CASELAW ROUNDUP

What the Law Court has had to say this past year

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State v. Every, 2023 ME 39, 298 A.3d 806

The issue presented relates to the circumstances in which an ex-domestic partner can be “not licensed or privileged” to be on the premises where he previously lived with his former partner.

State v. Every, 2023 ME 39, ¶ 1, 298 A.3d 806, 807

State v. Every, 2023 ME 39, 298 A.3d 806

"Every and the victim were in a romantic relationship from 2003 to 2019. They never married and are the parents of one daughter. In 2019, the three were living in a house that the victim rented in western Maine. Although there was no written lease, the victim signed a paper identifying the house's occupants, which included herself, Every, their daughter, and their pets. She was legally and financially responsible for the home.

State v. Every, 2023 ME 39, ¶ 3, 298 A.3d 806, 808 (emphasis added)

State v. Every, 2023 ME 39, 298 A.3d 806

“On Friday, December 6, 2019, the victim ended her relationship with Every. The victim informed Every that she would spend the weekend at her parents’ residence and that he needed to move out by that Sunday. He complied by taking all his clothes and moving into his other child's home in Dixfield.”

State v. Every, 2023 ME 39, ¶ 4, 298 A.3d 806, 808

State v. Every, 2023 ME 39, 298 A.3d 806

"Throughout December, Every messaged and called the victim incessantly. One night Every called the victim roughly fifty times . . . Every still had housekeys that he refused to return despite the victim asking him to do so, and at times he would come and go from the house when he pleased despite not having permission from the victim. The victim started barricading the doors with furniture at night in case he tried to enter."

State v. Every, 2023 ME 39, ¶ 5, 298 A.3d 806, 808 (emphasis added).

State v. Every, 2023 ME 39, 298 A.3d 806

"On January 3, 2020, while at work, the victim received a message from Every asking permission to go to the house to visit their dog. She agreed on the condition that he leave before she returned home at roughly 6:00 p.m. She granted him this permission because their daughter was home sick and Every could check on her. Every spent the day there and left around 5:30 p.m."

State v. Every, 2023 ME 39, ¶ 6, 298 A.3d 806, 808

State v. Every, 2023 ME 39, 298 A.3d 806

“At some point that evening, unbeknownst to the victim, Every entered the house through the basement. He knew that the victim did not want him there and that he was supposed to leave the house by 6:00 p.m. Every had been drinking heavily and had a handgun with him.”

State v. Every, 2023 ME 39, ¶ 7, 298 A.3d 806, 808

State v. Every, 2023 ME 39, 298 A.3d 806

The burglary statute provides that a person is guilty of burglary if "[t]he person enters or surreptitiously remains in a structure knowing that that person is not licensed or privileged to do so, with the intent to commit a crime therein." 17-A M.R.S. § 401(1)(A). Every contends that the State failed to prove that he knew that he was "not licensed or privileged" to be in the house that night because he claims he had a legal right to be there.

State v. Every, 2023 ME 39, ¶ 9, 298 A.3d 806, 809

State v. Every, 2023 ME 39, 298 A.3d 806

As the trial court reasoned and contrary to Every's contentions, “licensed or privileged” within the meaning of the statute refers to a defendant's possessory or occupancy rights, not legal rights or interests, and whether a defendant knew that he lacked the right to possess or occupy a structure is a question for the fact finder to answer based on the totality of the circumstances. See State v. Haines, 621 A.2d 858, 859 (Me. 1993) (noting that “burglary is an offense against the security of habitation or occupancy, rather than against ownership or property”

State v. Every, 2023 ME 39, ¶ 10, 298 A.3d 806, 809

State v. Every, 2023 ME 39, 298 A.3d 806

"There is sufficient evidence in the record from which the jury could find that Every knew that he lacked the right to possess or occupy the house the night of the offense. See State v. Thomas, 2022 ME 27, ¶ 30, 274 A.3d 356. The jury heard testimony from the victim that she told Every that he needed to move out nearly a month earlier and that he complied. Every conceded at trial that he knew that the victim did not want him there when she was there, he sought her permission to be there the day of the offense, and his permission expired at 6:00 p.m. The jury could have reasonably found that one generally does not ask for permission to be in a structure they believe they have a right to possess or occupy. This is supported by the surreptitious manner in which he entered the house, in the middle of the night, through the basement."

State v. Every, 2023 ME 39, ¶ 11, 298 A.3d 806, 809–10

State v. Every, 2023 ME 39, 298 A.3d 806

Takeaway: explain this to your clients who are going through a divorce/separation that involves possession of a shared home! You can be guilty of burglary in your “own home” under some circumstances.

State v. Marquis, 2023 ME 16, 290 A.3d 96

Independent driver education instructor was considered an “other official” at a high school for purposes of the gross sexual assault statute.

State v. Marquis, 2023 ME 16, 290 A.3d 96

“The evidence that the trial court relied upon, appropriately in light of the protective purpose of the statute, permitted the court to determine that students would reasonably view Marquis as someone vested, by the school, with supervisory and instructional authority over them while they were sitting in his classroom after school and driving his vehicle during school. It is no coincidence that the victim's mother considered Marquis to be one of the victim's teachers. The evidence was sufficient to support the court's findings that Marquis was an “other official” of the school and that he was guilty of gross sexual assault.”

State v. Marquis, 2023 ME 16, ¶ 22, 290 A.3d 96, 103

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

In this discretionary sentence appeal, Richard J. Murray-Burns appeals from a series of consecutive sentences imposed by the trial court (Somerset County, Mallonee, J.) on his guilty pleas to ten counts of aggravated attempted murder, one count of robbery, one count of failure to stop, and one count of theft. Murray-Burns argues that we should vacate the sentences because the court did not make the factual findings required for the imposition of consecutive sentences. See 17-A M.R.S. § 1608 (2022). We agree, and we therefore vacate the sentences and remand for the imposition of a sentence or sentences that are not more severe than the sentence appealed from. We also use this occasion to clarify our jurisprudence regarding the several avenues through which a defendant may challenge a criminal sentence.

State v. Murray-Burns, 2023 ME 21, ¶ 1, 290 A.3d 542, 544

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

"On December 22, 2019, a police officer investigated a report that a person had stolen something from a retail store in Waterville and then driven away in a particular vehicle. The officer located and stopped a vehicle matching the description and made contact briefly with the driver, Murray-Burns. Murray-Burns then sped off, and when the police officer followed and approached with his cruiser's lights and sirens activated, Murray-Burns began firing an "AR-15 style" rifle at the officer. Two bullets from the rifle struck the officer—one in each arm—and sixteen bullets struck the cruiser."

State v. Murray-Burns, 2023 ME 21, ¶ 2, 290 A.3d 542, 544

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

“A second officer pursued Murray-Burns and approached his vehicle. Murray-Burns fired on that officer; sped off; stopped and fired on the officer again, striking the officer's cruiser and disabling it; and then sped off again. Murray-Burns then stopped his vehicle in front of a man who was backing his car out of his driveway. Murray-Burns got out of his vehicle and ordered the man at gunpoint to get out of his car, saying that he “didn't want to do something horrible.” The man heard police sirens approaching, and Murray-Burns got back into his own vehicle and drove away.”

State v. Murray-Burns, 2023 ME 21, ¶ 2, 290 A.3d 542, 544–45

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

“Rather than attempting to evade them, Murray-Burns stopped his vehicle in multiple locations to fire gunshots at them as they approached. Officers ultimately closed in from both directions and returned fire, and Murray-Burns fell out of his vehicle. Police found the rifle, a pistol, and ammunition, and saw that a piece of heavy-duty body armor had been draped over the driver's seat of Murray-Burns's car.”

State v. Murray-Burns, 2023 ME 21, ¶ 2, 290 A.3d 542, 545

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

A grand jury returned a nineteen-count indictment charging Murray-Burns with

- thirteen counts of aggravated attempted murder (Class A), 17-A M.R.S. § 152-A (2022);
- one count of robbery with a dangerous weapon (Class A), 17-A M.R.S. § 651(1)(E) (2022);
- two counts of aggravated assault with a firearm (Class B), 17-A M.R.S. §§ 208(1)(B), 1604(3)(B) (2022);
- one count of reckless conduct with a dangerous weapon (Class C), 17-A M.R.S. §§ 211(1), 1604(5)(A) (2022);
- one count of failure to stop (Class E), 29-A M.R.S. § 2414(2) (2022); and
- one count of theft by unauthorized taking or transfer (Class E), 17-A M.R.S. § 353(1)(A) (2022).

State v. Murray-Burns, 2023 ME 21, ¶ 3, 290 A.3d 542, 545

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

"The trial court held a hearing in August 2021 during which Murray-Burns pleaded guilty to ten of the aggravated attempted murder charges and to the robbery, failure to stop, and theft charges."

State v. Murray-Burns, 2023 ME 21, ¶ 3, 290 A.3d 542, 545

The State dismissed the remaining charges.

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

The court held a sentencing hearing in March 2022. Although neither Murray-Burns nor the State recommended consecutive sentences, the court asked the parties to consider "how many probations could be stacked on top of one another to stretch how far." The State suggested that the court could impose as much as four years of probation on each of the Class A counts if it were to impose consecutive sentences pursuant to 17-A M.R.S. § 1608(1)(D). Defense counsel likewise said that consecutive suspended sentences would be an appropriate way to impose a sentence that included any length of probation.

State v. Murray-Burns, 2023 ME 21, ¶ 4, 290 A.3d 542, 545

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

The court then imposed the following sentences:

- On six of the ten aggravated attempted murder counts: concurrent sentences of forty-five years in prison, with all but thirty years suspended, and four years of probation.

- On the robbery, failure to stop, and theft counts: sentences of fifteen years, six months, and six months, respectively, concurrent with one another and concurrent with the sentences on the first six aggravated attempted murder counts.

- On the remaining four aggravated attempted murder counts: separate and successive consecutive sentences of forty-five years, all suspended, and four years of probation, all consecutive to the sentences imposed on the other nine counts.

State v. Murray-Burns, 2023 ME 21, ¶ 5, 290 A.3d 542, 545–46

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

The court did not state its reasons for imposing consecutive sentences, see 17-A M.R.S. § 1608(3), and it did not articulate a Hewey analysis specific to each of the counts for which it imposed consecutive sentences, see 17-A M.R.S. § 1602(1); State v. Stanislaw, 2013 ME 43, ¶ 16, 65 A.3d 1242. The net effect of the sentences was to subject Murray-Burns to a total of 225 years of incarceration, with no less than thirty to be served, and twenty years of probation.

State v. Murray-Burns, 2023 ME 21, ¶ 6, 290 A.3d 542, 546

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

"The court entered a judgment of conviction reflecting the sentences imposed. Murray-Burns filed a timely application for leave to appeal from the sentence, which the Sentence Review Panel granted. See 15 M.R.S. § 2151 (2022); M.R. App. P. 2B(b)(1), 20(b)"

State v. Murray-Burns, 2023 ME 21, ¶ 7, 290 A.3d 542, 546

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

In his appellate brief, Murray-Burns argues that (1) the sentence is illegal because the court was not authorized to impose consecutive sentences and (2) the sentence is disproportionate to the offenses and disproportionate to sentences imposed in other cases.

State v. Murray-Burns, 2023 ME 21, ¶ 7, 290 A.3d 542, 546

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

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“On paper, defendant's sentence might run until late 2264, some years after the Starship Enterprise is foretold to boldly go where no man has gone before.”

Brief of the Appellant, p 12-13

See https://www.denofgeek.com/tv/star-trek-discovery-timeline-breakdown (last accessed May 17, 2022).

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

“Given the current posture of the case and the parties’ positions, an essential preliminary question is whether we can address the merits of Murray-Burns's argument that his sentence is illegal as part of this discretionary sentence appeal or whether, as the State now asserts, we must ignore that argument on the ground that a challenge to the legality of a sentence may be pursued only in a direct appeal.”

State v. Murray-Burns, 2023 ME 21, ¶ 12, 290 A.3d 542, 547

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

“We have made clear that “[w]e do not review the propriety of a sentence on direct appeal.” State v. Davenport, 2016 ME 69, ¶ 8, 138 A.3d 1205 (emphasis omitted). Rather, “[o]n direct appeal, we will vacate a sentence only when it is illegal and the illegality appears on the face of the record. ... [A] direct appeal that does not argue any illegality, but instead challenges only the court's findings or discretionary determinations, will be dismissed.”

State v. Murray-Burns, 2023 ME 21, ¶ 14, 290 A.3d 542, 548

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

“[T]o obtain review of the propriety of a sentence, it is necessary to apply for sentence review, with an appeal following only if the Sentence Review Panel authorizes the appeal in its discretion.”

State v. Murray-Burns, 2023 ME 21, ¶ 14, 290 A.3d 542, 548

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

"It does not follow, however, that we cannot review the facial legality of a sentence in the context of a discretionary sentence appeal"

"As we have explained, "the discretionary appeal afforded by [15 M.R.S. §§ 2151-2157] is broad enough to include claims of facial illegality." State v. Tellier, 580 A.2d 1333, 1333 n.1 (Me. 1990);7 see State v. Cyr, 611 A.2d 64, 66 n.6 (Me. 1992) ("[A] facially illegal sentence, which may be challenged on direct appeal, may also be attacked, at the defendant's discretion, through the sentence review procedures ...."))."

State v. Murray-Burns, 2023 ME 21, ¶15,¶16 290 A.3d 542, 548

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

"We therefore reaffirm our earlier conclusions that although the propriety of a criminal sentence is not reviewable in a direct appeal, e.g., Davenport, 2016 ME 69, ¶ 8, 138 A.3d 1205, the discretionary sentence review process "is broad enough to include claims of facial illegality."

State v. Murray-Burns, 2023 ME 21, ¶ 17, 290 A.3d 542, 549

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

Title 17-A M.R.S. § 1608(1) provides that multiple sentences of imprisonment imposed on the same date must be concurrent except that the court may impose the sentences consecutively after considering the following factors:

A. The convictions are for offenses based on different conduct or arising from different criminal episodes;

B. The individual was under a previously imposed suspended or unsuspended sentence and was on probation or administrative release, under incarceration or on a release program or period of supervised release at the time the individual committed a subsequent offense;

C. The individual had been released on bail when that individual committed a subsequent offense, either pending trial of a previously committed offense or pending the appeal of previous conviction; or

D. The seriousness of the criminal conduct involved in either a single criminal episode or in multiple criminal episodes or the seriousness of the criminal record of the individual, or both, require a sentence of imprisonment in excess of the maximum available for the most serious offense.

State v. Murray-Burns, 2023 ME 21, ¶ 19, 290 A.3d 542, 549–50

State v. Murray-Burns, 2023 ME 21, 290 A.3d 542, 544

"The statute therefore prohibits a sentencing court from imposing consecutive sentences without finding that one of the four listed factors applies. E.g., State v. Treadway, 2020 ME 127, ¶ 14, 240 A.3d 66. In addition, "[i]f the court decides to impose consecutive sentences, the court shall state its reasons for doing so on the record or in the sentences." 17-A M.R.S. § 1608(3); see Stanislaw, 2013 ME 43, ¶ 16, 65 A.3d 1242 ("If the court decides to impose consecutive sentences for various convictions, it must perform a separate Hewey analysis for each conviction.")."

State v. Murray-Burns, 2023 ME 21, ¶ 19, 290 A.3d 542, 550

State v. Moore, 2023 ME 18, 290 A.3d 533

It is black-letter law that an accused cannot be punished by a more severe sentence because he unsuccessfully exercised his constitutional right to a trial." Farnham, 479 A.2d at 891. Although a court may deny leniency to a defendant who is convicted after a trial, in so doing, it may not consider the defendant's exercise of his right to trial.

State v. Moore, 2023 ME 18, ¶ 24, 290 A.3d 533, 541

State v. Moore, 2023 ME 18, 290 A.3d 533

“It follows that simply exercising the right to trial can never be cited as an aggravating factor.”

State v. Moore, 2023 ME 18, ¶ 25, 290 A.3d 533, 541

State v. Moore, 2023 ME 18, 290 A.3d 533

“Here, the court concluded that most or all courts would agree that “if you get convicted after a trial, then you're showing no remorse, and ... that's a proper sentencing consideration.” Although the sentencing court then stated it was going to be conservative in applying this principle, this is of no import because any increase in Moore's sentence for that reason is improper. Because a fair reading of these remarks suggests that the sentencing court was—or might have been—influenced by Moore's decision to stand trial, we must vacate Moore's sentence and remand for resentencing.”

State v. Moore, 2023 ME 18, ¶ 27, 290 A.3d 533, 542

State v. Chase, 2023 ME 32, 294 A.3d 154.

In February 2022, Chase was indicted on the following five counts: (1) aggravated assault (Class B), 17-A M.R.S. § 208(1)(C); (2) robbery (Class B), 17-A M.R.S. § 651(1)(B)(2); (3) domestic violence assault (Class D), 17-A M.R.S. § 207-A(1)(A); (4) domestic violence criminal threatening (Class D), 17-A M.R.S. § 209-A(1)(A); and (5) theft by unauthorized taking or transfer (Class E), 17-A M.R.S. § 353(1)(A). Chase pleaded not guilty to all five counts, and a jury trial was held.

State v. Chase, 2023 ME 32, ¶ 8, 294 A.3d 154, 158, as revised (June 13, 2023)

State v. Chase, 2023 ME 32, 294 A.3d 154.

"Frankly, in this case, any remorse shown by you, Mr. Chase, is after the fact, insofar as you flatly denied making any contact with the complainant's throat in this case, took that position on the witness stand, much less choking her, and taking responsibility is, frankly, missing in light of the fact that you insisted on a trial for the offenses charged. I'm not punishing anyone for insisting on a trial, but I do think it's difficult to argue that someone is taking responsibility if they insist on a trial."

State v. Chase, 2023 ME 32, ¶ 31, 294 A.3d 154, 164, as revised (June 13, 2023)

State v. Chase, 2023 ME 32, 294 A.3d 154.

“Although we have held that it is permissible for a court to consider what it believes to be untruthful testimony as an aggravating factor, see Grindle, 2008 ME 38, ¶ 26, 942 A.2d 673, we made clear in Moore that if it reasonably appears from the record that the court relied in whole or in part on the defendant's decision to stand trial, that is sufficient to render the sentence invalid”

State v. Chase, 2023 ME 32, ¶ 32, 294 A.3d 154, 164, as revised (June 13, 2023)

State v. Ringuette, 2022 ME 61, 288 A.3d 393

“Ringuette contends that the court erred when it applied section 1252(4-E) to her sentence and set the basic sentence at twenty years, because she was convicted as an accomplice, rather than as principal, of gross sexual assault.”

State v. Ringuette, 2022 ME 61, ¶ 8, 288 A.3d 393, 396

State v. Ringuette, 2022 ME 61, 288 A.3d 393

"Section 1252(4-E) states, "If the State pleads and proves that a crime under section 253 was committed against a person who had not yet attained 12 years of age, the court, notwithstanding subsection 2 [of section 1252], shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least 20 years."

State v. Ringuette, 2022 ME 61, ¶ 10, 288 A.3d 393, 396

State v. Ringuette, 2022 ME 61, 288 A.3d 393

Title 17-A M.R.S. § 57 (2022), which defines accomplice liability, states, "A person may be guilty of a crime if it is committed by the conduct of another person for which the person is legally accountable as provided by this section." A person who is an accomplice is legally accountable for the conduct of another. Id. § 57(2)(C). "Pursuant to section 57, an accomplice is guilty of the crime as if he acted as a principal, and a guilty verdict rendered on either theory is thus indistinguishable and each is independently sufficient to support a conviction." State v. Nguyen, 2010 ME 14, ¶ 15, 989 A.2d 712.

State v. Ringuette, 2022 ME 61, ¶ 11, 288 A.3d 393, 397

State v. Ringuette, 2022 ME 61, 288 A.3d 393

“Because we hold that a principal and an accomplice are not subject to different processes or analyses when a sentencing court applies the Hewey analysis, the sentencing court did not err when it set Ringuette's basic sentence at twenty years, complying with the legislative mandate in section 1252(4-E).”

State v. Ringuette, 2022 ME 61, ¶ 14, 288 A.3d 393, 398

State v. Osborn, 2023 ME 19, 290 A.3d 558

"Osborn argues that the court erred when it allowed the CI to testify about his "prior uncharged transactions" with Osborn because such testimony constituted inadmissible character evidence under Maine Rule of Evidence 404(b) and because its probative value was substantially outweighed by a danger of unfair prejudice, rendering it inadmissible under Maine Rule of Evidence 403. We disagree."

State v. Osborn, 2023 ME 19, ¶ 16, 290 A.3d 558, 565

State v. Osborn, 2023 ME 19, 290 A.3d 558

“Here, the trial court did not commit clear error in admitting the CI's testimony regarding the manner in which he had previously met with Osborn to obtain drugs. As the court ruled in advance of trial, such evidence was probative of the relationship between the CI and the defendant—a relationship that “might cause [the CI] to call [Osborn] to purchase drugs.”

State v. Osborn, 2023 ME 19, ¶ 18, 290 A.3d 558, 565

State v. Brackett, 2023 ME 51, 300 A.3d 827

"The State of Maine appeals from a judgment of acquittal of eluding an officer (Class C), 29-A M.R.S. § 2414(3) (2023), entered by the trial court (Penobscot County, Anderson, J.) after a jury found Dale M. Brackett guilty of that offense and two misdemeanors—failure to stop for an officer (Class E), 29-A M.R.S. § 2414(2), and criminal speeding (Class E), 29-A M.R.S. § 2074(3) (2023)."

State v. Brackett, 2023 ME 51, ¶ 1, 300 A.3d 827, 828

State v. Brackett, 2023 ME 51, 300 A.3d 827

"The court granted the motion without explaining its decision in detail. The court said to Brackett at sentencing, however, '[T]he gist of what you did was not really attempting to elude a police officer in that the recklessness and all of that was minimal at best.' The court stated, 'I consider this a serious misdemeanor, not a felony.'"

State v. Brackett, 2023 ME 51, ¶ 7, 300 A.3d 827, 830

State v. Brackett, 2023 ME 51, 300 A.3d 827

“The State argues that the trial court erred in concluding that the jury could not rationally have found beyond a reasonable doubt that Brackett operated at “a reckless rate of speed”—a required element of eluding an officer. Id. § 2414(3). Because we agree with the State that the evidence, viewed in the light most favorable to the State, rationally supports the jury's verdict, we vacate the judgment of acquittal and remand for entry of a judgment of conviction and for sentencing.”

State v. Brackett, 2023 ME 51, ¶ 1, 300 A.3d 827, 828–29

State v. Brackett, 2023 ME 51, 300 A.3d 827

"After the close of evidence and the closing arguments of counsel, the court delivered jury instructions. The court instructed the jury on the elements of eluding an officer and, with respect to the element of a "reckless rate of speed," included an instruction on the meaning of "recklessly" as it pertains to attendant circumstances, using the language of the Maine Criminal Code, 17-A M.R.S. § 35(3) (2023). Neither party objected to this instruction. The jury returned a verdict finding Brackett guilty of all three charges."

State v. Brackett, 2023 ME 51, ¶ 6, 300 A.3d 827, 829–30

State v. Brackett, 2023 ME 51, 300 A.3d 827

"We have interpreted 'reckless rate of speed' as used in section 2414(3) not to be constrained by the definition of the term 'recklessly' in Maine's criminal code, 17-A M.R.S. § 35(3). See State v. Winchenbach, 501 A.2d 1282, 1285-86 (Me. 1985). In Winchenbach, we could 'find no reason to ascribe to the [L]egislature an intent to use the identical meaning in both very different contexts' and found 'no error in the court's failure to give the jury a specific definition of the commonplace term "reckless rate of speed." ' "

State v. Brackett, 2023 ME 51, ¶ 10, 300 A.3d 827, 830–31

State v. Brackett, 2023 ME 51, 300 A.3d 827

"By finding that Brackett, in speeding as he did, "consciously disregard[ed] a risk" in a way that "involve[d] a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation," id., the jury necessarily also found that the speed at which he was operating was "careless," "irresponsible," or "done with a lack of care or caution," the ordinary meaning of the term "reckless," Reckless, Webster's New World College Dictionary; Reckless, American Heritage Dictionary of the English Language."

State v. Brackett, 2023 ME 51, ¶ 13, 300 A.3d 827, 831

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

On June 24, 2019, the corporal stopped a vehicle being operated by Abdullahi for traveling on the Turnpike at eighty-five miles per hour—a rate of speed in excess of the posted speed limit. Because Abdullahi could not produce a driver's license, a vehicle registration, or proof of insurance (although he later showed the corporal a photo of his license on his cell phone), the corporal suspected that the vehicle might not belong to Abdullahi.

State v. Abdullahi, 2023 ME 41, ¶ 5, 298 A.3d 815, 821–22

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

On June 24, 2019, the corporal stopped a vehicle being operated by Abdullahi for traveling on the Turnpike at eighty-five miles per hour—a rate of speed in excess of the posted speed limit. Because Abdullahi could not produce a driver's license, a vehicle registration, or proof of insurance (although he later showed the corporal a photo of his license on his cell phone), the corporal suspected that the vehicle might not belong to Abdullahi.

State v. Abdullahi, 2023 ME 41, ¶ 5, 298 A.3d 815, 821–22

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

After obtaining the vehicle registration information through a dispatcher, the corporal spoke by telephone with the owner of the vehicle, who told him that she did not know who Abdullahi was and had not given him permission to use the vehicle.

State v. Abdullahi, 2023 ME 41, ¶ 5, 298 A.3d 815, 822

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

He placed Abdullahi in handcuffs for safety reasons because Abdullahi was acting nervous and fidgety and because the corporal also needed to pay attention to cleaning out his cruiser so he could give Abdullahi a ride off the Turnpike. Toward the end of the stop, the corporal determined that Abdullahi had been in possession of what appeared to be an illegal drug and placed him under arrest.

State v. Abdullahi, 2023 ME 41, ¶ 5, 298 A.3d 815, 822

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

During the trial, the corporal and both sergeants testified about their observations and opinions concerning the contents of the plastic bag recovered at the scene of the stop. Although the extent of their experience with drug investigations varied, each officer testified about his own experience with drug trafficking investigations.

State v. Abdullahi, 2023 ME 41, ¶ 19, 298 A.3d 815, 825

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

Abdullahi argues that the three police officers should not have been allowed to give their testimony without being designated and qualified as expert witnesses. The State did not designate the officers as expert witnesses, so their testimony was admissible only if it qualified as lay opinion evidence rather than expert opinion evidence.

State v. Abdullahi, 2023 ME 41, ¶ 20, 298 A.3d 815, 825–26

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

Under Maine Rule of Evidence 701, lay witnesses may provide testimony in the form of opinions or inferences as long as the testimony is "(a) [r]ationally based on the witness's perception; and (b) [h]elpful to clearly understanding the witness's testimony or to determining a fact in issue." A witness's opinion must be "adequately grounded on personal knowledge or observation just as would be the case with simple statements of fact." Field & Murray, Maine Evidence § 701.1 at 365 (6th ed. 2007). Lay opinion evidence is appropriate when "the subject of inquiry is one which is plainly comprehensible by the jury and of such a nature that unskilled persons would be capable of forming correct conclusions respecting it." Ginn v. Penobscot Co., 334 A.2d 874, 883 (Me. 1975).

State v. Abdullahi, 2023 ME 41, ¶¶ 21-22, 298 A.3d 815, 826

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

An opinion is not admissible as lay witness testimony if it involves "knowledge, skill, experience, training, or education" that is beyond the comprehension of an ordinary person. See M.R. Evid. 702; State v. Woodburn, 559 A.2d 343, 346 (Me. 1989) ("[B]efore admitting expert testimony the trial court must consider (1) whether the matter is beyond common knowledge so that the untrained layman will not be able to determine it intelligently and (2) whether the witness is qualified to give the opinion sought."). If such an opinion is admissible at all, it would be as expert opinion evidence pursuant to Maine Rule of Evidence 702.

State v. Abdullahi, 2023 ME 41, ¶¶ 21-22, 298 A.3d 815, 826

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

The distinction between opinion testimony and fact testimony is not always clear, because whether something is true as a matter of fact often proves to be a matter of opinion.

State v. Abdullahi, 2023 ME 41, ¶ 23, 298 A.3d 815, 826

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

Although the line between admissible lay opinion evidence and expert opinion evidence can be difficult to define, a lay opinion must be based "wholly and solely" on the firsthand knowledge, perception, or observation of the witness, Mitchell v. Kieliszek, 2006 ME 70, ¶ 13, 900 A.2d 719 (quotation marks omitted), whereas an expert opinion may be based on information made known to the expert. Lay opinion testimony is thus inadmissible if it is not based on knowledge obtained through the witness's own perception and personal experience.

State v. Abdullahi, 2023 ME 41, ¶ 24, 298 A.3d 815, 826

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

Although the line between admissible lay opinion evidence and expert opinion evidence can be difficult to define, a lay opinion must be based "wholly and solely" on the firsthand knowledge, perception, or observation of the witness, Mitchell v. Kieliszek, 2006 ME 70, ¶ 13, 900 A.2d 719 (quotation marks omitted), whereas an expert opinion may be based on information made known to the expert. Lay opinion testimony is thus inadmissible if it is not based on knowledge obtained through the witness's own perception and personal experience.

State v. Abdullahi, 2023 ME 41, ¶ 24, 298 A.3d 815, 826

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

On the other hand, the fact that a witness may have specialized training or experience does not transform what is otherwise a lay opinion into that of an expert. See United States v. Mast, 999 F.3d 1107, 1112 (8th Cir. 2021). Thus, whether opinion testimony is admissible as lay opinion evidence or can only be admitted as expert opinion evidence is primarily a function of two variables—the extent to which the witness's foundation for giving the opinion consists of the witness's own perceptions, observations, and experiences as opposed to the knowledge and experiences of others; and whether the subject of the opinion is so "specialized" as to place it beyond the ability of "unskilled persons [to be] capable of forming correct conclusions respecting it."

State v. Abdullahi, 2023 ME 41, ¶ 25, 298 A.3d 815, 827

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

We emphasize that although the precise line between lay and expert opinion evidence may not be sharp, we are not suggesting that the line cannot be drawn. As we have said, "[t]he two categories of expert and lay opinion testimony are thus mutually exclusive." Mitchell, 2006 ME 70, ¶ 14, 900 A.2d 719.

State v. Abdullahi, 2023 ME 41, ¶ 31, 298 A.3d 815, 829

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

In the case of police testimony, it is important that officers be designated as experts when they are expected to offer opinions based on their "knowledge, skill, experience, training, or education" that is beyond the comprehension of an ordinary person.

State v. Abdullahi, 2023 ME 41, ¶ 31, 298 A.3d 815, 829

State v. Abdullahi, 2023 ME 41 298 A.3d 815, 821–822

Emphasizing a police officer's specialized expertise, particularly if it was acquired as a result of training or study rather than observation, as a preface to opinion questions, may be inconsistent with proffering the officer as a lay witness. Qualifying any witness to give lay opinion testimony as if the witness were an expert risks impermissibly bolstering the reliability of the witness's opinion.

State v. Abdullahi, 2023 ME 41, ¶ 34, 298 A.3d 815, 830

State v. Barclift, 2022 ME 50, 282 A.3d 607

On January 9 and 10, 2020, the Augusta Police Department and the Maine Drug Enforcement Agency each received, through an online reporting system similar to email, a written anonymous communication containing a tip concerning Barclift. The two tips were nearly identical in content, suggesting that they were provided by the same person. The tipster wrote that Barclift was a rap artist known as DownLeezy and that he traveled regularly from New York to Maine by Concord Trailways bus carrying large quantities of cocaine or heroin in a bag or a backpack, and that he had been doing so for years. The tipster also gave a date of birth for Barclift and indicated that he typically carried a firearm.

State v. Barclift, 2022 ME 50, ¶ 3, 282 A.3d 607, 609–10

State v. Barclift, 2022 ME 50, 282 A.3d 607

Through internet searches, police confirmed that Barclift was a rap artist known as DownLeezy. From law enforcement authorities in New York, they obtained a photograph of Barclift and an indication that he had a criminal history of indeterminate vintage.

State v. Barclift, 2022 ME 50, ¶ 4, 282 A.3d 607, 610

State v. Barclift, 2022 ME 50, 282 A.3d 607

They also contacted an employee of Concord Trailways in Boston, who said that Barclift had purchased ten bus tickets to Maine in the month of January 2020, made four trips to Maine within the first nine days of January 2020, and purchased bus tickets for travel to Maine since 2014. The employee also told police that Barclift used cash to pay for his bus tickets.

State v. Barclift, 2022 ME 50, ¶ 4, 282 A.3d 607, 610

State v. Barclift, 2022 ME 50, 282 A.3d 607

On January 22, 2020, the Concord Trailways employee reported that Barclift had purchased a bus ticket for travel to Augusta that afternoon and described the clothing that Barclift was wearing.

State v. Barclift, 2022 ME 50, ¶ 5, 282 A.3d 607, 610

State v. Barclift, 2022 ME 50, 282 A.3d 607

A team of police officers set up surveillance at the Concord Trailways bus terminal in Augusta. The bus arrived and passengers, including Barclift, got off. Barclift was wearing a backpack and carrying a black plastic bag. He exited the terminal building, approached a waiting SUV, put his backpack and bag in the back seat area, and started getting into the front passenger seat. Multiple police officers and vehicles converged on the SUV, Barclift got out with his hands raised in the air, and an officer immediately placed him in handcuffs. Eventually, officers searched Barclift's backpack, found a plastic bag containing approximately 300 grams of cocaine, and placed him under arrest.

State v. Barclift, 2022 ME 50, ¶ 5, 282 A.3d 607, 610

State v. Barclift, 2022 ME 50, 282 A.3d 607

After the suppression hearing, the [trial] court concluded that the police officers had an objectively reasonable, articulable suspicion that Barclift had been engaged in criminal activity when they stopped him on the afternoon of January 22, 2020, and issued a written order denying the motion to suppress the physical evidence seized as a result of the stop.

State v. Barclift, 2022 ME 50, ¶ 6, 282 A.3d 607, 611

State v. Barclift, 2022 ME 50, 282 A.3d 607

When an investigatory stop is based on information from an informant, “the central issue ... is whether the informant's information is so reliable and complete that it makes past, present or pending criminal conduct sufficiently likely to justify a stopping of the designated person for investigation.

State v. Barclift, 2022 ME 50, ¶ 10, 282 A.3d 607, 612

State v. Barclift, 2022 ME 50, 282 A.3d 607

Although no single rule can be fashioned to meet every conceivable confrontation between the police and citizen, the analysis must focus primarily on

- the extent and specificity of predictive detail regarding future criminal activity contained in the tip;

- the extent to which the predictive detail contained in the tip involved information that could be supplied only by a person with knowledge of the criminal activity alleged, rather than information available more generally or to the public at large; and

- the extent to which the police were able to confirm the accuracy of the predictive detail in the tip through their own observation or independently obtained, reliable information.

State v. Barclift, 2022 ME 50, ¶ 18, 282 A.3d 607, 614–15

State v. Barclift, 2022 ME 50, 282 A.3d 607

Because the tip regarding Barclift was lacking in predictive information that, if confirmed as accurate, might have validated the reliability of the tip, the police needed to obtain independent information corroborating the tipster's assertion of illegal conduct in order to establish an objectively reasonable suspicion of wrongdoing on the day of the stop.

State v. Barclift, 2022 ME 50, ¶ 23, 282 A.3d 607, 616

State v. Barclift, 2022 ME 50, 282 A.3d 607

"The additional information that the police were able to develop, in their follow-up efforts to validate the reliability of the tip, was limited and did not lend credibility to the assertion of illegal activity. The police confirmed that Barclift had, indeed, frequently taken the Concord Trailways bus from New York to Maine. Certain "[f]actors consistent with innocent travel, when taken together, can give rise to reasonable suspicion, even though some travelers exhibiting those factors will be innocent." United States v. Carpenter, 462 F.3d 981, 986 (8th Cir. 2006). Frequent interstate bus travel, on the other hand, is not alone indicative of criminal activity."

State v. Barclift, 2022 ME 50, ¶ 25, 282 A.3d 607, 617

State v. Barclift, 2022 ME 50, 282 A.3d 607

The police officers also learned, from their source at the bus company, that Barclift paid cash for his bus tickets, a fact that might be deemed indicative of an effort to leave no traceable record of his travel and therefore probative of a criminal purpose. See United States v. Sokolow, 490 U.S. 1, 8-9, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). But the State's first witness at the suppression hearing acknowledged that the source also disclosed that Barclift bought the tickets in his own name, belying any notion that Barclift was attempting to conceal his identity

State v. Barclift, 2022 ME 50, ¶ 25, 282 A.3d 607, 617

State v. Barclift, 2022 ME 50, 282 A.3d 607

[W]e acknowledge that this case is close, but it lands on the other side of the line. What is lacking is evidence that the police were able to confirm the anonymous tipster's assertion of illegality by (1) corroborating a prediction of Barclift's actions that was sufficiently specific and detailed to indicate inside knowledge of a plan to commit a crime or (2) independently obtaining reliable information, through their own direct observation or from known reliable sources, corroborating the tipster's assertion of illegality.

State v. Barclift, 2022 ME 50, ¶ 26, 282 A.3d 607, 618

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

"The officer was dispatched to a particular 7-Eleven store on November 27, 2020, at about 10:20 p.m. The dispatcher informed the officer of an anonymous report that a brown Honda had struck something and was now in the 7-Eleven parking lot. The person who made the report also conveyed a belief that the driver was intoxicated."

State v. Wilcox, 2023 ME 10, ¶ 4, 288 A.3d 1200, 1203, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

“When the officer arrived at the 7-Eleven, he found two brown Hondas—a car and a sport utility vehicle. After confirming with dispatch that the vehicle in question was a car, the officer approached the brown Honda car and found a man—later identified as Wilcox—crouched by the front driver's side of the car looking at the front tire. There was extensive damage to the driver's side of the vehicle, with bare metal and no rust. The trunk of the car was open.”

State v. Wilcox, 2023 ME 10, ¶ 4, 288 A.3d 1200, 1203, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

"The officer asked Wilcox what was going on. When Wilcox did not respond and began to walk away toward the store with his hands in his pockets, the officer told him to stop, keep his hands out of his pockets, and come toward him. Wilcox said that he was "just going into the store real quick," but he walked toward the officer at the rear of his car, and the officer told him to have a seat on the rear of the trunk."

State v. Wilcox, 2023 ME 10, ¶ 5, 288 A.3d 1200, 1203, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

"The officer asked what had happened and where the accident had occurred, and Wilcox said that it had happened on the highway. He was disheveled and emotional, and was slurring his speech as if his tongue were too large for his mouth. The officer asked Wilcox questions about his health and well-being, and Wilcox reported no injuries or ailments. The officer told Wilcox that he was going to conduct field sobriety tests and offered Wilcox no opportunity to decline. As a result of field sobriety testing, the officer conducted additional alcohol and drug testing."

State v. Wilcox, 2023 ME 10, ¶ 6, 288 A.3d 1200, 1203, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

“Based on the testimony and video recordings, the court found that, because the officer's observations were consistent with what the anonymous caller had said, the tip was sufficiently reliable for the officer to approach Wilcox. The court found that the police officer located the car parked in a dark area at the identified convenience store; noticed damage to the car, consistent with the report, after shining a light on it; and approached Wilcox in a friendly manner to ensure that he was okay and to see what had happened.”

State v. Wilcox, 2023 ME 10, ¶ 7, 288 A.3d 1200, 1203, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

The [trial] court concluded that Wilcox had not been seized until the officer asked him to complete field sobriety tests. It found that the officer had a reasonable articulable suspicion to justify the field sobriety tests because Wilcox's speech was slurred and there was damage to his vehicle.

State v. Wilcox, 2023 ME 10, ¶ 7, 288 A.3d 1200, 1203, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

“A seizure of the person occurs when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen such that he is not free to walk away.” State v. White, 2013 ME 66, ¶ 11, 70 A.3d 1226 (quotation marks omitted). As the State conceded at oral argument, the officer restrained Wilcox's liberty through a show of authority by ordering him to remove his hands from his pockets, stop, come toward the officer, and sit on the rear of his vehicle's trunk.

State v. Wilcox, 2023 ME 10, ¶ 11, 288 A.3d 1200, 1204, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

Because the officer had confirmed that the caller accurately identified the type of vehicle, its color, its location, and its involvement in a recent collision, it was reasonable for the officer to infer that the caller had observed the collision that resulted in damage to Wilcox's car and the car's progress to the convenience store. Based on the tip and the officer's observations, it was then reasonable for the officer to have Wilcox sit on the rear bumper to see if he was safe or required medical attention.

State v. Wilcox, 2023 ME 10, ¶ 14, 288 A.3d 1200, 1205, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

The record supports the trial court's finding that the officer intended to ascertain Wilcox's safety and well-being; the evidence shows that the officer asked Wilcox what had happened and where, followed quickly by an inquiry into whether Wilcox was injured and needed an ambulance. Such an investigation of a reported accident can be as much a part of an officer's role as a community caretaker, see Bragg, 2012 ME 102, ¶ 10, 48 A.3d 769; Pinkham, 565 A.2d at 319, as it is central to an officer's task of ascertaining whether criminal conduct has occurred, is occurring, or is about to occur…

State v. Wilcox, 2023 ME 10, ¶ 14, 288 A.3d 1200, 1205, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

We have held that a brief detention of a driver to "[s]ubject[ ] the driver to field sobriety tests," Sylvain, 2003 ME 5, ¶ 18, 814 A.2d 984, is allowed if an officer has "a reasonable articulable suspicion of impairment," State v. McPartland, 2012 ME 12, ¶ 8, 36 A.3d 881. The intrusion on a person occasioned by field sobriety testing does not amount to an arrest for which probable cause is required, largely because "[t]he performance of a couple of quick, simple physical coordination tests is not particularly onerous, offensive or restrictive."

State v. Wilcox, 2023 ME 10, ¶ 16, 288 A.3d 1200, 1206, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

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State v. Wilcox, 2023 ME 10, ¶ 16, 288 A.3d 1200, 1206, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

Only a reasonable articulable suspicion of safety concerns was required to begin the limited seizure and then, after a brief investigation, only a reasonable articulable suspicion of intoxication was required to conduct field sobriety testing.

State v. Wilcox, 2023 ME 10, ¶ 17, 288 A.3d 1200, 1207, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

Specifically, the caller indicated that a brown Honda car had collided with an object, that the car was now at a specific convenience store, and that the caller thought the driver was intoxicated.

State v. Wilcox, 2023 ME 10, ¶ 20, 288 A.3d 1200, 1207, cert. denied, 143 S. Ct. 2666 (2023)

State v. Wilcox, 2023 ME 10, 288 A.3d 1200, cert. denied, 143 S. Ct. 2666 (2023)

Although Wilcox argues on appeal that we should interpret the Maine Constitution in accordance with the reasoning of the dissent in Navarette v. California, 572 U.S. 393, 404-14, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014) (Scalia, J., dissenting), Wilcox did not argue to the trial court that the Maine Constitution provides more protection than the federal constitution . . . Wilcox thereby waived the argument that he now asserts on appeal. See State v. Reynolds, 2018 ME 124, ¶ 28, 193 A.3d 168. We therefore address only his arguments challenging the trial court's application of federal constitutional law.

State v. Wilcox, 2023 ME 10, n. 4, 288 A.3d 1200, 1204, cert. denied, 143 S. Ct. 2666 (2023)