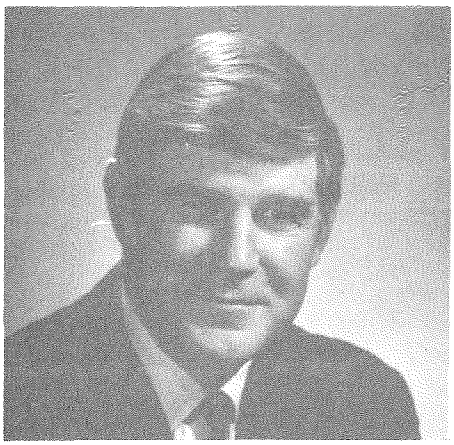
JULY 1971

ALERT

CRIMINAL DIVISION

FROM THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MAINE



MESSAGE FROM THE ATTORNEY GENERAL JAMES S. ERWIN

In many of our ALERT Bulletins, Federal and state court cases have been cited as authorities for some of the principles of law that have been set forth in the main articles. These citations have been included because usually a mere statement of a principle is not enough to convey the full meaning of the principle in actual practice. The officer needs to see how the legal principle is applied to an actual fact situation to gain a complete and thorough understanding of it.

This office originally suggested that law enforcement officers make use of the Maine State Law Library or local law libraries to look up and read these cited cases. We realize, however, that for one reason or another it is still very difficult for most officers to get to a library for this purpose. Therefore, the Law Enforcement Education Section of the Criminal Division of this office is now prepared to duplicate and mail out to any law enforcement officer requesting it, a duplicate copy of any court opinion that has been cited in the ALERT Bulletin. All the officer need do is write or call this office at 289-2146 and request the case or cases he wants, giving the proper citations if possible. This office will duplicate the material and have it in the mail that same day.

ARREST I

The law of arrest is based upon guarantees embodied in the Constitutions of the United States and the State of Maine. The familiar Fourth Armendment to the U. S. Constitution provides as follows:

> "The right of the people to be secure in their *persons,* houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the *persons* or things *to be seized,*" (emphasis supplied) *U.S.C.A. Const. Amend. IV*

The Constitution of the State of Maine contains a provision similar in import to the above. *M.R.S.A. Const. Art. I. Section 5.*

There is a common belief among law enforcement personnel that the Fourth Amendment, quoted above, applies only to searches and seizures of material things and not of people. The word "persons" has been emphasized in the above passage to indicate clearly that this amendment is not so restricted, but that it also protects individuals from illegal seizures of their persons.—i.e. arrests. Furthermore, the U. S. Supreme Court has dispelled any lingering uncertainty as to the status of illegal arrest under the Fourth Amendment in the 1959 case of *Henry v. U. S.:*

> ". . . (I)t is the command of the Fourth Amendment that no warrants either for searches or *arrests* shall issue except upon probable cause . . ." (361 U.S. 98, 100) (emphasis supplied)

Keeping in mind this basic requirement that law enforcement officers must comply with the Fourth Amendment in order for an arrest to be valid, we turn now to the task of formulating a precise definition of arrest and discussing the authority, execution and various other aspects of the law of arrest.

DEFINITION OF ARREST

Numerous attempts have been made to frame an all inclusive definition of arrest which would be applicable in all situations. None of these have been entirely satisfactory because arrest is a term which eludes exact difinition. In effect, it is a legal conclusion used to describe a complex series of events which have in fact taken place.

Nevertheless, the Supreme Judicial Court of Maine has attempted to define arrest in detail in a relatively recent case and every Maine law enforcement officer should be familiar with this definition:

> "An arrest in criminal law signifies the apprehension or detention of the person of another in order that he may be forth-coming to answer for an alleged or supposed crime."

State v. MacKenzie, 210 A.2d 24, 32 (1965)

The court went on to set out the basic elements necessary to constitute an arrest. These elements are:

1. A purpose or intention to effect an arrest under real or pretended authority.
2. An actual or constructive seizure or detention of the person to be arrested by one having the present power to control him.
3. A communication by the arresting officer to the one whose arrest is sought of his intention or purpose then and there to make the arrest.
4. An understanding by the person who is to be arrested that it is the

(Continued on page 2)

It is our sincere hope that officers will respond to this new service and that through it we will be able to improve the flow of information to law enforcement personnel in Maine.

James S. Erwin

JAMES S. ERWIN
Attorney General

intention of the arresting officer then and there to arrest and detain him.
Each of these elements will be discussed separately in some detail.

Intention to Arrest

To satisfy this first requirement, there must be an intent on the part of the law enforcement officer to take the other person into the custody of the law, and to deprive him of his liberty and freedom of movement at the time the officer takes control of him. This intent of the arresting officer to take the person into the custody of the law is the basic element which distinguishes an arrest from lesser forms of detention.

Lesser forms of detention may occur in the many and varied situations which confront a law enforcement officer in his daily duties in which he does not intend to actually take anyone into the custody of the law but merely stops or detains a person for a variety of different reasons. The following are examples of common situations in which a law enforcement officer may detain a person but technically there is no arrest:

1. Restraining a person who is behaving in a manner which is dangerous either to himself or others;
2. Stopping a person to find out his identity or to seek information relating to a possible crime;
3. Service of a subpoena or other process such as a summons or notice to appear in court;
4. Restraining an insane person who is presenting an immediate danger either to himself or others;
5. Asking a suspect or material witness to appear at the station for questioning;
6. Stopping a vehicle to inspect license, equipment or load.

Although this is not a complete list, it illustrates the type of situation where there is no intent by the law enforcement officer to take the person into the custody of the law and without further actions, on the part of the officer, there is no arrest.

There is one further detention situation which deserves mention in this context. This is the situation where police stop a person under suspicious circumstances for a brief general on-the-scene investigation as to facts surrounding the possible commission of a crime. When, accompanying this brief detention of the person, there is a limited search of the person for possible weapons, this situation is commonly referred to as "stop and frisk". There has been much discussion and several court decisions in this area over the last few years. Because of its importance and because a detailed discussion is beyond the scope of this article, "stop and frisk" will be covered in a future issue of ALERT. For purposes of this article, it is important to note that the ordinary "stop and frisk" situation does not involve an intention to arrest and therefore does not constitute an arrest.

A further requirement of arrest is that the restraint of the person be exercised under the authority of the law enforcement officer whether it be real authority or pretended. An example of pretended authority would be the situation where an officer makes an arrest without authority to do so but he assumes wrongfully that he does have the authority. It is still technically an arrest despite the officer's error. This distinguishes arrest from the situation where a person might be seized and detained without any type of authority being apparent or claimed. An example of this would be a kidnaping, where a person is seized but no one claims any kind of authority to arrest him.

Seizure and Detention

To technically constitute an arrest, the arrested person must come within the actual custody and control of the law enforcement officer. There are two kinds of seizure or detention which will satisfy this requirement – actual and constructive.

An actual seizure or detention is the taking into custody of a person with the use of hands or with force, including the use of weapons. The ordinary situation would include the grabbing, holding, or handcuffing of a person to restrain his freedom of action. However, the mere touching of the person of the accused is also considered to be an actual seizure and may constitute an arrest if the other elements of arrest are present. *Childress v. State,* 175 A.2d 18 (Maryland Supreme Court, 1961).

A constructive seizure may be accomplished when the person being arrested submits to the control of the law enforcement officer without any physical force whatsoever being applied. His peaceable submission eliminates the need for manual force and it satisfies the requirement of seizure or detention.

Mere words of the officer such as "You are under arrest", without anything else, will not be sufficient to satisfy the seizure and detention element. There must be, in addition, an actual physical seizure of the person or a submission by him to the officer's will and control. Furthermore, the seizure need only be momentary and if the other necessary elements of arrest are present, the arrest is completed, even if it is followed by an immediate escape. The person does not have to be permanently confined in order to constitute detention or seizure.

Communication and Understanding

The final two elements of arrest can be considered together because they are two aspects of the same issue. Briefly stated, the law enforcement officer's actions in making an arrest must result in an understanding on the part of the arrested party that he is being arrested. This understanding is ordinarily shown when the officer notifies the other person that he is arresting him. However, facts and circumstances may make it obvious to the suspect that he is being arrested such as when he is being handcuffed or otherwise physically restrained. The officer may never say a word but the circumstances convey the idea.

There is one exception to the rule that understanding is an essential element of arrest. Despite the fact that a person arrested is unconscious, insane, or so drunk that he is incapable of understanding anything, he may still be placed technically under arrest when his body is actually seized and restrained, even though his understanding is delayed until he regains consciousness. *State v. Cram,* 160 P. 2d 283 (Oregon Supreme Court, 1945).

ARREST AUTHORITY UNDER A WARRANT

Despite the fact that the authority of law enforcement officers and private citizens to arrest without a warrant in proper circumstances has been recognized from time immemorial, arrests made under the authority of a warrant have always been preferred. The reason for favoring the warrant procedure is that it places the sometimes delicate decision of determining whether there is probable cause to justify an arrest in the hands of an impartial judicial authority. The U. S. Supreme Court has said that . . ."(T) he informed and deliberate determinations of magistrates empowered to issue warrants are to be preferred over the hurried actions of officers . . ." *Aguilar v. Texas,* 378 U.S. 108, 111 (1964). This avoids the necessity of placing such responsibility upon law enforcement officers and private citizens with the resulting danger of rash and ill-advised action on their part.

Furthermore, if the warrant is proper on its face and the officer does not abuse his authority in executing the arrest, the officer is protected against civil liability for false arrest or false imprisonment, even though it is later determined that the arrest was unjustified.

(Continued on page 3)

The Warrant

The arrest warrant is a written order issued by a proper authority upon probable cause, directing the arrest of a particular person or persons. In Maine, District Court Judges, complaint justices, and certain other clerks and officers of the District Court are empowered to issue warrants of arrest. *15 M.R.S.A. Section 706 (amended, Maine Laws 1965, c.356, sec. 23).* The warrant is issued on the basis of a sworn complaint charging that the accused has committed an offense against the State. The complainant is often a law enforcement officer.

The Complaint

The complaint must state the essential facts constituting the offense charged including the time and place of its commission and the name of the accused or a reasonably definite description if the name is not known. It must be sworn to and signed by the person charging the offense. If the complainant does not have personal knowledge of any of the facts connected with the offense, instead of swearing absolutely to the truth of the charge, he may state that he has good reason to believe and does believe that the accused committed the offense.

Probable Cause

In either case, probable cause must be established to the magistrate's satisfaction that the offense charged in the complaint was committed and that the accused committed it. Probable cause, although incapable of precise definition, should be a familiar concept to every law enforcement officer. Probable cause exists where the facts and circumstances within a person's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution and prudence in the belief that an offense has been or is being committed. *Draper v. U.S.,* 358 U.S. 307, 313 (U. S. Supreme Court, 1959). It means something less than certainty but more than mere suspicion, speculation, or possibility. The magistrate must be satisfied that probable cause exists before he is empowered to issue an arrest warrant.

Because of the probable cause requirement, a separate affidavit or affidavits setting forth in some detail all the facts and circumstances upon which probable cause is to be based are often filed with the complaint although, if there is room for it, these facts can be set forth in the body of the complaint itself. The affidavit is to be executed by the person making the complaint and need not be prepared with any particular formality. It may merely be a sworn recitation of the facts upon which the complainant relies in seeking the issuance of a warrant. The magistrate may require additional affidavits of other persons having pertinent and reliable information upon which probable cause can be based. In any case, all information upon which probable cause is based must appear either in the complaint or the affidavits. The reason for this is to maintain a record of the evidence produced before the magistrate issuing the warrant in case the validity of the warrant is called into question at a later date.

Requirements of Warrant

If and when the magistrate finally decides to issue the requested warrant, it must conform to certain requirements as follows:

1. The warrant must bear the caption of the court or division of the court from which it issues.
2. The person to be arrested must be named in the warrant if his name is known. If not known, the warrant should contain any name or description by which he can be identified with reasonable certainty.
3. The warrant should describe the offense charged in the complaint. This should be the name of the offense as it is stated in the Maine statutes, or if it is a violation of a municipal ordinance, the name of the violation as it is stated in the ordinance. Whatever the description of the offense, it should be in such words that it is definite enough for the accused to readily understand the charge against him. Stating that he is charged merely with "a felony" or "a misdemeanor" is insufficient and will invalidate the warrant.
4. The warrant should be directed to an appropriate officer or officers and should command that the defendant be brought before the judge of the court which issued the warrant.
5. The warrant must be signed by the issuing magistrate and must state what his official title is.

Glassman, Maine Practice, Rules of Criminal Procedure, Rule 4 (b) (1)

Summons

All law enforcement officers should be aware that a magistrate is empowered to issue a summons instead of an arrest warrant when so requested by the attorney for the State. The requirements for a summons are the same as those for a warrant except that a summons directs the defendant to appear before a court at a stated time and place rather than having him arrested. *Glassman, Rule 4 (b) (2)*

The summons is used in instances where the offense charged in the complaint is a violation of a municipal ordinance or some other misdemeanor or petty offense. If the offender is a citizen with his "roots firmly established in the soil of the community" so that he can be easily found for service of a warrant if he ignores the summons, the summons procedure is a much easier and better way of inducing the accused to appear in court than arresting him and locking him up.

ARREST AUTHORITY WITHOUT A WARRANT

The law enforcement officer in his daily duties will often be faced with the decision whether to take the time and effort to apply for a warrant or to go ahead and make an arrest without a warrant. The variety of situations that present themselves often call for an immediate decision in this respect and the inexperienced or poorly trained officer will run into problems if he does not know his rights and limitations in this area. It thus becomes important for the officer to have a clear working knowledge of the law governing arrest without a warrant.

In order to determine whether he has the authority to arrest without a warrant, the officer must first know the difference between a felony and a misdemeanor because his authority depends upon the distinction between the two. In Maine, the term felony includes every offense punishable by imprisonment in the State prison. *15 M.R.S.A. Section 451* . By authority of a general law, all sentences for a term of one year or more shall be in the State prison. *Ex Parte Gosselin,* 44 A.2d 882 (Supreme Judicial Court of Maine, 1945). Furthermore, it has been held that it is the punishment which *may* be imposed that determines whether an offense is a felony or misdemeanor, not the punishment which finally *is* imposed. *Smith v. State,* 75 A.2d 538 (Supreme Judicial Court of Maine, 1950). *Therefore, a felony is any offense for which the punishment could possibly be imprisonment for a term of one year or more.* All other offenses are classed as misdemeanors.

Misdemeanors

Unless otherwise provided by statute, a law enforcement officer may make an arrest without a warrant for a misdemeanor only when the misdemeanor is "committed in his presence." Ordinarily, this type of situation arises when the officer sees an offense being committed

(Continued on page 4)

with his own eyes and he makes the arrest. However, it may be dark, there may be obstructions, etc., and the officer may have to rely on his other senses. Courts have responded to this by holding that an offense is committed in the officer's presence if he is able to perceive it through any of his five senses—sight, hearing, touch, taste, and smell. *People v. Bock Leung Chew,* 298 P.2d 118 (California Court of Appeals, 1959). Furthermore, he may use any mechanical or electrical means to enhance his senses such as field glasses, hearing aids, etc. *People v. Steinberg,* 307 P.2d 634 (California Court of Appeals, 1957). His knowledge of the offense may even come to him through information received from the suspect himself through an admission or confession. *Cornish v. State,* 137 A. 2d 170 (Maryland Supreme Court, 1957).

However, the mere fact that a misdemeanor is actually taking place in the officer's presence is not enough in itself to give him the authority to make an arrest. The officer must know that the offense is being committed *before* he makes the arrest. *State v. Pluth* 195 N.W. 789 (Minnesota Supreme Court, 1923). Therefore, if an officer makes an arrest on mere suspicion or chance that an offense is being committed, and he later proves to be right, the arrest is not justified and is illegal. The officer must know that the offense is being committed to *start* with and *not* to *end* with.

Misdemeanor Arrests on Probable Cause

In recent years, the legislature of the State of Maine has made several exceptions to the general rule that arrest without warrant for a misdemeanor is only authorized for offenses committed in the officer's presence. These enactments have authorized arrests for misdemeanors on probable cause under certain specified circumstances. Since a complete discussion of the meaning and application of each of these statutes is beyond the scope of this article, the provisions of each one that apply to law enforcement officers will be quoted in full in the column *From the Legislature* in this issue. It is urged that these provisions be read carefully because of their involved and technical nature.

Promptness of Arrest

Time is a very important factor in making an arrest without a warrant for a misdemeanor committed in the officer's presence. The arrest must be made promptly and without unnecessary delay. The officer must set out to make the arrest at the time of the offense and continue his efforts until the arrest is accomplished or abandoned. As stated by the Supreme Court of Mississippi in a leading case on the subject:

> "The arrest for misdemeanors committed or attempted in the presence of officers must be made as quickly after the commission of the offense as the circumstances will permit. After an officer has witnessed a misdemeanor, it is his duty to then and there arrest the offender. Under some circumstances, there may be justification for delay, as for instance, when the interval between the commission of the offense and the actual arrest is spent by the officer is pursuing the offender, or in summoning assistance where such may reasonably appear to be necessary; . . . If, however, the officer witnesses the commission of an offense and does not arrest the offender, but departs on other business, or for other purposes, and afterwards returns, he cannot then arrest the offender without a warrant; for then the reasons for allowing the arrest to be made without a warrant have disappeared." *Smith v. State,* 87 *So. 2d 917,919 (1956).*

If the officer does not act immediately, he must go through the procedure of obtaining a warrant and make the arrest according to the warrant. There is *no* authority to arrest for a *past* misdemeanor offense without a warrant.

A reasonable delay in making the arrest which is closely connected with the offense itself or with an attempted escape will usually not invalidate the arrest. Examples would be where the officer delayed the arrest to summon assistance in making the arrest, to plan strategy to overcome resistance to arrest, or to pursue an escaping offender. However, if the delay is unconnected with the process of making the arrest, it will make the arrest without warrant improper.

Felonies

A law enforcement officer may arrest for a felony if, at the time of arrest, he has "probable cause" for considering that a felony has been committed and that the person arrested is guilty of the felony. *State v. Hawkins,* 261 A.2d 255 (Supreme Judicial Court of Maine, 1970). Here the key terms the officer must know in order to determine his authority are "felony" and "probable cause". "Felony" has already been defined in an earlier section of this article. It should only be noted that, in order to apply the definition of felony, the officer must have a thorough knowledge of the definitions and possible range of punishments for all crimes in Maine as found in the *Maine Revised Statutes Annotated.* (See especially Title 17).

Probable Cause

Probable cause has been defined earlier in relation to the requirements for the issuance of an arrest warrant. It has the same meaning with respect to arrests without a warrant except that it is the law enforcement officer and not the magistrate who must be convinced that the offense was committed and that the suspect committed it. It should be emphasized that the officer must be in possession of concrete facts or information linking the suspect to the specific offense in question. With anything less, the officer takes his chances of having the arrest declared invalid.

The basis for probable cause may arise through facts or information which the officer himself has personally observed or gathered. It may also be based upon apparently reliable information from third parties such as the victim, other police agencies, witnesses, reporters, informants, etc. The defendant's reputation or criminal record *alone,* without further suspicious circumstances, will *not* be enough to give an officer probable cause to justify an arrest. However, if there are other circumstances, combined with the defendant's reputation, then together they might be enough. *U. S. ex rel. Coffey v. Fay,* 344 F. 2d 625 (Second Circuit Court of Appeals; 1965).

It is important to note that probable cause is to be evaluated from the collective information of the police at the time of the arrest and not merely on the personal knowledge of the arresting officer. Therefore, if the knowledge of the police in its totality shows probable cause, a law enforcement officer who makes an arrest upon orders to do so is acting on probable cause, even though he personally does not have all the information upon which probable cause is based. *State v. Smith,* 277 A.2d 481 (Supreme Judicial Court of Maine, May, 1971).

NOTE: The case of *State v. Smith* is a very recent Maine case which covers probable cause and many other aspects of the law of arrest. If possible, it should be read by all law enforcement personnel.

Knowledge on the part of a law enforcement officer that an arrest warrant has been issued and is still outstanding against the suspect for the commission of a certain felony constitutes probable cause to believe that he

(Continued on page 5)

has committed that particular crime. An officer with such knowledge has the authority to arrest the defendant despite the fact that he does not have nor does his department have the warrant.

If an officer making an arrest has probable cause to believe that a felony has been committed and that the defendant is the one who committed it, it makes no difference whether the officer was right or wrong in making the arrest or that the defendant was later acquitted of the crime for which he was arrested. The officer is still justified in making the arrest and it is a legal arrest. On the other hand, if the officer, on a hunch or intuition, makes a warrantless arrest without probable cause it makes no difference whether the defendant is guilty or not. The arrest is still illegal. Therefore, the reasonableness of the actions of the law enforcement officer are the main consideration in determining the validity of an arrest.

Time of Arrest

Unlike an arrest without a warrant for a misdemeanor committed in the presence of an officer, which must be made immediately, an arrest without warrant for a felony need not be made immediately. This is true whether the arrest was based on probable cause or whether the felony was committed in the officer's presence. *Carlo v. U. S.*, 286 F 2d 841 (Second Circuit Court of Appeals, 1961). Delay may be justified for a variety of reasons, as long as the delay is not designed to prejudice the offender with respect to his constitutional rights. Thus an officer may postpone making an arrest to complete further undercover work, to avoid alerting other potential offenders, to protect the identity of undercover agents or informers, etc. As the U. S. Supreme Court has said:

> "The police are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect, risking a violation of the Fourth Amendment if they act too soon, and a violation of the Sixth Amendment if they wait too long. Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal prosecution." *Hoffa v. U. S.*, 385 U.S. 293 (1966).

Nevertheless, an extended period of delay between the time of the offense and the date of arrest may be so great as to give rise to a presumption that the accused was prejudiced by it. *Jackson v. U.S.*, 351 F.2d 821 (District of Columbia Court of Appeals, 1965).

Therefore, unless there is good reason for delaying, the arrest should be made as soon as possible after the offense.

NOTE:

The remaining aspects of the law of arrest will be covered in the August issue of ALERT.

FROM THE LEGISLATURE

Section 3051. Vehicles must stop on signal

1. Authority of inland fish and game wardens. Any officer whose duty it is to enforce the inland fish and game laws, if in uniform and if he has *probable cause* to believe that a violation of the inland fish and games laws has taken or is taking place, may, at any time, stop any motor vehicle, boat, vessel, airplane or conveyance of any kind for the purpose of *arresting* or questioning the operator or occupant thereof or for the purpose of searching said motor vehicle, boat, vessel, airplane or conveyance of any kind.

2. Penalty. Any operator of a motor vehicle, boat, vessel, airplane or conveyance of any kind, who fails or refuses to stop such conveyance immediately upon request or signal of any officer, in uniform, whose duty it is to enforce the inland fish and game laws, shall be punished by a fine of not more than $400 or by imprisonment for not more than 90 days, or by both. *12 M.R.S.A. Section 3051*

Section 4551. Boats, vehicles and persons to stop on request

1. Authority of coastal wardens. Any coastal warden in uniform may, if he has *probable cause* to believe that a violation of the sea and shore fisheries law has taken or is taking place, at any time stop any motor vehicle, boat, vessel, airplane or conveyance of any kind for the purpose of *arresting* or questioning the operator or occupant thereof or for the purpose of searching said motor vehicle, boat, vessel, airplane or conveyance of any kind.

2. Violation. It is unlawful for the operator of a motor vehicle, boat, vessel, airplane or conveyance of any kind, or any person:

A. To fail or refuse to stop upon request or signal of any coastal warden;

B. After he has so stopped, to fail to remain stopped until the coastal warden reaches his immediate vicinity and makes known to that operator or other person the reason for the request or signal;

C. To fail or refuse to stand by for inspection on request of any coastal warden in uniform;

D. Who has been requested or signaled to stop by a coastal warden in uniform, to throw or dump into any water any lobster, or any pail, bag, barrel or other container of any type, or the contents thereof, before the coastal warden has inspected the same.

3. Penalty. Whoever violates any provision of subsection 2 shall be punished by a fine of not less than $25 nor more than $500, or by imprisonment for not more than 90 days, or by both. *12 M.R.S.A. Section 4551.*

Section 1155. Power of police officers to stop vehicles, restrictions

Any sheriff, deputy sheriff, constable, municipal or state police officer, or liquor enforcement officer, if he has *probable cause* to believe that a violation of the liquor laws has taken or is taking place, may, at any time, stop any motor vehicle, boat, vessel, airplane or conveyance of any kind for the purpose of *arresting* or questioning the operator or occupant thereof or for the purpose of searching said motor vehicle, boat, vessel, airplane or conveyance of any kind. *28 M.R.S.A. Section 1155.*

Section 2121. Examination of vehicles by police officers

Any law enforcement officer in uniform whose duty it is to enforce the motor vehicle laws may stop and examine any motor vehicle for the purpose of ascertaining whether its equipment complies with the requirements of section 2122, and the officer may demand and inspect the operator's license, certificate of registration and permits. He may also examine the identification numbers of said motor vehicle and any marks thereon. Such law enforcement officer if in uniform and if he has *probable cause* to believe that a violation of law has taken or is taking place may, at any time, stop a motor vehicle for the purpose of *arresting* or questioning the owner of occupant thereof, or for the purpose of searching said motor vehicle.

It shall be unlawful for the operator of any motor vehicle to fail or refuse to stop such vehicle, upon request or signal of any such officer.

Whenever a motor vehicle is being operated by a person not having upon his person or in such vehicle the registration certificate covering such vehicle, or if it be operated by a person other than the person in whose name it is registered, and such operator is unable to present reasonable evidence of his authority to operate such motor vehicle, such law

(Continued on page 6)

enforcement officer, or any other law enforcement officer, may impound such vehicle and hold it until the same is claimed and taken by the registered owner thereof, who shall be forthwith notified of the impounding.

Whoever while operating a vehicle in violation of any of the provisions of this Title shall fail or refuse when requested by an officer authorized to make arrests to give his correct name and address shall be punished by a fine of not more than $100 or by imprisonment for not more than 90 days, or by both. *29 M.R.S.A. Section 2121.*

The following section applies to Title 38 M.R.S.A. (Waters and Navigation) Subchapter VI (Watercraft Registration and Safety)

Section 205. Enforcement

Inland fish and game wardens, coastal wardens, state police officers and all other law enforcement officers of this State have authority to enforce this subchapter and to *arrest* persons who violate it. Such officers, when in uniform, may stop any watercraft for the purpose of inspecting said craft, its equipment, and its documents or certificates and may board all watercraft where necessary to enforce this subchapter or to make *arrests. 38 M.R.S.A. Section 205.*

Section 2383. Possession

1. Manufacture or possess. Whoever manufactures, cultivates, grows, possesses or has under his control, Cannabis, Mescaline or Peyote, except as authorized by this chapter, shall be punished, for the first offense, by a fine of not more than $1,000 and by imprisonment for not more than 11 months; and, for any subsequent offense, by a fine of not more than $2,000 and by imprisonment for not more than 2 years.

2. Present. Whoever, knowingly, is present where Cannabis, Mescaline or Peyote is kept or deposited, or whoever is in the company of a person, knowing that said person is in possession of Cannabis, Mescaline or Peyote, shall be punished by a fine of not more than $1,000 and by imprisonment for not more than 11 months.

3. Enforcement. Any sheriff, deputy sheriff, municipal or state police officer, if he has *probable cause* to believe that a violation of this section has taken place or is taking place, may *arrest* without a warrant, any person for violation of this section whether or not that violation was committed in his presence. *22 M.R.S.A. Section 2383.*

IMPORTANT RECENT DECISIONS

Note: Cases that are considered especially important to a particular branch of the law enforcement team will be designated by the following code: J - Judge, P - Prosecutor, L - Law Enforcement Officer.

Flashlight Search - Plain View L

Defendant was convicted of robbery and appealed. Police, at night, had seen a car with headlights out make a wrong turn and then put the lights on as it completed the turn. A passenger was seen in the rear seat. When the car was stopped for investigation, the passenger could not be seen. An officer then shined his flashlight into the car and saw the passenger lying on the seat. On the floor he saw pry bars, a walkie talkie set, and an object obscured by a coat. The men were removed from the car and the object under the coat was found to be a safe stolen from a grocery store.

The court held that the suspicious operation of the car warranted an investigation by police. The objects observed by the police fell within the plain view rule which says that criminal objects falling in plain view of an officer, who has a right to be where he is and to have that view are subject to seizure. Furthermore, the use of the flashlight was proper; the plain view rule does not go into hibernation at sunset. *Walker v. Beto,* 437 F2d 1018 (Fifth Circuit Court of Appeals, March, 1971).

Arrest, Search and Seizure L

Defendant was convicted of smuggling marijuana and appealed. An officer had been informed that a man fitting defendant's description had received a suitcase from a Mexican who came down from a hill where there was a hole in the border fence. The officer then searched the suitcase and arrested the defendant.

The court held that the officer had probable cause to arrest, but even if he didn't, his information was at least sufficient to justify stopping and questioning defendant. Then, when defendant offered the officer a bribe, the officer had probable cause to arrest.

There was also some question as to whether the search preceded the arrest. The court said in this regard:

> "The fact that the seizure may have preceded the actual arrest by a matter of minutes is immaterial where it was part of one continuous transaction and the existence of probable cause preceded the seizure."

U.S. v. Maynard, 439 F.2d 1087 (9th Circuit Court of Appeals, March, 1971).

MAINE COURT DECISIONS

Escape J P

Defendant was convicted and sentenced for the offense of escape from jail and appealed. At the time defendant escaped, he was in lawful custody pending trial on another charge. He was later acquitted on that charge.

The court held defendant's rights in defense of his original charge did not include the right to escape from jail. The fact that he was found not guilty on the original charge did not render improper his conviction for escape. *State v. Perkins,* 277 A2d 501 (Supreme Judicial Court of Maine, May, 1971).

Habeas Corpus J

Defendant had been convicted of grand larceny on a plea of guilty and was sentenced. He petitioned for a writ of habeas corpus and it was denied without hearing. In his appeal, petitioner stated that he did not *knowingly* waive his right to trial by jury, his right to be free of compulsory self-incrimination, or his right to confront and cross-examine his accusers. He also stated that he was deprived of his constitutional right to present his own defense in Court.

The Court held that when, as here, there are relevant allegations of fact in a petition which, if satisfactorily proved, would entitle the petitioner to the writ, a hearing becomes mandatory. *Lamay v. State,* 276 A2d 603 (Supreme Judicial Court of Maine, May, 1971).

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine.

ALERT

The matter contained in this bulletin is information for the criminal law community only. If there is any question as to the subject matter contained herein, the cases cited should be consulted. Nothing contained herein shall be considered as an Official Attorney General's opinion unless otherwise indicated.

Any change in personnel, or change in address of present personnel should be reported to this office immediately.

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