

MAINE STATE LEGISLATURE

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February 18, 1964

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Maine State Prison

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Methods Used in Apprehending State Prison Escapees.

FACTS:

When prisoners escape from the Maine State Prison road blocks are set up in the vicinity of the institution, which road blocks are manned by personnel of the State Police, Sheriffs' Department, local Police Departments and Prison. Automobiles heading away from the area are stopped by the officers who look into the vehicles in order to determine whether an occupant might be the escaped prisoner.

QUESTION:

Do the law enforcement officers seeking the recapture of escaped prisoners violate the constitutional rights of the occupants of an automobile, by the mere stopping of such automobile at a road block, for the purpose of determining whether the escapee might be the driver or passenger in such automobile?

ANSWER:

No.

OPINION:

By the United States Constitution, 4th Amendment, and by the Constitution of Maine, Art. I, §5, a citizen is protected from unreasonable seizure of his person. Generally, an arrest under the constitutional provisions must take place upon probable cause, and pursuant to a warrant; however, in certain instances, arrests may take place without a warrant, e.g., when a person seized is in the act of committing a felony.

"An arrest is the taking, seizing, or detaining of the person of another by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest." 3 Am. Jur. 2d Arrests §1."

Arrest as it is commonly used, contemplates the formal charging of the person arrested with the commission of an offense. In our opinion, the stopping of a person at a road block, as herein described, does not constitute an arrest. Such temporary restrictions of absolute freedom of movement is not illegal police activity. No one would argue that a law enforcement officer stopping a pedestrian in order to satisfy himself that such person is not the escaped prisoner who the officer is seeking to recapture, or to ask such pedestrian if he had seen a person answering the description given by the officer, would constitute an arrest of such pedestrian; hence, it cannot be reasonably contended that what would not be a violation of a constitutional right on foot, becomes so, merely, by virtue of a

different means of movement, i.e., travel by automobile.

The escape of a felon from the Maine State Prison requires immediate action on the part of law enforcement officers for the protection of the public, such action obviously entails the investigation by such officers into the movements of the escapee, from the time of escape. Such investigation oftentimes brings law officers into contact with members of the public from whom information is sought.

A statement by Justice Burton of the United States Supreme Court in a concurring opinion in the case of *Brinegar vs. United States*, 338, U.S. 160 at 179, is particularly applicable to escapes and is as follows:

" . . . It is only by alertness to proper occasions for prompt inquiries and investigations that effective prevention of crime and enforcement of law is possible. Government agencies are commissioned to represent the interests of the public in the enforcement of the law and this requires affirmative action not only when there is reasonable ground for an arrest or probable cause for a search but when there is reasonable ground for an investigation. . . ."

Another significant statement appears in *United States vs. Brinegar*, 180 Fed. Supp. 71 at 78, wherein the Court stated:

" . . . While the Fourth Amendment may be construed as encompassing "seizure" of an individual, it cannot be contended that every detention of an individual is such a "seizure". If that were the case, police investigation would be dealt a crippling blow, by imposing a radical sanction unnecessary for the protection of a free citizenry"

At Page 79, the Court went on:

" . . . When police reasonably believe that a crime might have been committed, those closely connected in time and place to the criminal activity are undoubtedly proper subjects for limited police questioning, for they are most likely to have information of value to the investigation"

The Court in the *Brinegar* case, at Page 80, set forth requisites for legal stoppage of motor vehicles for investigation, which requisites we consider sound, and which are as follows:

" . . . (1) belief by the officer involved that a crime might have been committed; (2) reasonable grounds for such a belief and (3) absolute necessity for immediate investigatory activity. These factors, when met, would constitute reasonable basis for stopping an automobile for the purpose of inquiry even though they might provide something less than would constitute probable cause for a formal arrest of its occupants"

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In instances of escape the above requisites are more than met; in that, law enforcement officers do not merely have reasonable basis for a belief that a crime has been committed, but have absolute knowledge thereof, along with absolute knowledge of the identity of the person or persons guilty of the crime.

In summary, it is our opinion the stoppage of motor vehicles at road blocks, established in an area near the Maine State Prison in instances of escape therefrom, is reasonable police activity and does not constitute the illegal arrests of the occupants of such vehicles, and, therefore, is not violative of any constitutional rights.

This opinion is rendered with reference to the facts set forth herein, and those alone, and should not be construed to be applicable to any situation other than escapes from the Maine State Prison.

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