

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 724

6  
7 H.P. 576

House of Representatives, February 10, 1983

8 Referred to the Committee on Judiciary, sent up for concurrence and  
9 ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Bell of Paris.

Cosponsor: Representative Livesay of Brunswick.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Permit the Appeal of Denials  
18 of the Suppression of Evidence  
19 by Criminal Defendants.  
20

21 Be it enacted by the People of the State of Maine as  
22 follows:

23 15 MRSA §2115-B is enacted to read:

24 §2115-B. Appeals by the defendant after a plea of  
25 guilty.

26 1. Appeals after plea of guilty. An appeal may  
27 be taken by a defendant in criminal cases on ques-  
28 tions of law from the District Court and from the  
29 Superior Court to the Law Court, after the defendant  
30 has entered a plea of guilty to a complaint, informa-  
31 tion or indictment, on all issues that the defendant  
32 has heretofore been permitted to appeal after that  
33 plea and, additionally, from an order of the court

1 prior to that plea denying the defendant's motion for  
2 the suppression of any evidence, including, but not  
3 limited to, physical or identification evidence or  
4 evidence of a confession or admission.

5 2. Cross appeal by the State. When the defend-  
6 ant appeals pursuant to subsection 1, the State  
7 shall be permitted to appeal on questions of law from  
8 an order of the court prior to the defendant's plea  
9 of guilty granting that defendant's motion for the  
10 suppression of any other evidence, including, but not  
11 limited to, physical or identification evidence or  
12 evidence of a confession or admission.

13 3. Rules. The Maine Rules of Criminal Procedure  
14 and District Court Criminal Rules shall apply as in  
15 any other appeal of a criminal action by a defendant.

16 4. Effect of an appellate reversal. Should the  
17 appellate review result in a reversal of the lower  
18 court's denial of the defendant's motion for the sup-  
19 pression of any evidence, the defendant shall be per-  
20 mitted to withdraw his plea of guilty and proceed to  
21 trial as if he had not entered that plea.

22 5. Liberal construction. This section shall be  
23 liberally construed to effectuate its purpose of  
24 allowing defendants to appeal issues of the suppres-  
25 sion of evidence without the necessity of proceeding  
26 through otherwise unnecessary trials.

27 STATEMENT OF FACT

28 The purpose of this bill is to allow defendants  
29 to appeal denials of their motions to suppress evi-  
30 dence without the necessity of proceeding to trail in  
31 order to preserve the issue. Decisional law pres-  
32 ently allows appeals after guilty pleas only on  
33 jurisdictional and sentence issues, see Dow v. State,  
34 Me., 275 A.2d 815, 821 (1971). The theory behind  
35 allowing defendants to appeal jurisdictional issues,  
36 and conversely why other issues cannot be appealed,  
37 is that jurisdictional issues "cannot be validated by  
38 waiver or consent," Id., all other issues, therefore,  
39 being presumed waived by the plea of guilty.

1           Frequently, the state's prospect of obtaining a  
2 conviction of a particular defendant rests solely or  
3 primarily on a piece of evidence that was obtained  
4 under circumstances which would allow the defendant  
5 to move to suppress that evidence. Examples would  
6 include a drug search and seizure, a one-person iden-  
7 tification of a defendant or a defendant's confes-  
8 sion, each where there exists no or little other evi-  
9 dence to connect the defendant to the crime. If the  
10 evidence is suppressed, the State would have to dis-  
11 miss its case; if it is not suppressed, the defendant  
12 faces sure conviction at trial. Under the present  
13 law regarding appeals, the defendant foregoes his  
14 right to appeal what he maintains were constitution-  
15 ally infirm actions by law enforcement officers if he  
16 pleads guilty. To preserve that appeal, he must pro-  
17 ceed with an unnecessary trial at considerable  
18 expense and wasted time to himself, the prosecution  
19 and the judicial system as a whole.

20           This bill allows the defendant to appeal those  
21 constitutional issues, and allows the State the right  
22 to cross appeal a grant of suppression of other evi-  
23 dence thus clarifying all suppression issues at the  
24 same time, despite a post-suppression hearing, pre-  
25 trial plea of guilty.

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