion that the suspect may be armed; therefore, a second frisk may be justified. In this case, the court found that the initial frisk was confined to the area of Rasberry's lower back. Because the first frisk was confined to Rasberry's lower back, the court concluded the agent had reasonable suspicion to believe that Rasberry might be carrying a weapon somewhere else on his person.

Seizure of Contraband. Rasberry argued that the removal of the contraband from his undershorts violated the Fourth Amendment. Prior to seizing the drugs from Rasberry, the agent recovered drugs from Rasberry's accomplice, the renter of the motel room. The accomplice told the agent that Rasberry was in the room and was in possession of additional drugs. The officers searched the room, without finding any drugs, and the only place that had not yet been searched was Rasberry's person. When the agent frisked Rasberry, he felt a softball-sized object in Rasberry's undershorts that he reasonably suspected contained drugs. This suspicion was increased by the agent's knowledge that drug dealers frequently conceal drugs in their undergarments. Finally, when the agent asked Rasberry about the object, Rasberry responded with an obvious lie. The court concluded that these facts established probable cause to arrest Rasberry and to seize the softball-sized object incident to his arrest.

U.S. v. Rasberry (Decided February 14, 2018)
http://media.ca1.uscourts.gov/pdf.opinions/16-2465P-01A.pdf

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Fourth Amendment – Automobile Exception – Probable Cause

Was Search of Vehicle without Warrant Constitutional?

To satisfy the requirements of the automobile exception to the Fourth Amendment warrant requirement, the question is whether the totality of the circumstances creates a fair probability that evidence of a crime will be found in the vehicle. There does not have to be specific information linking the automobile to the commission of the crime, only that that evidence of a crime will be found in the vehicle.

Background

Joseph Kennedy was on federal supervised release when a warrant was issued for his arrest. While several officers were conducting surveillance at the address of Kennedy's longtime girlfriend, they learned that Kennedy was wanted for stealing a safe containing ammunition and possibly weapons, pepper spray, and drugs. The officers learned that Kennedy might be driving a gray Honda and were provided with the license plate number of that vehicle. A gray Honda approached the team's location, and Kennedy was the person driving the car. Kennedy parked the car near his girlfriend's apartment and left it. The officers approached Kennedy to arrest him; he ran away but was quickly apprehended. Once Kennedy was secured and away from the car, one of the officers looked through the car's window and saw part of a large gray, metallic, box-shaped object on the backseat that was mostly covered by a duffle bag. The officers searched the car and found a safe that had been forced open and contained drug paraphernalia and ammunition. Kennedy moved to suppress all evidence stemming from the warrantless search of the Honda, arguing that the search violated the Fourth Amendment. After an evidentiary hearing the district court denied the motion and Kennedy appealed.

Held

The appeals court found that the evidence in the Honda was seized under the automobile exception to the warrant requirement. The court stated that to satisfy the automobile exception requirement, the question was whether the totality of the circumstances created a *fair probability* that evidence of a crime would be found in the Honda. When the officers searched the vehicle, they knew the following information: Kennedy was wanted for the theft of a safe containing ammunition and possibly other items that had occurred the previous night; there was clutter in the backseat of the vehicle he had been driving immediately before his arrest, including bags and clothing piled on top of what appeared to be a large gray metallic box-shaped item consistent with the size and shape of a safe;. This factual basis – together with reasonable inferences drawn therefrom – was sufficient to establish a "fair probability" that evidence of the larceny would be found inside the vehicle. Kennedy argued that the evidence taken from the Honda should have been suppressed because the officers did not have specific information linking the Honda to the crime (larceny) and because the passage of 10-12 hours between when the larceny was reported and when Kennedy was arrested renders any link between the crime and the car weak. The appeals court stated that the officers' search was proper so long as there was probable cause to believe the Honda contained evidence of the crime (larceny), not that it was directly used in the commission of the crime.

U.S. v. Kennedy (Decided January 24, 2018)
http://media.ca1.uscourts.gov/pdf.opinions/15-2298P-01A.pdf

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Maine Supreme Judicial Court

First Amendment – Facebook Posts - Protection from Abuse

Did Facebook Posts Violate the Terms of a Protection from Abuse Order?

The posts constituted "contact" for purposes of the PFA. The posts were published to a publicly accessible Facebook page, which defendant knew could be seen by the protected person, that person's family and friends, and that even if the protected person did not directly see the messages, they would eventually be relayed to that person.

Background

Richard Heffron III published several posts on Facebook concerning the person he was prohibited from contacting by the terms of a Protection from Abuse Order. Heffron and the person protected by the order each used Facebook and they had "friends" in common on Facebook. The content of some of Heffron's posts were personal, and the language was offensive. The State charged Heffron with violating the protection order and the trial court found that the posts were not expressing protected opinions or providing information, and that the posts were intended to reach the person protected by the order directly. After a jury-waived trial, Heffron was convicted. He appealed the conviction, asserting that his Facebook posts did not violate the protection order in that they did not constitute "direct or indirect contact." He also argued that he did not have sufficient notice that the posts were a form of prohibited conduct, and that the posts constituted protected speech under the First Amendment.

Held

In its decision, the Law Court stated that while "contact" is not defined in the protection statutes, an order prohibiting direct or indirect contact instructs a defendant not to meet, connect, or communicate with the protected person, either personally or through a third party or other intervening agency, instrumentality, or influence. Proof of contact may be established by a variety of actions, including emailing, gesturing from the window of a car, calling the protected person's current romantic partner, and monitoring a person's movements. The court went on to say that the trial court did not err by finding that Heffron had direct or indirect contact with the protected person, that the finding is supported first by the content of some of the Facebook posts in which Heffron directly addressed the protected person followed by personal and demeaning allegations. The posts were also published to his publicly accessible Facebook page, which he knew could be seen by that person, that person's family and friends and that even if the protected person did not directly see the messages, they would eventually be relayed to that person. The court also stated that Heffron had adequate notice that his Facebook posts were a prohibited form of contact, that through his posts he intended to have contact, and that the contents of the posts were highly personal, derogatory, harassing, and threatening and that the First Amendment does not serve as a shield to protect Heffron from the consequences of his harassing communications.

State v. Heffron (Decided July 24, 2018)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2018/18me102.pdf

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Fourth Amendment – Curtilage – Plain View – Inevitable Discovery

Was the Search of Bags Seized within the Home's Curtilage Constitutional?

If the officers had merely seized the bags, they inevitably would have discovered the drugs in the bags once they obtained the search warrant, and there was no information to suggest that the officers intended to subvert the Fourth Amendment's warrant requirement.

Background

Following the arrest of a woman outside of a Bangor motel after she attempted to buy a large quantity of oxycontin pills, two officers went to the Caribou home she shared with David Sullivan, pending issuance of a search warrant. Their purpose was to conduct a "security check" and thereby prevent the destruction of evidence and ensure the safety of officers arriving at the home with the anticipated warrant. Sullivan's Caribou home was a mobile home with a porch on the front and an addition extending from the back. It was located down a long driveway and surrounded by woods. When the officers arrived at the home shortly after 7:30 p.m., it was dark outside, and they observed several security cameras around the house. The officers knocked on the front door and announced their presence, but no one answered. The officers then walked around the residence to see if there was a rear door. As they walked around the side of the residence, within a few feet of the home, they discovered two plastic shopping bags in the snow. The bags were nearly translucent, and they emitted a strong odor of marijuana. It was immediately apparent to the officers that the bags contained drug paraphernalia. Because the bags sat atop fresh snow and had no footprints around them, it appeared that they had recently been thrown from a window. The officers took the bags back to their vehicle, searched the contents, and discovered contraband. Eventually, the warrant arrived, and the home was searched.

Sullivan was charged by indictment with several drug charges. He pleaded not guilty to all charges and moved to suppress the evidence in the bags discovered outside of his home. After a hearing, the court denied the motion and after a jury trial Sullivan was found guilty of the drug charges. Sullivan's central argument on appeal was that the evidence obtained from the search of the bags discovered within the curtilage should have been excluded because the officers had not obtained a warrant for the search and no exception to the warrant requirement applied.

Held

A person has a reasonable expectation of privacy in the curtilage around his or her home, but a person's reasonable expectation of privacy in that space is not identical to the expectation of privacy inside the home. The State can intrude into the home's curtilage under certain circumstances, including accessing the entry to a dwelling and while conducting legitimate law enforcement activities. While the bags were clearly within the curtilage, they could be seized without a warrant if there was an appropriate warrant exception. The appropriate exception in this case was the plain view doctrine given that the officers were legitimately in a place to see the object and the incriminating nature of the object was immediately apparent. However, this only justified a seizure, not a search. The State argued that the officers' "security check" was justified pursuant to the exception to the warrant requirement that permits officers to temporarily secure a residence to prevent the destruction of evidence while pursuing a warrant.[3] The

[3] Officers may temporarily secure a residence if (1) the officers have probable cause to believe the home contains evidence of a crime; (2) the officers have reason to believe that evidence could be destroyed before they obtain the warrant; (3) the officers make reasonable efforts to reconcile their law enforcement needs with the demands of

suppression court found that the officers had probable cause to believe that the home contained drugs based on their interaction with Sullivan's housemate. The police also had reason to believe that evidence of drugs at Sullivan's home might be destroyed, and by walking around the side of the house, the officers intruded upon Sullivan's privacy only minimally and the police obtained a warrant within five hours after arriving at the residence. In its decision, the Law Court stated that these factors support the reasonableness of the officers' conduct, and that by entering Sullivan's curtilage without a warrant, the officers only minimally intruded on his privacy. The officers were motivated not only by a desire to prevent destruction of evidence, but also to ensure the safety of officers and others arriving at the scene. This was a reasonable concern given the presence of mounted security cameras, the remote area, and the size of the drug purchase that motivated officers to seek a search warrant for the home.

The inevitable discovery exception permits the use of evidence that would otherwise be excluded when that evidence would have been discovered by lawful means. In this case, the Law Court stated, the officers had lawfully obtained the information that led them to believe with some certainty that the bags contained contraband. They obtained that information from their initial plain view observation of the bags, not an improper search. If the officers had merely seized the bags, they inevitably would have discovered the drugs once they obtained the search warrant, and there was no information to suggest that the officers intended to subvert the Fourth Amendment's warrant requirement. Since there was no reasonable concern that application of the inevitable discovery exception would create an incentive for future misconduct, the evidence was admissible.

State v Sullivan (Decided March 15, 2018)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2018/18me037.pdf

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Fourth Amendment – Consent to Search – Knock-and-Talk

Did Defendant Grant Consent to Enter Premises & Search?

Consent must be given freely and voluntarily, and the State must prove by a preponderance of the evidence that consent was objectively manifested by word or gesture and more than a mere acquiescence to a claim of lawful authority. The State proved by a preponderance of the evidence that defendant consented.

Background

Between December 2014 and January 2015, officers with the Maine State Police Computer Crimes Unit downloaded files containing child pornography from an IP address associated with a networking device at a residence in Augusta. Following up on this information, three officers, wearing plain clothes, went to the residence. The lead investigator knocked on a door connected to an enclosed porch. Randy Marquis answered the knock. Marquis opened the door and let the officers enter the enclosed porch after the lead investigator identified himself as a State Police officer. The investigator asked Marquis and Marquis's mother and father, who had joined them, whether the taxi business operating out of the home had experienced any problems on Christmas Day. When they indicated that they were not aware of any problems, the investigator told them

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personal privacy; and (4) the time period lasts no longer than reasonably necessary for the police to obtain a warrant.

that there was "something else" with which he would like their help. He stated that the police had discovered child pornographic files coming through the network associated with their address and asked if they knew anything about the child pornography. Randy Marquis readily responded, "Yeah, I know what you're talking about." He stated that he had received "a few" of the files while using a peer-to-peer file sharing network but that he immediately deleted them upon receipt. Marquis added that he was the only user of the computer. The investigator asked whether he could look at Marquis's computer and Marquis replied, "Yeah." The investigator explained that he did not have a search warrant and that Marquis did not have to consent to a search of his computer, but that he would like to check the accuracy of what Marquis told him by using a "search tool." Marquis responded with "yeah ok" and "I have no problem with that." Marquis then directed the lead investigator to the computer, which was in the enclosed porch.

While the search of the computer was being performed, Marquis answered the investigator's questions. After the search was complete, the investigator showed Marquis the results, which he told Marquis revealed "hits on tons and tons of pictures." The investigator told Marquis that if Marquis gave consent, he would like to take the computer to the laboratory and do a more thorough search for illegal files. The investigator asked Marquis if he could also take the "SD" card and Marquis muttered his assent. The investigator gave Marquis a consent-to-search form and told him that by signing the form he was consenting to a search of the computer and the SD card for illegal contraband, specifically child pornography, and that he did not have to give consent. Marquis signed the form. The investigator asked Marquis if he had any questions and Marquis replied, "Nope, I'm good." The 37-minute interview was tape-recorded.

Marquis was indicted on three counts of possession of sexually explicit material. He filed a motion to suppress, arguing that (1) he had not consented to the officers entering his home, (2) any consent given was not voluntary because the officers used deception to gain entry, (3) he did not consent to the search and seizure of his computer, and (4) the officers subjected him to custodial interrogation without providing Miranda warnings. The suppression court denied the motion to suppress. The court found that while the lead investigator did not expressly ask whether he could enter the home, Marquis's conduct was cooperative and that he freely let the officer enter his residence after the officer identified himself as a law enforcement officer. The court further found that the investigator's statements about the taxi business were brief and did not affect Marquis's decision to consent to the search and seizure of his computer. Based on its finding, the court determined that Marquis consented to the officers' entry into his residence and consented to the search and seizure of his computer, both orally and in writing. The court further found that Marquis was not in custody for purposes of Miranda when the police interviewed him at his home. Marquis appealed, arguing that the suppression court erred in finding that he consented to the officers' entry into his home when he merely acquiesced to the officers' entry.

Held

In its decision, the Law Court addressed only the issue of whether Marquis had consented to the officers entering his home. The court stated that when there is valid consent, a warrantless search of a home is reasonable. Consent must be given freely and voluntarily, and the State must prove by a preponderance of the evidence that consent was objectively manifested by word or gesture and more than a mere acquiescence to a claim of lawful authority. The court went on to say that consent may be found when a person actively assists and cooperates with an

investigation. The Law Court said that the suppression court's determination that Marquis consented to the officers' entry into the enclosed porch was supported by Marquis actions: he responded to a knock on the door; he voluntarily opened the door and engaged in conversation with the lead investigator, he answered the investigator's questions without hesitation, and the conversation had a friendly tone. After the officers entered the porch, the conversation continued without interruption. Marquis was cooperative, and he did not ask the officers to leave or indicate that the officers' presence was unwelcome. The Law Court added that even though there was no testimony that Marquis made a specific gesture, such as waving the officers in or stepping aside to let the officers enter, there was sufficient evidence based on the totality of the circumstances to support a finding that Marquis consented to the officers' entry.

State v. Marquis (Decided March 20, 2018)
http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2018/18me039.pdf

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Fourth Amendment – Search Incident to Arrest – Probable Cause

Was Search Incident to Arrest of Defendant's Jacket and Vehicle Lawful?

Because the jacket was on defendant's person at the time that she was advised that she was under arrest and remained associated with her person, even as she sat on the jacket, the officer's search of the jacket was a lawful search incident to arrest. Because the search of defendant's vehicle was not supported by probable cause and was outside the scope of a vehicle search incident to arrest, the warrantless search of the vehicle was not justified.

Background

An Auburn police officer observed Donna Pagnani driving her vehicle. The officer was familiar with Pagnani's extensive criminal history and believed that her driver's license had recently been suspended. The officer ran a license check on Pagnani but, by the time he received the results of that check—which revealed that Pagnani's driver's license was under suspension and that she had a prior conviction for operating after suspension (OAS)—Pagnani had driven away. The officer decided to wait for Pagnani near her residence. When the officer saw Pagnani driving toward her home, he initiated a traffic stop, following Pagnani's vehicle into the driveway of her residence. As Pagnani got out of her vehicle, the officer informed her that her license was suspended for failing to pay a fine, to which she replied that it was not. The officer then ran another license check and confirmed that Pagnani's license was currently suspended. While the officer and Pagnani were standing in her driveway next to her vehicle, the officer, who knew that Pagnani had a pending drug trafficking case in New Hampshire, asked her about the status of that case. Pagnani told him that the case had been dropped. The officer asked Pagnani if she had any drugs or weapons on her and she said no. The officer asked Pagnani if she would consent to a search of her vehicle, and she said no. The officer told Pagnani that she was under arrest for operating after suspension. Pagnani did not willingly submit to arrest. She continued to tell the officer that she had done nothing wrong and continued to ask for time to speak with someone at the Violations Bureau. Several times, the officer told Pagnani to put the phone down, but she continued to speak with someone on her phone and started to walk away from her vehicle. The officer advised Pagnani not to move away from him, but she walked away from the officer toward the porch of her home. Once on the porch, Pagnani removed her

jacket, placed it on the seat of a chair on the porch, and sat in the chair. Pagnani was wearing a sleeveless top. The temperature was 34 degrees.

The officer called for backup. When the responding officers arrived, they helped place Pagnani in handcuffs and put her into the back of the arresting officer's vehicle. After Pagnani was placed in handcuffs by the responding officers, the arresting officer picked up Pagnani's jacket from the chair and searched it. A video of the incident shows the officer searching Pagnani's jacket almost immediately after she was handcuffed and removed from the porch. In the jacket the officer found a small loose rock, which he believed was cocaine base. The officer then attempted to open Pagnani's car, but it was locked. He advised the responding officers that he had found cocaine base in her jacket and was going to "toss the car." The responding officers physically removed the keys from Pagnani's hands. The officer then searched the vehicle and found a sandwich bag containing five smaller bags of a brown powder. The officer believed that the substance in the bags was heroin.

The trial court ruled that the searches of the jacket and the vehicle and the seizure of the evidence was not supported by probable cause. The State appealed, arguing that the search of the jacket was lawful incident to the arrest, and that evidence discovered in the jacket supported the subsequent search of the vehicle.

Held

In a split 4-3 decision, the Law Court affirmed in part and vacated in part. It ruled that the search of the jacket was a lawful search incident to arrest, but that the search of the vehicle was not supported by probable cause and was outside the scope of a vehicle search incident to arrest. Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. Three justices dissented from the majority opinion. While concurring with the decision that a search of the vehicle was unlawful, they also said they would have ruled that the search of the jacket was unlawful, given their view that the rationale underlying the validity of searches incident to lawful arrests stems from the need to seize weapons and other things on the arrestee's person or under his or her immediate control that might be used to assault an officer or effect an escape or to prevent the destruction of evidence of the crime. They pointed to the facts that before the search occurred, Pagnani was restrained, she was outnumbered by police officers, and she was being led away from the porch where she had left her jacket; it would have been impossible for Pagnani to reach into her jacket to obtain a weapon or an escape instrumentality or to destroy or conceal evidence.

State v. Pagnani (Decided August 30, 2018)
https://cases.justia.com/maine/supreme-court/2018-2018-me-129.pdf?ts=1535641535

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