

# MAINE STATE LEGISLATURE

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DECEMBER 1976

**ALERT****CRIMINAL DIVISION**

**MESSAGE FROM THE  
ATTORNEY GENERAL  
JOSEPH E. BRENNAN**

It has come to our attention that one of larger departments in the State has only recently submitted its roster of personnel for the updating of the ALERT mailing list. Law enforcement agencies which have not responded to the announcements in the February-March and April-May 1976 ALERTs regarding the revision of the ALERT mailing list are urged to send us rosters of all active personnel with home addresses. Please send the departmental roster to the Law Enforcement Education Section, Department of the Attorney General, Room 507, State Office Building, Augusta, Maine 04333.

I would also like to announce that a supplement to update the **Law Enforcement Officer's Manual** is presently being finalized by the Law Enforcement Education Section. It is expected that the supplement will be returned from the printer in the late spring or early summer. I have been very pleased with the positive reaction to the **Manual** we have had from the criminal justice community and I believe that the supplement will increase its usefulness substantially.

**JOSEPH E. BRENNAN**  
Attorney General

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

## CASE SUMMARY INDEX

### January 1976—December 1976

The following index of ALERT case summaries contains entries for all the case summaries which have appeared in the ALERT since January 1976. Earlier indexes to case summaries appeared in the December 1974 and December 1975 ALERTs. The index is based on the Table of Contents in NEDRUD, **THE CRIMINAL LAW**, a monthly compilation of case summaries relating to criminal law and procedure. A copy of the NEDRUD index was inserted in the January 1974 ALERT. (Any officer who does not have a copy of the NEDRUD index may obtain one by contacting the Law Enforcement Education Section.)

The index is broken down into nine general categories such as **ARREST, SEARCH AND SEIZURE; CONFESIONS / SELF-INCRIMINATION; CRIMES/OFFENSES;** etc. Each general category is then broken down into numerous subcategories. The individual entries under the subcategories consist of three lines containing the following information:

1. A brief phrase or sentence describing the nature or holding of the case. (Often this brief description will refer to the subcategory heading.)
2. The title and citation of the case along with an abbreviated designation of the jurisdiction in which the case was decided and the year in which it was

decided. The Maine Supreme Judicial Court, First Circuit Court of Appeals, and U.S. Supreme Court entries are highlighted by putting Me., 1st Cir., and U.S. in bold face print.

3. The month and page of the issue of ALERT in which the case summary appears. Where a case summary begins on one page and ends on another, both pages will be included. (e.g., pp. 6-7)

Two further features of this index are worthy of mention. First, the index is not divided into two sections—Important Recent Decisions and Maine Court Decisions. Each index subcategory contains entries of cases from the Maine Supreme Judicial Court, the First Circuit Court of Appeals, and the U.S. Supreme Court. Secondly, if a case summary has discussed two or more different holdings, the case will be indexed under **each** of the two or more NEDRUD categories appropriate for the particular holding.

Finally, it should be noted that the entries within each subcategory are listed in the order in which they appeared in the ALERT Bulletins, with those appearing in the most recent ALERTs listed first. Therefore, the entries may not be in strict chronological order as to the time the decisions were rendered.

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## A. ARREST, SEARCH AND SEIZURE

### ARREST AND DETENTION A § 1

#### A § 1.1 Reasonable Grounds

Warrantless arrest of person who retreats from public place into private place.

**U.S. v. Santana**, U.S. , 96 S.Ct. 2406, 49 L.Ed. 2d 300 (U.S. 1976) September 1976, pp. 1-2

Officers had probable cause to arrest for burglary.

**State v. LeBlanc**, 347 A.2d 590 (Me. 1975) August 1976, p. 4

Officers had probable cause to believe offense committed in their presence.

**State v. Cowperthwaite**, 354 A.2d 173 (Me. 1976) August 1976, p. 5

#### A § 1.3 Misdemeanors

Arrest for unlawful possession of concealed weapon.

**State v. Clark**, 365 A.2d 1031 (Me. 1976) December 1976, p. 4

#### A § 1.4 Detention: "Stop and Frisk"

Facts supported detention and frisk of defendant.

**State v. Clark**, 365 A.2d 1031 (Me. 1976) December 1976, p. 4

Investigative stop of vehicle held lawful.

**State v. Johnson**, 365 A.2d 497 (Me. 1976) December 1976, p. 4

Stopping of vehicle to determine if operator intoxicated; detention to investigate furtive conduct.

**State v. Fitzherbert**, 361 A.2d 961 (Me. 1976) September 1976, pp. 5-6

### SEARCH AND SEIZURE A § 2

#### A § 2.1 Probable Cause: Warrant

Information in affidavit not stale.

**Andresen v. Maryland**, U.S. , 96 S.Ct. 2737, 49 L.Ed. 2d 627 (U.S. 1976) September 1976, p. 3

Inaccurate statements in affidavit.

**U.S. v. Pagan**, 537 F.2d 554 (1st Cir. 1976) September 19, 1976, p. 4

Establishing reliability of narcotics-detecting dog in search warrant affidavit.

**U.S. v. Skelcher**, 536 F.2d 963 (1st Cir. 1976) September 1976, p. 4

#### A § 2.2 Other Warrant Requirements

Description of property to be seized held

sufficiently particular. Search for and Seizure of business records not violative of Fifth Amendment.

**Andresen v. Maryland**, U.S. , 96 S.Ct. 2737, 49 L.Ed. 2d 627 (U.S. 1976) September 1976, p. 3

#### A § 2.3 Incident to Arrest — Arrest or Search for One Offense, Seizure for Another

Since arrest lawful, search incident to arrest was lawful.

**U.S. v. Santana**, U.S. , 96 S.Ct. 2406, 49 L.Ed. 2d 300 (U.S. 1976) September 1976, pp. 1-2

Scope of search of arrestee's person.

**State v. Paris**, 343 A.2d 588 (Me. 1975) August 1976, p. 2

Evidence seized from arrestee at scene and at jail.

**State v. Little**, 343 A.2d 180 (Me. 1975) August 1976, p. 2

Search sufficiently contemporaneous with arrest. Search within permissible scope of search incident to arrest.

**State v. LeBlanc**, 347 A.2d 590 (Me. 1975) August 1976, p. 4

Search incident to arrest doctrine inapplicable.

**State v. Cowperthwaite**, 354 A.2d 173 (Me. 1976) August 1976, p. 5

#### A § 2.4 Automobiles—Without a Warrant

Inventory search of automobile held reasonable.

**South Dakota v. Opperman**, U.S. , 96 S.Ct. 3092, 40 L.Ed. 2d 1000 (U.S. 1976) October 1976, p. 6

Search of vehicle valid under **Chambers v. Maroney**.

**State v. Little**, 343 A.2d 180 (Me. 1975) August 1976, p. 2

Search of vehicle permissible under **Carroll** doctrine.

**State v. Cowperthwaite**, 354 A.2d 173 (Me. 1976) August 1976, p. 5

Search of vehicle at station upheld under **Carroll** doctrine.

**State v. Cress**, 344 A.2d 57 (Me. 1975) January 1976, p. 6

#### A § 2.5 Persons and Places—Without a Warrant

Underground parking garage of condominium not within curtilage.

**U.S. v. Pagan**, 537 F.2d 554 (1st Cir. 1976) September 1976, p. 4

Plain view observation of shells in automobile.

**State v. Little**, 343 A.2d 180 (Me. 1975) August 1976, p. 2

Seizure authorized under plain view doctrine.

**State v. Cowperthwaite**, 354 A.2d 173

(Me.1976) August 1976, p. 5

#### A § 2.6 Consent—Abandonment

Failure to warn of right to withhold consent.

**State v. Fitzherbert**, 361 A.2d 961 (Me. 1976)

September 1976, pp. 5-6

### EFFECTING THE ARREST, SEARCH OR SEIZURE A § 3

#### A § 3.1 Entry

Entry of private place to arrest one who retreated from public place; hot pursuit.

**U.S. v. Santana**, U.S. , 96 S.Ct. 2406, 49 L.Ed. 2d 300 (U.S. 1976) September 1976, pp. 1-2

Officers' entry into underground parking garage not violative of Fourth Amendment.

**U.S. v. Pagan**, 537 F.2d 554 (1st Cir. 1976) September 1976, p. 4

#### A § 3.2 Warrant Essential

Warrant unnecessary for arrest in public place.

**U.S. v. Santana**, U.S. , 96 S.Ct. 2406, 49 L.Ed. 2d 300 (U.S. 1976) September 1976, pp. 1-2

## B. CONFESSIONS/SELF-INCRIMINATION

### INTERROGATION B § 1

#### B § 1.1 Voluntariness

Search for and seizure of business records not violative of Fifth Amendment.

**Andresen v. Maryland**, U.S. , 96 S.Ct. 2737, 49 L.Ed. 2d 627 (U.S. 1976) September 1976, p. 3

#### B § 1.3 Miranda

Interrogation after suspect exercises right to remain silent.

**Michigan v. Mosley**, 423 U.S. 87, 96 S.Ct. 316, 46 L.Ed. 2d 313 (U.S. 1975) September 1976, p. 2

Use for impeachment of defendant's silence during custodial interrogation.

**U.S. v. Hale**, 422 U.S. 171, 95 S.Ct. 2133, 45 L. Ed. 2d 99 (U.S. 1975) September 1976, p. 2

Use for impeachment of defendant's silence during custodial interrogation.

**Doyle v. Ohio**, U.S. , 96 S.Ct. 2240, 49 L.Ed. 2d 91 (U.S. 1976) September 1976, pp. 2-3

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Statements made by defendant while being transported held spontaneous and voluntary.

**State v. Farley**, 358 A.2d 516 (Me. 1976) September 1976, p. 5

Voluntary statement made after defendant told officer he did not wish to talk.

**State v. Armstrong**, 344 A.2d 42 (Me. 1975) August 1976, p. 3

Admissions made during polygraph testing.

**State v. Bowden**, 342 A.2d 281 (Me. 1975) August 1976, p. 1

When *Miranda* warnings must be given at a second interrogation of accused.

**State v. Myers**, 345 A.2d 500 (Me. 1975) August 1976, p. 3

Suspect not in custody.

**State v. Inman**, 350 A.2d 582 (Me. 1976) August 1976, p. 4

## PROCEDURE B § 2

### B § 2.3 Evidence—Use for Impeachment—Harmless

Use for impeachment of defendant's silence during custodial interrogation.

**Doyle v. Ohio**, U.S. , 96 S.Ct. 2240, 49 L.Ed. 2d 91 (U.S. 1976) September 1976, pp. 2-3

Corpus delicti of arson.

**State v. Sheehan**, 337 A.2d 253 (Me. 1975) September 1976, p. 6

## SELF-INCRIMINATION B § 3

### B § 3.1 (a) Identification: Wade-Gilbert-Stovall

In-court identification not tainted by photographic display. In-court identification not tainted by identification in courthouse corridor.

**State v. Caplan**, 353 A.2d 172 (Me. 1976) August 1976, pp. 5-6

### B § 3.3 Right of Silence—Implied Admission

Use for impeachment of defendant's silence during custodial interrogation.

**Doyle v. Ohio**, U.S. , 96 S.Ct. 2240, 49 L.Ed. 2d 91 (U.S. 1976) September 1976, pp. 2-3

## C. CRIMES/OFFENSES

### ROBBERY-BURGLARY-THEFT-DESTRUCTION OF PROPERTY C § 2

#### C § 2.6 Arson-Bombing

Corpus delicti of arson.

**State v. Sheehan**, 337 A.2d 253 (Me. 1975) September 1976, p. 6

## AGAINST AUTHORITY C § 5

### C § 5.2 Breach of the Peace—Riots—Vagrancy

Loitering ordinance held unconstitutionally vague.

**State v. Reed**, 345 A.2d 891 (Me. 1975) August 1976, p. 6

## TRAFFIC OFFENSES C § 6

### C § 6.2 Driving While Intoxicated—Blood Test

Arrest for O.U.I. lawful where preceded by lawful investigative stop.

**State v. Johnson**, 365 A.2d 497 (Me. 1976) December 1976, p.

Stop of vehicle to investigate possible O.U.I. was reasonable.

**State v. Fitzherbert**, 361 A.2d 961 (Me. 1976) September 1976, pp. 5-6

## D. DEFENDANT'S RIGHTS/DEFENSES

## DEFENSES D § 3

### D § 3.1 Alibi

Use of defendant's silence during custodial interrogation to impeach alibi defense.

**U.S. v. Hale**, 422 U.S. 171, 95 S.Ct. 2133, 45 L.Ed. 2d 99 (U.S. 1975) September 1976, p. 2

## E. EVIDENCE/WITNESSES

### EVIDENCE E § 1

#### E § 1.1 Reasonable Doubt—Sufficiency—Circumstantial—Presumptions—Inferences

Circumstantial proof of possessory rights in abandoned property.

**State v. Cress**, 344 A.2d 57 (Me. 1975) January 1976, p. 6

#### E § 1.3 Identification

When out-of-court identification may be introduced at trial.

**State v. Caplan**, 353 A.2d 172 (Me. 1976) August 1976, pp. 5-6

Coins taken from defendant's person not identified as those taken in break.

**State v. Cress**, 344 A.2d 57 (Me. 1975) January 1976, p. 6

### E § 1.4(a) Improper Reference

Reference to defendant's silence during custodial interrogation was improper.

**U.S. v. Hale**, 422 U.S. 171, 95 S.Ct. 2133, 45 L.Ed. 2d 99 (U.S. 1975) September 1976, p. 2

Reference to defendant's silence during custodial interrogation.

**Doyle v. Ohio**, U.S. , 96 S.Ct. 2240, 49 L.Ed. 2d 91 (U.S. 1976) September 1976, pp. 2-3

### E § 1.10 Scientific—Opinion: Expert—Lay

Admissions made during polygraph testing.

**State v. Bowden**, 342 A.2d 281 (Me. 1975) August 1976, p. 1

### E § 1.13 Relevant—Material

Relevancy of coins taken from defendant's person.

**State v. Cress**, 344 A.2d 57 (Me. 1975) January 1976, p. 6

## WITNESSES E § 2

### E § 2.1 Impeachment: Defendant

Impeachment by reference to defendant's silence during custodial interrogation held improper.

**U.S. v. Hale**, 422 U.S. 171, 95 S.Ct. 2133, 45 L.Ed. 2d 99 (U.S. 1975) September 1976, p. 2

Use for impeachment of defendant's silence during custodial interrogation.

**Doyle v. Ohio**, U.S. , 96 S.Ct. 2240, 49 L.Ed. 2d 91 (U.S. 1976) September 1976, pp. 2-3

# MAINE COURT DECISIONS

## ARREST:

### A § 1.3 Misdemeanors

## ARREST:

### A § 1.4 Detention: "Stop and Frisk"

Defendant was convicted of armed assault and battery. Crucial to the State's case was evidence of a gun found in defendant's possession two weeks after the assault and identified as the gun used in the assault. The gun was obtained by police officers following a tip from a private citizen who had observed a man putting a hand gun underneath his jacket. One of the officers, who knew the private citizen, had just seen a man matching the description given by the reporting citizen, walking on a certain road. Shortly thereafter, the officers stopped the defendant, who was walking on that road and who matched the citizen's description. Defendant denied carrying a gun, and the officers read a *Miranda* warning and conducted a pat-down search which revealed the gun in question. The officers arrested defendant for carrying a concealed weapon without a license, a misdemeanor.

The Law Court found that this warrantless detention and limited search for the hand gun were constitutionally permissible under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968). The detention of defendant was based on specific factual information derived from a concerned citizen who had no possible bad motive in relaying the information. The warrantless investigation was justified since the information that a man carrying a concealed weapon "was walking along a major highway where he might be picked up by some unsuspecting motorist created an exigency requiring

prompt action without the delay required to get a warrant." The limited search of defendant's person was conducted out of a fear for the officers' own safety and was therefore permissible. The ensuing arrest was also permissible since it occurred only after the officers observed the misdemeanor of carrying a concealed weapon taking place in their presence. *State v. Clark*, 365 A.2d 1031 (Supreme Judicial Court of Maine, November 1976).

## ARREST:

### A § 1.4 Detention: "Stop and Frisk"

## CRIMES/OFFENSES:

### C § 6.2 Driving While Intoxicated

Defendant was convicted of operating under the influence of intoxicating liquor (29 M.R.S.A. §1312). Two police officers observed defendant's truck double parked. As they passed the vehicle the officers recognized defendant, who turned and looked at them from within the vehicle. Defendant's face appeared to one officer to be flushed and his hair to be abnormally disheveled. The officers decided at this point to investigate but they had to go around the block to do so. When they again approached the defendant's vehicle, this time with their blue light flashing, the defendant started to drive away. The officers stopped the vehicle and arrested the defendant for O.U.I. On appeal defendant argued that the officers had no right to stop him and therefore the results of the blood test should have been suppressed.

The Law Court upheld the conviction, finding the officers' stop of defendant's vehicle lawful under *Terry v. Ohio*, 392 U.S. 1, 88

S.Ct. 1868, 20 L.Ed. 2d 889 (1968). The "specific and articulable facts" underlying the stop were that defendant's vehicle was double parked, that he was recognized as being the only occupant of the vehicle, that his face was flushed and his hair was "abnormally disheveled." These symptoms of intoxication and the evidence of a parking violation justified an investigative stop in the interest of public safety. Regarding the fact that the vehicle was double parked, the court noted that the motor vehicle statutes authorize an investigative stop by an officer in uniform having probable cause to believe that a violation of law has taken or is taking place. *State v. Johnson*, 365 A.2d 497 (Supreme Judicial Court of Maine, November 1976).

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*Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, Room 507 - State Office Building, Augusta, Maine 04333.*

## ALERT

The matter contained in this bulletin is intended for the use and information of all those involved in the criminal justice system. Nothing contained herein is to be construed as an official opinion or expression of policy by the Attorney General or any other law enforcement official of the State of Maine unless expressly so indicated.

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

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