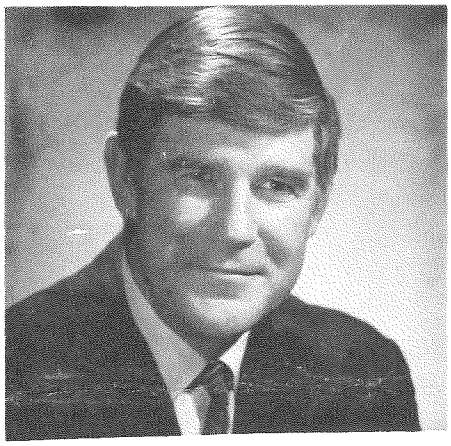
FEBRUARY 1972

ALERT

CRIMINAL DIVISION

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



MESSAGE FROM THE ATTORNEY GENERAL JAMES S. ERWIN

I would like to speak to you again of the Law Enforcement Officer's Manual which is presently being prepared by the Law Enforcement Education Section of the Criminal Division. We contemplate including in the Manual much of the material that has already appeared in the monthly main articles of the ALERT Bulletin with certain additions, corrections, and updating where necessary. We therefore need to know if any of these previous articles have been unclear or incomplete in any respect so that we can make the necessary changes. The Manual is being designed for daily use by all law enforcement officers and we must have feedback from you in order to make the manual as practical and useful as possible.

I am therefore requesting that each officer, over the next couple of months, look back through his old ALERT Bulletins for anything that is not up-to-date, complete, or understandable to him and to let us know about it either by writing or calling us at 289-2146. Of course, any other suggestions as to content, format, or anything else regarding the Manual will also be welcomed.

James S. Erwin

JAMES S. ERWIN
Attorney General

MAINE CRIMINAL COURT PROCEDURE I

The topic of the articles in this and next month's ALERT Bulletin will be criminal court procedure in Maine. This month's installment is an attempt to familiarize law enforcement officers with criminal court procedure up to the time of trial. Next month's article will deal with trial and post-trial procedure. Although most officers are somewhat familiar with the initial stages of a criminal prosecution (securing evidence, making arrests, drawing complaints, etc.), many are unacquainted with the procedures and terminology used in the later stages of a criminal proceeding as it progresses through pleadings, motions, jury selection, trial and appeal. Since the law enforcement officer is an integral part of the criminal justice system and often testifies in court as a witness, it is worthwhile for him to understand what is going on around him and to know the meanings of the various words and phrases used by judges and attorneys.

Criminal court procedure in Maine is governed chiefly by the Maine Rules of Criminal Procedure and the Maine District Court Criminal Rules, both of which became effective in 1965. There are also several statutory provisions scattered throughout the Maine Revised Statutes which deal with criminal court procedure in conjunction with the rules mentioned above. These combined rules and regulations of court are designed for use mainly by judges and attorneys to effect the just and efficient processing of offenders against the criminal law. As a result, many of the rules are quite detailed and involved and do not directly concern the law enforcement officer. Therefore, an effort will be made in this article to highlight pertinent procedures and legal terms in order to give a comprehensive overall view of how the system works without dwelling too heavily on details which are of little direct concern to the law enforcement officer.

To the extent possible, this article will present things in chronological order as they would happen if a criminal case were followed from beginning to end. Wherever certain aspects of criminal court procedure might have already been covered in a past issue of ALERT, reference will be made to that issue. Most of the information presented in this article has been taken from Glassman, *Maine Practice, Rules of Criminal Procedure Annotated.* If there are any questions about the material presented or if further detail is desired, this reference book should be consulted.

Before discussing the preliminary proceedings in a criminal case, it is appropriate to first outline the Maine court system and to describe briefly the criminal trial jurisdiction of the different courts. Jurisdiction here means simply the authority of a court to deal with a particular case. The Maine court system consists of three distinct levels of courts — the District Courts, the Superior Court, and the Supreme Judicial Court. The District Court system was created in 1961 by the District Court Act to replace the municipal courts and trial justices, which are no longer in existence. The District Court has trial jurisdiction only of misdemeanors. This means that a felony *trial* may not be held in District Court although certain felony procedures may be held in District Court.

The Superior Court consists of a number of justices each of whom sit in a different county of the state at various times during the year. The times of the sittings of these justices are determined by rules established by the Supreme Judicial Court. The Superior Court has trial jurisdiction of both felonies and misdemeanors.

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The Supreme Judicial Court is the highest court in the State and is often referred to as the "Law Court" when it hears appeals from the lower courts. It has the power to prescribe rules of pleading, practice, and procedure before itself and all the lower courts in the State.

PRELIMINARY PROCEEDINGS

The Complaint

Criminal process against a defendant formally begins with the complaint. The reason the word "formally" is used here is that it is possible for a defendant to be arrested for an offense without a complaint being filed or warrant issued. This would in actuality be the institution of criminal process. However, the arrest without a warrant is considered an exception to the basic warrant requirement and so the complaint is still considered the formal beginning of proceedings.

The complaint serves a dual purpose in a criminal proceeding. If the defendant has already been arrested (without a warrant) and is before the court, the complaint serves as the charging document upon which the preliminary examination before a magistrate is to be held. If the defendant has not been arrested, and is not before the Court, the complaint serves as the basis for determining whether there is probable cause justifying the issuance of a warrant for his arrest.

The complaint must be in writing, must be on oath, and must state the essential facts of the offense being charged. A citation of the statute, rule, regulation, or other provision of the law which the defendant is alleged to have violated should also appear in the complaint.

The complaint is made before a magistrate, who may be a District Court judge, complaint justice, or clerk of the District Court who has been authorized to issue process in criminal cases. The information in the complaint does not have to be derived from personal observation or experience, but may be based on information from others or personal belief based on circumstantial evidence. Nevertheless, the evidence put forth in the complaint must be strong enough to convince the magistrate that there is probable cause to believe that an offense has been committed and that defendant was the one who committed it.

It is worthwhile to briefly note the reasons for the requirement that the complaint be in writing. Oftentimes, during a motion to suppress evidence, trial, or appeal, the determination of the admissibility of certain evidence may ultimately depend on the validity of an arrest (e.g. evidence secured during a search incident to arrest.) If the arrest is made under a warrant, its validity will in turn depend upon whether or not there was probable cause for issuance of the warrant. This determination can only be made by examining the evidence which was presented to the magistrate issuing the warrant. Only if the complaint is in writing will a reviewing court have a permanent record of this evidence upon which to base its examination.

Affidavits

This requirement of a written record of the evidence relied upon in determining probable cause can be satisfied also by the filing of affidavits with the complaint. Oftentimes there is information to be presented which is not contained in the complaint or comes from witnesses other than the complainant. This additional information may be brought to the court's attention in the form of an affidavit. An *affidavit* is nothing more than a simple sworn statement of the facts relied upon in seeking the issuance of a warrant and it need not be prepared with any particular formality. Together, the complaint and accompanying affidavits can provide a sufficient written record for the reviewing court to examine in determining whether probable cause existed for the issuance of a warrant.

There is one exception to this rule requiring a written record of the evidence presented to establish probable cause for the issuance of a warrant. In District Court, when a warrant is being sought for a misdemeanor offense, no written record is required by the court. Nevertheless, it is still good practice for a law enforcement officer to either file an affidavit with the complaint or make sure the complaint contains all the facts upon which probable cause is to be based. This is especially true when the officer contemplates a search incident to arrest.

Warrant or Summons on the Complaint

Once the magistrate has determined from the complaint and affidavits that there is probable cause to believe that an offense has been committed and that defendant committed it, he then issues either a summons or a warrant for defendant's arrest to the appropriate law enforcement officer. Of course, if the defendant is already before the court, no summons or warrant is necessary.

Once the warrant is issued, the officer must execute the warrant by arresting the defendant and bringing him before a magistrate as commanded in the warrant. (The entire warrant and arrest procedure has already been discussed in detail in the August and September 1971 issues of the ALERT Bulletin. Officers are encouraged to study these two issues carefully. If any officer does not have either of these two issues of ALERT, he may obtain them by writing the Law Enforcement Education Section or calling us at 289-2146.)

Proceedings Before The Magistrate

Once a person has been arrested, either with or without a warrant, he is entitled to be brought before a magistrate "without unnecessary delay". (The details of this procedure are also examined in the September 1971 issue of ALERT. Special attention should be given to the statutory provisions quoted in that issue.)

The purpose of bringing an arrested person before a magistrate without unnecessary delay is to inform him of the following things:

1) the complaint against him;
2) his right to retain counsel;
3) his right to request the assignment of counsel in case of indigency; and
4) his right to have a preliminary examination.

The defendant must also be informed that he is not required to make a statement and that any statement made by him may be used against him. He is then given reasonable time and opportunity to consult an attorney and is admitted to bail where appropriate.

If the offense is a misdemeanor and the proceedings are to be brought in District Court, the defendant will be called upon to plead

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to the complaint brought against him. More will be said about pleading later. However, if the proceedings are to be brought in the Superior Court, defendant is not required to plead at this time. Rather he is entitled to a preliminary examination to determine whether he is to be held over for trial.

Preliminary Examination

At the preliminary examination, the District Court judge must determine whether there is probable cause to believe that an offense has been committed and that defendant has committed it. Defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If probable cause is found or if defendant exercises his right to waive the preliminary examination, he will be held to answer to the grand jury in the county where the trial is to be held. The District Court judge may admit defendant to bail at this time. If no probable cause to believe defendant committed an offense is found, the District Court judge shall discharge the defendant.

INDICTMENT AND INFORMATION

All criminal proceedings originating in the Superior Court and all felony proceedings are prosecuted by indictment, unless indictment is waived by defendant, in which case prosecution may be by information. Neither indictment nor information is used in misdemeanor proceedings in the District Court.

The indictment and the information are very similar in nature and content. Each is a plain, concise, and definite written statement of the essential facts constituting the offense charged. An example of a typical indictment for robbery appears below:

INDICTMENT FOR ROBBERY

(Title of Court and Cause)

Indictment for violation of 17 M.R.S.A. § 3401

The grand jury charges:
On or about the———— day of————, 19————, in the County of————, State of Maine, John Doe did by force and violence (by putting in fear), take, steal and carry away the property of Richard Roe, to wit, Fifty ($50.00) Dollars, from the person of Richard Roe with the intent to permanently deprive the owner of his property.

A True Bill

————————
Foreman

Dated:————

The main difference between an indictment and an information is that the indictment is issued by a grand jury and signed by the foreman of the grand jury. An information is issued and signed by the attorney for the state without the approval or intervention of the grand jury. The information is only used if the defendant elects to waive the indictment.

Grand Jury

The grand jury may consist of anywhere from 13 to 23 jurors. The jurors are selected from their communities according to law to serve at each criminal term of the Superior Court. The duty of the grand jury is to receive complaints and accusations in criminal cases, hear the evidence put forth by the State, and find an indictment where they are satisfied that there is probable cause that the defendant has committed an offense. The concurrence of at least 12 grand jurors is required in order to find an indictment.

Grand jury proceedings are traditionally kept secret. During deliberations or voting, no persons other than the jurors are allowed to be present. However, when the grand jury is taking evidence, the attorneys for the State, the witnesses under examination, and an official court reporter may be present. Furthermore, matters occurring before the grand jury, other than deliberations or the votes of any juror, may be disclosed to the attorney for the State for use in performing his duties. Otherwise, these matters are to be kept secret except when ordered to be disclosed by the court.

The reasons for keeping grand jury proceedings secret can be summarized as follows:

1) To prevent the escape from the jurisdiction of someone who is not yet in custody but whose indictment may be contemplated;

2) To provide the utmost freedom for the grand jury in its deliberations and to protect them from outside influences;

3) To prevent tampering with witnesses who may testify before the grand jury and later appear at the trial of those indicted;

4) To encourage the free and unrestrained disclosure of information by persons who have information on the commission of crimes; and

5) To protect innocent persons who are exonerated of charges from disclosure of the fact that they were under grand jury investigation.

Waiver of Indictment

A defendant who does not wish to be prosecuted by indictment may waive the indictment in writing and be prosecuted by information. This can be done for any offense except one punishable by life imprisonment. The waiver of indictment procedure is of great advantage to any defendant who desires to plead guilty or *nolo contendere*. (These pleas will be discussed in further detail later in the article). In effect, the waiver of indictment procedure enables a defendant to begin serving a sentence immediately instead of having to wait for a grand jury, which sits only during the criminal term in each county. The defendant can thereby secure his release from custody at an earlier date than he could if he went through the indictment procedure. Under a recent amendment to the Rules of Criminal Procedure, a defendant who has been bound over may waive the indictment and plead guilty to the charge in the *District Court* rather than the Superior Court. In doing so, he must waive his right to trial and appearance in the Superior Court and have the proceedings take place in the District Court.

There are a number of somewhat technical provisions in the Maine Rules of Criminal Procedure that deal with drafting, amending, and joining indictments and informations and with joining offenses or defendants for trial together. These provisions are of interest only to judges and attorneys and will not be discussed here.

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Warrant or Summons Upon Indictment or Information

An indictment may sometimes be found against a defendant before he has been taken into custody and brought before the court. In these cases, upon the request of the attorney for the State, or by direction of the court, the clerk shall issue a summons or a warrant for the arrest of each defendant named in the indictment. This indicates no change of procedure for the law enforcement officer. He is required to execute the warrant or serve the summons in the same way as he would any other warrant or summons. (Reference is again made to the August and September 1971 issues of ALERT.)

ARRAIGNMENT AND PREPARATION FOR TRIAL

The next step in the criminal proceeding, after an indictment or information is found, is the arraignment. The term arraignment is often confused with the initial appearance before a magistrate by a defendant who has either been arrested or is appearing in response to a summons. Part of the reason for the confusion is that in the District Court in a misdemeanor proceeding, the two procedures are combined. The essence of the arraignment is that the substance of the charge against the defendant is read to him and he is *called upon to plead* to the charge. In the District Court misdemeanor proceeding, since there is no requirement of prosecution by indictment or information, *the complaint* is read to defendant and he pleads to the complaint. However, in Superior Court, prosecution must be by indictment or information and so the *indictment* or *information* is read to defendant and he pleads to that. Therefore, the requirement of prosecution by indictment or information in Superior Court means that the arraignment proceeding must be separate from the initial appearance before the magistrate.

It is appropriate to mention at this point that there is a provision in the Maine District Court Criminal Rules that gives a defendant in a misdemeanor trial in District Court the right to appeal to the Superior Court. Furthermore, this appeal entitles him to a *trial de novo* in that court. *Trial de novo* means that the whole case is gone into as if there had been no trial at all in the District Court. The case is tried on the original complaint and plea of defendant and therefore, no rearraignment in the Superior Court is necessary.

Pleas

As mentioned above, the distinctive feature of arraignment is that the defendant is called upon to plead to the charge against him. He has four pleas open to him:

1) Not guilty
2) Not guilty by reason of insanity (mental disease or defect)
3) Guilty
4) *Nolo contendere.*

Each of these merits some explanation.

A plea of not guilty puts in issue all the material facts alleged in the indictment, information, or complaint. Defendant has a right to refuse to plead at all in which case the court must enter a plea of not guilty.

A plea of not guilty by reason of insanity is required to raise the defense of insanity. A defendant may plead not guilty and not guilty by reason of insanity to the same charge. When a plea of not guilty by reason of insanity is entered, the court may, on petition, order the defendant committed to an appropriate institution for the mentally ill for examination. The insanity plea is hardly ever raised in a misdemeanor proceeding.

In order to plead guilty or *nolo contendere*, defendant must obtain the consent of the court. Both these pleas have the same effect on defendant with one exception. They simply mean that the defendant does not wish to contest the charge but will submit to the judgment of the court. The exception is that a guilty plea may constitute an admission of guilt by the defendant and may be used against him in a *civil* action based on the same facts. A plea of *nolo contendere* is not an admission and cannot be used against defendant in a civil action.

The court may not accept a plea of guilty or *nolo contendere* in a *felony* proceeding unless the court is first satisfied, after inquiry, that defendant committed the crime charged, and that the plea is made voluntarily with understanding of the nature of the charge.

Motions

Before trial, there are various defenses and objections which the defendant may raise by means of motions. These motions are heard by the court and may result in various forms of relief ranging from amending or curing a defect in the complaint, indictment, or information to discharging the defendant. Because motions are primarily of concern to judges and attorneys, they will not be discussed in detail here.

Depositions

In situations where a witness may not be able to attend a criminal trial, and it is shown that his testimony is material to a just determination of the case, the court may order that a deposition of the witness be taken at any time after the filing of an indictment or information. A deposition involves taking the testimony of a witness out of court and preserving that testimony in writing for later use in court. It is used only in exceptional circumstances and not for the mere convenience of a witness or party. It may be requested by either the State or the defendant and the opposing party is given the opportunity to attend the taking of the deposition.

A deposition, or a part thereof, may be used at a trial or hearing if it appears that any of the following circumstances exist:

1. The witness who gave the deposition is dead;
2. The witness is out of the State of Maine (unless, of course, the party offering the deposition caused the witness's absence);
3. The witness is unable to attend or testify because of sickness or infirmity; or
4. The party offering the deposition is unable to procure the attendance of the witnesses by subpoena.

Furthermore, depositions may be used even if the witness does testify at the trial, but only for the purposes of contradicting or impeaching his testimony.

Discovery, Inspection, and Notice of Alibi

Under a relatively new procedure in Maine, a defendant in a criminal case now may petition the court to allow him to inspect, copy, or photograph certain items which are in the possession of the prosecution. In order to obtain this right, the defendant must make a motion before the court and show

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that the items he seeks may be material to the preparation of his defense and that his request is reasonable. The items sought may be books, papers, documents, or tangible objects, and may include written or recorded statements or confessions made by the defendant or a co-defendant, written or recorded statements of witnesses, and the results or reports of physical examinations and scientific tests, experiments, and comparisons.

It is worthwhile to mention some of the reasons behind the discovery procedure. First of all, giving the defendant access to this information can help to eliminate the concealing of evidence by the prosecution before trial and the later surprising of an unprepared defendant at trial. It can assist in the fair and expeditious disposition of certain cases before trial. It can also assure a fuller presentation of evidence at trial.

The discovery procedure recognizes the fact that there is a basic imbalance between the investigative resources of the defense and the prosecution. The State has at its disposal an investigating staff to assist in obtaining evidence. The State can also obtain the services of scientists and technicians to conduct tests and experiments. Furthermore, the State can conduct interrogations to obtain evidence, even though this method of investigation has been severely limited in recent years by court decisions. The defendant on the other hand goes to trial with very little evidence and must rely heavily on challenging and discrediting the prosecution's case. The right of discovery is designed to correct this imbalance and enable the defendant to more adequately prepare his defense.

Another procedure, closely related to discovery is the requirement that a defendant give notice to the prosecution of his intent to rely on an alibi as a defense to the charge against him. This procedure is initiated by the prosecutor making a demand for such notice from the defendant. The purpose of this requirement is to prevent surprise to the prosecuting attorney at trial and to enable him to prepare to meet the alibi defense.

Subpoena

The term "subpoena" is used to describe the process used to secure the attendance of witnesses or the production of books, papers, documents, or other objects at a criminal proceeding. The subpoena is issued by the clerk of court or by a Justice of the Peace and it commands the person to whom it is directed to attend a trial, hearing, or deposition for the purpose of testifying or bringing with him a named document or object. A subpoena can be served by a sheriff, constable, or any other person not a party to the proceedings, who is 18 years of age or over.

VENUE

One final pretrial matter to be dealt with is the definition of the term "venue." Venue is often confused with jurisdiction. Jurisdiction refers to the authority of the court to deal with a particular case. For instance, the District Court has *jurisdiction* over misdemeanor offenses. Venue, on the other hand, merely refers to the *place* at which the court should exercise the power it may possess. For example, the trial of a misdemeanor case is held in the geographic division of the District Court in which the offense was committed.

There are some special rules relating to the proper venue for offenses that are committed on a boundary of two counties or where part of an offense is committed in one county and another part in another county. These technicalities will not be discussed here.

Change of Venue

Sometimes, because of heavy publicity or intense community feeling against a defendant, he may wish to have his case tried in a different place than the one authorized by statute. To enable defendant to do so, a procedure is provided for defendant to make a motion for a change of venue. A change of venue may be granted by the court in two situations:

1. Where there is such prejudice in the county where the case is to be tried that defendant cannot obtain a fair and impartial trial there; and
2. Where the offense was committed in more than one county and the court is satisfied that, in the interest of justice, the proceedings should be transferred to another county in which the commission of the offense is charged.

The motion to change venue must be made before the jury is impanelled or, in cases where there is no jury, before any evidence is received.

This concludes the section of Maine Criminal Court Procedure on pretrial proceedings. In next month's ALERT, we will deal with the trial and post-trial aspects of a criminal proceeding.

MAINE COURT 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.

Possession of Gambling Implements JP

Defendant was convicted of the crime of possession of gambling implements and he appealed. Police had obtained search warrants to search defendant's residence, garage, and car for evidence that defendant was engaged in illegal bookmaking. Betting slips, among other things, were found on the floor of defendant's car. The statute under which defendant was convicted (17 M.R.S.A. 1811) provides:

> "No person shall have in his actual or constructive possession any punch board, seal card, slot gambling machine or other implements, apparatus, or materials of any form of gambling....."

The Court held that betting slips do not constitute such gambling devices as the statute prohibits. Referring to the principle of *ejusdem generis*, the Court said that by enumerating the devices specifically prohibited, the Legislature intended to include only other articles which also have a per se relationship to the determination of the outcome of wagers recognizable from common experience. Betting slips may be evidence of illegal gambling or bookmaking, but they are not implements, apparatus, or materials of gambling. *State v. Ferris*, 284 A. 2d 288 (Supreme Judicial Court of Maine, December, 1971)

Demand for Notice of Alibi; Bill of Particulars JP

Defendant was convicted of kidnapping and of assault with intent to rape and appealed. The State had served and filed a demand for notice of alibi stating that the state intended to prove the acts charged were committed within a certain range of time. Defendant filed a motion for bill of particulars, requesting an exact statement of time, before he had filed any notice of alibi in response to the state's demand and before the expiration of time within which to file such notice. The state then filed a bill of particulars stating a broader range of time than the original demand for notice of alibi. This was received by defendant at a time too late for him to file a notice of alibi. Defendant then filed a motion to determine the validity of the state's bill of particulars claiming that the bill should be struck because it stated a broader range of time. The trial court dismissed this motion.

Defendant contended on appeal that the demand for notice of alibi, immediately upon its being served on the defendant, performed the function not only of prescribing time limits as to which defendant was to furnish alibi information to the prosecution in advance of trial but also of providing to the defendant the equivalent of a bill of particulars which would control the scope of the prosecution's right to offer proof at trial as to the time of the commission of the offenses charged in the indictment.

The Court held that the essence of a demand for notice of alibi is its function as a discovery device, as opposed to its effect on the admissibility of evidence during trial. The bill of particulars however, although incidentally useful as a discovery device, is of primary importance because it restricts the scope of the State's proof at trial and renders it subject to the principle of fatal variance. The demand for notice of alibi is incapable of operating as a bill of particulars and the defendant could not claim that the State was restricted in its scope of proof to that time range stated in the demand for notice of alibi rather than the broader time range in the bill of particulars. *State v. Benner*, 284 A. 2d 91. (Supreme Judicial Court of Maine, December, 1971).

Corpus Delicti; Admissions JP

The Defendant was tried for murder and found guilty. At the trial the State's first witness, a police officer, testified that when he went to the defendant's residence, she opened the door and said, "I killed my aunt." The defense objected to this testimony on the grounds that the crime had not yet been established. The objection was sustained, but the Court said that the defendant's statement would be excluded only until such time as the corpus delicti was established. The State proceeded to show the corpus delicti at which time the first witness was again introduced. Again the defendant objected, but the objection was overruled. The defendant appealed the conviction, claiming that the State failed to prove its corpus delicti so that the admission should not be allowed into evidence.

The Law Court denied the appeal, ruling that the corpus delicti had been established. The standard for determining whether the corpus deliciti has been established is whether the State has presented such credible evidence as will create a really substantial belief that the crime charged has actually been committed by someone. The Court found that here there was adequate credible evidence to create a substantial belief that the victim of this homicide had died as the result of manual strangulation, not self-inflicted. Therefore, there was no error in admitting the defendant's statement into evidence. *State v. Grant*, 287 A. 2d 674 (Supreme Judicial Court of Maine, December, 1971).

Arrest; Probable Cause L

Defendants were convicted of breaking, entering, and larceny in the nighttime, and they appealed. One of the bases for appeal was that the arrest of defendants was made without probable cause and therefore furnished no basis for subsequent searches.

An officer received a radio message from the police dispatcher that an unknown person had reported a break in progress at a building. When the officer got to the building, he discovered that the rear window had been broken and metal bars over the window spread to permit entrance of a person. He observed no suspects at the scene but heard voices coming from the second floor porch of an adjoining building. He entered this building and went up to the roof where he found defendants, lightly clad on a cold night, attempting to conceal themselves. He arrested them, frisked them for weapons, and found coins which were later admitted into evidence.

The Court found that the facts provided probable cause for arrest of defendants citing the following passage from *Sibron v. New York*, 392 U. S. 40, 66.

> "..... (D) eliberately furtive actions and flight at the approach of strangers or law officers are strong indicia of mens rea, and when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime, they are proper factors to be considered in the decision to make an arrest."

The searches which followed were properly incident to a valid arrest. *State v. Mimmovich.* 284 A. 2d 282 (Supreme Judicial Court of Maine, December, 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

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