

IN THE MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

STATE OF MAINE,

Plaintiff/Appellee,

vs.

RICHARD TONINI,

Defendant/Appellant

Case No.: HAN-19-245

APPENDIX

Maxwell G. Coolidge
Attorney for Defendant
3 Franklin Street
Ellsworth, ME 04605
attorney.coolidge@gmail.com

Toff Toffolon
Attorney for the State
District Attorney's Office
70 State Street
Ellsworth, ME 04605

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STATE OF MAINE
v.
RICHARD A TONINI
PO BOX 1956
BUCKSPORT ME 04416

CRIMINAL DOCKET
HANCOCK, ss.
Docket No HANCD-CR-2018-01171

DOCKET RECORD

DOB: 03/20/1961

Attorney: MAXWELL COOLIDGE
LAW OFFICE OF MAX COOLIDGE
3 FRANKLIN STREET
ELLSWORTH ME 04605
APPOINTED 09/04/2018

State's Attorney: MATTHEW FOSTER

Filing Document: CRIMINAL COMPLAINT
Filing Date: 08/24/2018

Major Case Type: MISDEMEANOR (CLASS D,E)

Charge(s)

1 UNLAWFUL FURNISHING SCHEDULED DRUG 07/13/2018 ORLAND
Seq 8564 17-A 1106(1-A) (D) Class D
CHAPMAN / MSP

2 ILLEGAL POSSESSION OF FIREARM 07/13/2018 ORLAND
Seq 13348 15 393(1) (G) Class D
CHAPMAN / MSP

Docket Events:

08/27/2018 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 08/24/2018

08/27/2018 Charge(s): 1,2
HEARING - ARRAIGNMENT SCHEDULED FOR 09/04/2018 at 01:00 p.m.

NOTICE TO PARTIES/COUNSEL

09/04/2018 BAIL BOND - \$500.00 UNSECURED BAIL BOND FILED ON 09/04/2018

Bail Amt: \$500

Date Bailed: 09/04/2018

09/11/2018 Charge(s): 1,2
HEARING - ARRAIGNMENT HELD ON 09/04/2018 at 02:03 p.m.

MICHAEL ROBERTS , JUDGE

Attorney: STEVEN JUSKEWITCH

DA: HEATHER STAPLES

DEFENDANT INFORMED OF CHARGES.

09/11/2018 Charge(s): 1,2
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 09/04/2018

09/11/2018 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 09/04/2018

09/11/2018 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 09/04/2018

MICHAEL ROBERTS , JUDGE

COPY TO PARTIES/COUNSEL

09/11/2018 Party(s): RICHARD A TONINI
ATTORNEY - APPOINTED ORDERED ON 09/04/2018

Attorney: MAXWELL COOLIDGE
09/11/2018 BAIL BOND - \$500.00 UNSECURED BAIL BOND SET BY COURT ON 09/04/2018
MICHAEL ROBERTS , JUDGE
NO USE OR POSSESS ILLEGAL DRUGS OR DANGEROUS WEAPONS INCLUDING FIREARMS, SUBMIT TO
SEARCHES AT ANY TIME WITHOUT ARTICULABLE SUSPICION OR PROBABLE CAUSE
09/11/2018 BAIL BOND - UNSECURED BAIL BOND COND RELEASE ISSUED ON 09/04/2018
09/11/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 10/11/2018 at 02:00 p.m.
09/11/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 09/11/2018
10/12/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE HELD ON 10/11/2018
PATRICK LARSON , JUDGE
Attorney: MAXWELL COOLIDGE
DA: TOFF TOFFOLON
CHAMBERS. MATTER CONTINUED TO 1/17/19 FOR DOCKET CALL
10/12/2018 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 01/07/2019 at 01:00 p.m.
ELLSC
10/12/2018 TRIAL - DOCKET CALL NOTICE SENT ON 10/12/2018
12/28/2018 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 12/27/2018
01/08/2019 HEARING - MOTION IN LIMINE SCHEDULE OTHER COURT ON 01/09/2019 at 01:00 p.m.
ELLSC
01/08/2019 TRIAL - DOCKET CALL HELD ON 01/07/2019
ROBERT E MURRAY JR, JUSTICE
Attorney: MAXWELL COOLIDGE
DA: TOFF TOFFOLON
SC1:36
01/08/2019 HEARING - MOTION IN LIMINE NOTICE SENT ELECTRONICALLY ON 01/08/2019
01/16/2019 HEARING - MOTION IN LIMINE HELD ON 01/09/2019
ROBERT E MURRAY JR, JUSTICE
Attorney: MAXWELL COOLIDGE
DA: TOFF TOFFOLON
01/16/2019 MOTION - MOTION IN LIMINE DENIED ON 01/14/2019
COPY TO PARTIES/COUNSEL
01/16/2019 ORDER - COURT ORDER FILED ON 01/14/2019
ROBERT E MURRAY JR, JUSTICE
ORDER REGARDING MOTION IN LIMINE
01/16/2019 Charge(s): 1,2
TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 03/04/2019 at 01:00 p.m.
ELLSC
01/16/2019 Charge(s): 1,2
TRIAL - DOCKET CALL NOTICE SENT ON 01/16/2019

03/11/2019 OTHER FILING - WITNESS LIST FILED BY STATE ON 03/05/2019

03/11/2019 Charge(s): 1,2

TRIAL - DOCKET CALL HELD ON 03/05/2019 at 01:38 p.m.

ROBERT E MURRAY JR, JUSTICE

Attorney: MAXWELL COOLIDGE

DA: TOFF TOFFOLON

03/11/2019 Charge(s): 1,2

TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 04/01/2019 at 01:00 p.m.

ELLSC

03/11/2019 Charge(s): 1,2

TRIAL - DOCKET CALL NOTICE SENT ON 03/11/2019

03/11/2019 OTHER FILING - WITNESS LIST FILED BY DEFENDANT ON 03/05/2019

03/13/2019 MOTION - OTHER MOTION FILED BY DEFENDANT ON 03/13/2019

MOTION TO SEVER CHARGES FOR TRIAL

03/15/2019 OTHER FILING - OTHER DOCUMENT FILED ON 03/15/2019

DA: TOFF TOFFOLON

LETTER FROM ADA TOFF TOFFOLON IN RESPONSE TO DEFENSE'S MOTION TO SEVER CHARGES

04/03/2019 Charge(s): 1,2

TRIAL - DOCKET CALL HELD ON 04/01/2019 at 02:00 p.m.

BRUCE MALLONEE , JUSTICE

Attorney: MAXWELL COOLIDGE

DA: DELWYN WEBSTER

Defendant Present in Court

JURY SELECTION SET FOR 4/2/19

04/03/2019 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 04/12/2019 at 08:30 a.m.

ELLSC

HELD ON 4/2/19

JURY SELECTION

04/16/2019 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 04/16/2019

04/19/2019 TRIAL - JURY TRIAL HELD ON 04/12/2019

BRUCE MALLONEE , JUSTICE

04/24/2019 Charge(s): 1

FINDING - NOT GUILTY ENTERED BY COURT ON 04/12/2019

04/24/2019 Charge(s): 2

FINDING - GUILTY ENTERED BY COURT ON 04/12/2019

BRUCE MALLONEE , JUSTICE

04/24/2019 Charge(s): 2

FINDING - GUILTY CONT FOR SENTENCING ON 04/12/2019

BRUCE MALLONEE , JUSTICE

04/24/2019 HEARING - SENTENCE HEARING SCHEDULE OTHER COURT ON 06/05/2019 at 08:30 a.m.

ELLSC

04/24/2019 HEARING - SENTENCE HEARING NOTICE SENT ELECTRONICALLY ON 04/19/2019

04/29/2019 OTHER FILING - OTHER DOCUMENT FILED ON 04/26/2019

BRIEF IN SUPPORT OF MOTION FOR A JUDGMENT OF ACQUITTAL

04/30/2019 OTHER FILING - OTHER DOCUMENT FILED ON 04/30/2019

STATE'S RESPONSE TO DEFENDANT'S POST-VERDICT MOTIONS

06/02/2019 MOTION - MOTION TO AMEND BAIL GRANTED ON 05/15/2019

BRUCE MALLONEE , JUSTICE

COPY TO PARTIES/COUNSEL

06/02/2019 MOTION - MOTION TO AMEND BAIL FILED BY DEFENDANT ON 04/26/2019

06/02/2019 BAIL BOND - PR BAIL BOND FILED ON 05/15/2019

Date Bailed: 05/15/2019

06/02/2019 BAIL BOND - UNSECURED BAIL BOND BAIL RELEASED ON 06/02/2019

Date Bailed: 09/04/2018

06/02/2019 BAIL BOND - UNSECURED BAIL BOND RELEASE ACKNOWLEDGED ON 06/02/2019

Date Bailed: 09/04/2018

06/05/2019 HEARING - SENTENCE HEARING CONTINUED ON 06/05/2019

BRUCE MALLONEE , JUSTICE

TO BE SET NOW ON THE 12TH AT 8:30 AM

06/05/2019 HEARING - MOTION TO DISMISS SCHEDULE OTHER COURT ON 06/12/2019 at 08:30 a.m.

ELLSC

06/05/2019 HEARING - MOTION TO DISMISS NOTICE SENT ELECTRONICALLY ON 06/05/2019

06/05/2019 HEARING - SENTENCE HEARING SCHEDULE OTHER COURT ON 06/12/2019 at 08:30 a.m.

ELLSC

06/05/2019 HEARING - SENTENCE HEARING NOTICE SENT ELECTRONICALLY ON 06/05/2019

06/07/2019 MOTION - MOTION TO DISMISS DENIED ON 06/06/2019

BRUCE MALLONEE , JUSTICE

COPY TO PARTIES/COUNSEL

06/07/2019 MOTION - OTHER MOTION DENIED ON 06/06/2019

BRUCE MALLONEE , JUSTICE

MOTION TO SEVER CHARGES FOR TRIAL

06/07/2019 ORDER - COURT ORDER ENTERED ON 06/06/2019

BRUCE MALLONEE , JUSTICE

ORDER DENYING MOTIONS TO DISMISS AND MOTION FOR JUDGMENT OF ACQUITTAL

06/12/2019 HEARING - MOTION TO DISMISS NOT HELD ON 06/12/2019

06/12/2019 Charge(s): 2

RULING - ORIGINAL ORDERED ON 06/12/2019

BRUCE MALLONEE , JUSTICE

Charge #2: It is ordered that the defendant forfeit and pay the sum of \$ 350.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

\$ 15 COURT MANAGEMENT SYS FEE FINE

10% GOV'T OPERATION SURCHARGE FUND \$ 35.00

\$ 20 VICTIMS COMPENSATION FUND

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Printed on: 07/15/2019

100% GENERAL FUND \$ 350.00
1% COUNTY JAIL \$ 3.50
5% GENERAL FUND ADDL 5% SURCHARGE \$ 17.50
3% MAINE CRIMINAL JUSTICE ACADEMY 2006 \$ 10.50
1% MSP COMPUTER CRIMES \$ 3.50
TOTAL DUE:\$ 505.00.

06/12/2019 Charge(s): 2
RULING - ORIGINAL ISSUED ON 06/12/2019
BRUCE MALLONEE , JUSTICE
DEFENDANT ACKNOWLEDGES RECEIPT

06/12/2019 HEARING - SENTENCE HEARING HELD ON 06/12/2019
BRUCE MALLONEE , JUSTICE
Attorney: MAXWELL COOLIDGE
DA: HEATHER STAPLES
SC

06/12/2019 Charge(s): 2
VERDICT - GUILTY RETURNED ON 04/12/2019

06/12/2019 Charge(s): 1
VERDICT - NOT GUILTY RETURNED ON 04/12/2019

06/12/2019 HEARING - SENTENCE HEARING HELD ON 06/12/2019
BRUCE MALLONEE , JUSTICE
Attorney: MAXWELL COOLIDGE
DA: HEATHER STAPLES
Defendant Present in Court

SC 8:53

06/12/2019 Charge(s): 2
APPEAL - NOTICE OF APPEAL FILED ON 06/12/2019

06/12/2019 HEARING - OTHER HEARING HELD ON 06/12/2019
BRUCE MALLONEE , JUSTICE
Attorney: MAXWELL COOLIDGE
DA: DELWYN WEBSTER
REQUESTS FOR CLARIFICATION ON POST CONVICTION BAIL WITH PENDING APPEAL AND IS THERE A STAY
ON THE FINE PAYMENT. JUSTICE MALLONEE DIRECTS ATTY COOLIDGE TO FILE A FORMAL MOTION SO
THAT THE STATE CAN RESPOND AND COURT WILL SCHEDULE A HEARING IF NEEDED.

06/12/2019 Charge(s): 2
MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 06/12/2019

06/24/2019 Charge(s): 2
MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 06/24/2019
BRUCE MALLONEE , JUSTICE

06/24/2019 BAIL BOND - PR BAIL BOND CONT AS POST CONVIC ON 06/24/2019

Date Bailed: 05/15/2019

07/08/2019 MOTION - MOTION TO TERMINATE BAIL FILED BY DEFENDANT ON 07/08/2019

07/08/2019 Charge(s): 2
MOTION - OTHER MOTION FILED BY DEFENDANT ON 07/08/2019

MOTION TO STAY FINE PAYMENT ORDER PENDING APPEAL
07/09/2019 Charge(s): 2
MOTION - OTHER MOTION GRANTED ON 07/09/2019
BRUCE MALLONEE , JUSTICE
MOTION TO STAY FINE PAYMENT ORDER PENDING APPEAL
07/09/2019 MOTION - MOTION TO TERMINATE BAIL GRANTED ON 07/09/2019
BRUCE MALLONEE , JUSTICE
COPIES TO PARTIES/COUNSEL
07/09/2019 BAIL BOND - PR BAIL BOND BAIL RELEASED ON 07/09/2019
BRUCE MALLONEE , JUSTICE
PER ORDER ON MOTION
Date Bailed: 05/15/2019
07/09/2019 BAIL BOND - PR BAIL BOND RELEASE ACKNOWLEDGED ON 07/09/2019

Date Bailed: 05/15/2019
07/12/2019 Charge(s): 2
RULING - AUDIT REPORT LATE FEE ASSESSED ON 07/12/2019

LATE FEE OF \$50 WAS ASSESSED ON \$350.
07/15/2019 Charge(s): 2
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 07/15/2019

A TRUE COPY

ATTEST: _____

Clerk

Docket No. HANCD-CR-2018-01171

County/Location HANCOCK

Male Female

Date: 4-12-19

DOB 03/20/1961

State of Maine v. RICHARD A TONINI

Residence: 840 RIVER ROAD BUCKSPORT ME

Offense(s) charged: ~~UNLAWFUL FURNISHING SCHEDULED DRUG~~ *Not Guilty*
Class: ~~D~~ DOV: ~~07/13/2018~~ Seq #: ~~8564~~ Title: ~~17-A / 1106 / 1-A / D~~
ILLEGAL POSSESSION OF FIREARM
Class: D DOV: 07/13/2018 Seq #: 13348 Title: 15 / 393 / 1 / G

Charged by:
Charge:1 indictment
Charge:2 information
 complaint

Plea(s): Guilty Nolo Not Guilty Date of Violation(s):

Offense(s) convicted:
 ~~UNLAWFUL FURNISHING SCHEDULED DRUG~~ *NOT Guilty*
Class: ~~D~~ DOV: ~~07/13/2018~~ Seq #: ~~8564~~ Title: ~~17-A / 1106 / 1-A / D~~
 ILLEGAL POSSESSION OF FIREARM
Class: D DOV: 07/13/2018 Seq #: 13348 Title: 15 / 393 / 1 / G

Convicted on:
Charge: 1 plea
Charge: 2 jury verdict
 court finding

It is adjudged that the defendant is guilty of the offenses as shown above and convicted.

- It is adjudged that the defendant be hereby committed to the sheriff of the within named county or his authorized representative who shall without needless delay remove the defendant to:
 - The custody of the Commissioner of the Department of Corrections, at a facility designated by the Commissioner, to be punished by imprisonment for a term of _____
 - A County jail to be punished by imprisonment for a term of _____
 - This sentence to be served (consecutively to)(concurrently with) _____
 - Execution stayed to on or before: _____ at _____ (a.m.)(p.m.)

Notice to Defendant: Your sentence does not include any assurance about the location of the facility where you will be housed during your commitment.

- It is ordered that all (but) _____ of the sentence (as it relates to confinement)(as it relates to the _____) be suspended and the defendant be placed on a period of _____
 - probation supervised release administrative release
 - for a term of _____ (years)(months) upon conditions attached hereto and incorporated by reference herein.
 - said probation or supervised release to commence (_____) (upon completion of the unsuspended term of imprisonment).
 - said administrative release to commence immediately.
 - The defendant shall serve the initial portion of the foregoing sentence at a County jail.

It is ordered that the defendant forfeit and pay the sum of \$ 350 as a fine to the clerk of the court, plus applicable surcharges and assessments.
 All but \$ _____ suspended. The total amount due, including surcharges and assessments is \$ _____. This amount is payable immediately or in accordance with the Order on Payment of Fines incorporated by reference herein.

It is ordered that the defendant forfeit and pay the sum of \$ _____ as restitution for the benefit of _____ (17-A M.R.S. § 1152-2-A).

Restitution is joint and several pursuant to 17-A M.R.S. § 1326-E.

Restitution is to be paid through the Office of the prosecuting attorney, except that during any period of commitment to the Department of Corrections and/or any period of probation imposed by this sentence, restitution is to be paid to the Department of Corrections.

A separate order for income withholding has been entered pursuant to 17-A M.R.S. § 1326-B incorporated by reference herein.

Execution/payment stayed to pay in full by _____

Installment payments of _____ to be made (weekly) (biweekly) (monthly) or warrant to issue

Restitution is to be paid to the Department of Corrections on a schedule to be determined by the Department.

It is ordered pursuant to applicable statutes, that the defendant's motor vehicle operator's license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license and/or the defendant's right to register a motor vehicle is suspended in accordance with notice of suspension incorporated herein.

It is ordered that the defendant perform _____ hours of court-approved community service work within _____ (weeks) (months) for the benefit of _____.

It is ordered that the defendant pay \$ _____ for each day served in the county jail, to the treasurer of the above named county. (up to \$80/Day) (17-A M.R.S. § 1341)

Execution/payment stayed to pay in full by _____ or warrant to issue.

It is ordered that the defendant shall participate in alcohol and other drug education, evaluation and treatment programs for multiple offenders administered by the office of substance abuse. (29 M.R.S. § 1312-B (2)(D-1), 29-A M.R.S. § 2411 (5)(F))

It is ordered that the defendant forfeit to the state the firearm used by the defendant during the commission of the offense(s) shown above. (17-A M.R.S. § 1158)

It is ordered that the defendant is prohibited from owning, possessing or having under the defendant's control a firearm. (15 M.R.S. § 393 (1-A)(1) and (1-B))

Other: _____

It is ordered that the defendant be unconditionally discharged. (17-A M.R.S. § 1201)

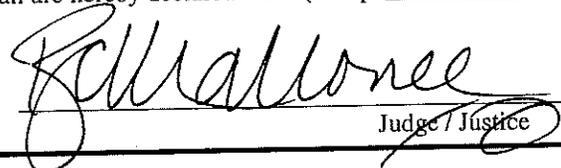
If the defendant has been convicted of an applicable offense listed in 25 M.R.S. § 1574, then the defendant shall submit to having a DNA sample drawn at any time following the commencement of any term of imprisonment or at any time following commencement of the probation period as directed by the probation officer.

WARNING: IT IS A VIOLATION OF STATE LAW, AND MAY BE A VIOLATION OF FEDERAL LAW, FOR THE DEFENDANT TO OWN, POSSESS OR HAVE UNDER THEIR CONTROL A FIREARM IF THAT PROHIBITION HAS BEEN ENTERED AS PART OF THIS JUDGMENT OR ANY OTHER COURT ORDER.

It is further ordered that the clerk deliver a certified copy of this judgment and commitment to the sheriff of the above named county or his authorized representative and that the copy serve as the commitment of the defendant. Reasons for imposing consecutive sentences are contained in the court record or in attachments hereto.

All pending motions, other than motions relating to payment of fees and bail are hereby declared moot (except _____.)

A TRUE COPY, ATTEST: _____
Clerk


Judge/Justice

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITMENT. I hereby acknowledge that the disclosure of my Social Security number on the Social Security Disclosure Form is mandatory under 36 M.R.S. § 5276-A. My Social Security number will be used to facilitate the collection of any fine that has been imposed upon me in this action if that fine remains unpaid as of the time I am due a State of Maine income tax refund. My Social Security number also may be used to facilitate the collection of money I may owe the State of Maine as a result of having had an attorney appointed to represent me. Collection of any fine or reimbursement of money, which I owe to the State of Maine, will be accomplished by offsetting money I owe to the State against my State of Maine income tax refund.

SS Number Disclosure Required on separate form.

Date: _____

Defendant _____
Address _____

STATE OF MAINE
HANCOCK, ss

UNIFIED CRIMINAL COURT
LOCATION: ELLSWORTH
DOCKET NO: *CR-18-1171*

STATE OF MAINE

COMPLAINT

v.

RICHARD A. TONINI

DOB: 3/20/1961

SIN:

840 River Rd.

Bucksport, ME 04416

G: Male Ht: 6' 1" Wt: 230 H: Brown

E: Blue R: White

COUNT 1: UNLAWFUL FURNISHING OF SCHEDULED DRUGS

COUNT 2: POSSESSION OF A FIREARM BY A PROHIBITED PERSON

The undersigned officer, being duly sworn, states upon information and belief that:

COUNT 1:

17-A M.R.S.A. §1106(1-A)(D)

Seq No: 8564

UNLAWFUL FURNISHING OF SCHEDULED DRUGS

CLASS D

ATNCTN 282265B001

On or about July 13, 2018, in Orland, Hancock County, Maine, **RICHARD A. TONINI**, did intentionally or knowingly furnish what he knew or believed to be a scheduled drug, which was in fact marijuana, a schedule Z drug.

COUNT 2:

15 M.R.S.A. §393(1)(G)

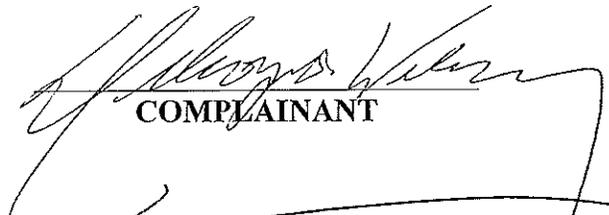
Seq No: 13348

POSSESSION OF A FIREARM BY A PROHIBITED PERSON

CLASS D

ATNCTN 282265B002

On or about July 13, 2018, in Orland, Hancock County, Maine, **RICHARD A. TONINI**, did own, possess or control a firearm and was an unlawful user of or was addicted to any controlled substance and as a result was prohibited from possession of a firearm under 18 U.S.C. section 922(g)(3).


COMPLAINANT

Clerk/Justice of Peace/Judge/Justice

Sworn to before me, 8/24, 2018

OFFICER: Travis Chapman
DEPT: Maine State Police
ARRAIGNMENT: September 04, 2018

Pros.: Toffoloon
Jail Requested
JW 18-2099

STATE OF MAINE

UNIFIED CRIMINAL DOCKET

HANCOCK ,SS

LOCATION: ELLSWORTH

STATE OF MAINE,

Case No.: CR-2018-1171

Plaintiff,

vs.

MOTION TO DISMISS
PROSECUTION AS DE MINIMIS

RICHARD TONINI,

Defendant

Now Comes the defendant, by and through counsel, giving notice to the prosecution, and moves this Honorable Court to dismiss this prosecution under 17-A M.R.S.A. § 12.

17-A M.R.S.A. § 12 states:

1. The court may dismiss a prosecution if, upon notice to or motion of the prosecutor and opportunity to be heard, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant's conduct:
 - A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or
 - B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or

C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime.

In *State v. Kargar*, 679 A.2d 81, 84 (Me. 1996), the Law Court articulated the following factors to consider regarding whether an offense is a de minimis infraction:

[T]he background, experience and character of the defendant which may indicate whether he knew or ought to have known of the illegality; the knowledge of the defendant of the consequences to be incurred upon violation of the statute; the circumstances concerning the offense; the resulting harm or evil, if any, caused or threatened by the infraction; the probable impact of the violation upon the community; the seriousness of the infraction in terms of punishment, bearing in mind that punishment can be suspended; mitigating circumstances as to the offender; possible improper motives of the complainant or prosecutor; and any other data which may reveal the nature and degree of the culpability in the offense committed by the defendant. [*Id.* at 84.]

Defendant was found guilty following a jury trial (Justice Bruce Mallonee presiding) on one count of being a prohibited person in possession of a firearm under 15 M.R.S.A § 393(1)(G). Under 15 M.R.S.A § 393(1)(G),

A person may not own, possess or have under that person's control a firearm . . . if that person . . . [i]s an unlawful user of or is addicted to any controlled substance and as a result is prohibited from possession

of a firearm under 18 United States Code, Section 922(g)(3).

Maine statutes do not provide any guidance regarding the definition of who is considered an unlawful user of a controlled substance. Likewise, there is no statutory guidance in federal law. However, the Federal Bureau of Alcohol Tobacco and Firearms has promulgated a regulation defining “unlawful user of or is addicted to any controlled substance.” 27 C.F.R. § 478.11. That regulation states in relevant part:

A person who uses a controlled substance and has lost the power of self-control with reference to the use of controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled

substance unlawfully, provided that the test was administered within the past year.

Although this regulation is not binding authority on Maine courts, it is persuasive on the question of the harm the Legislature sought to prevent when it enacted § 393(G). First, it should be noted that the definition describes “any controlled substance” which includes heroin, methamphetamines, and other dangerous drugs. The voters of the State of Maine have determined that marijuana should not be regulated in the same manner as so-called hard drugs. Accordingly, one could violate § 393(G) by being a heroin addict and daily user of heroin in possession of a firearm. Here, there was no evidence that defendant was using marijuana at the time he possessed a firearm. Likewise, there was very little if any circumstantial evidence that defendant was a regular user of marijuana. There is no evidence whatsoever that he is an addict.

The regulatory definition appears not to treat the “or” separating “unlawful user of or addicted to” as strictly disjunctive. Rather, the definition is informed by the common sense understanding of the dangers of drug addicts in

possession of firearms. The regulation discusses a “pattern of use” and use that “has occurred recently enough to indicate that the individual is actively engaged in such conduct.” “A person who uses a controlled substance and has lost the power of self-control with reference to the use of controlled substance” is the type of person the Legislature has determined should not possess firearms.

Of all the ways a person could violate this law, defendant’s violation was “too trivial to warrant the condemnation of conviction.” Defendant’s statement that he believed he was entitled to possess up to 8 pounds of marijuana indicates he was or has been a medical marijuana patient. See 22 M.R.S.A. § 2324-A(1)(1)(“a qualifying patient may [] possess up to 8 pounds of harvested marijuana”). If allowed to make an offer a proof with regard to this motion, defendant would state that he uses marijuana for a non-intoxicating purpose – namely the manufacture of an ointment to treat peripheral neuropathy.

Although knowledge of the law is presumed, this particular statute is arguably vague (perhaps even

unconstitutionally so). Given the effort counsel and this court are currently undertaking to understand the meaning of the terms in this provision, a lay person could not be faulted for being confused as to his legal rights and responsibilities in this area. It is counterintuitive that medicinal use of a drug that has been decriminalized by the people of Maine should result in the loss of 2nd Amendment rights.

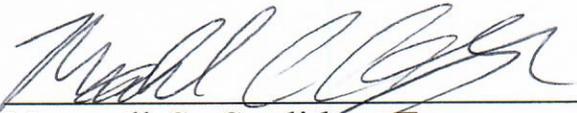
Condemnation of defendant's conduct cannot "reasonably be regarded as envisaged by the Legislature in defining the crime." No harm was caused or threatened on this occasion. The Trooper who pulled defendant over did not observe any signs that defendant was currently using or that he had recently used. Defendant was cooperative with law enforcement and immediately informed the Trooper of the presence of the firearms in the vehicle.

Defendant is now on notice that transporting firearms and marijuana together is against the law and that he can expect prosecution for that conduct. He should know going forward that he can be a legal marijuana user under Maine law, or possess firearms, but not both. Given the de minimis

nature of the violation, he should not be subjected to the condemnation of a conviction for this offense.

Wherefore, defendant prays this Honorable Court to DISMISS the prosecution of this offense as authorized under 17-A M.R.S.A. § 12.

Respectfully submitted this 16th of April, 2019,



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STATE OF MAINE

-VS-

RICHARD TONINI

STATE'S RESPONSE TO DEFENDANT'S POST-VERDICT MOTIONS

Motion to Dismiss as De Minimus

Justice Lance Walker has observed that the *de minimus* statute should be applied sparingly and in the most patently obvious cases... *State v. Peacock*, 2018 Me. Super LEXIS 144. It is a safety valve for circumstances which could not have been envisioned by the Legislature (*Kargar*), not a second bite at the apple.

Defense counsel has accurately defined the Law Court's list of factors which should be considered when applying the statute. The State wishes to focus on one of them.

1. **Possible Improper Motives of the Complainant (Police) or the Prosecutor:** The motion court may wonder why in a day when the transportation of marijuana is common place, and the defendant had no prior disqualifying conviction, why the State would proceed with this case. The answer can be found in the facts of a case docketed as CR-2017-305, resolved by plea on January 21, 2018. The facts of that case, while not admissible before the jury in determining the guilt or innocence of Mr. Tonini in the instant matter, certainly bear on the motives of law enforcement and the prosecutor. In the 2017 case, Mr. Tonini, who had been the subject of several firearms complaints, was located by the police at night parked in the lot of the shuttered VERSO paper mill with two loaded handguns on his dashboard. The Court can appreciate how deadly this encounter may have been for unsuspecting officers approaching the car without knowledge that Mr. Tonini had placed multiple weapons within easy reach. Future interactions between law enforcement and the defendant seem more likely to end in tragedy because the police may respond with heightened concern due to their knowledge that Mr. Tonini is seemingly routinely armed while driving. The State has an ongoing and legitimate interest in protecting the police, the public, and the defendant from these consequences.

As *Kargar* pointed out, *de minimus* relief is a safety valve addressing circumstances which could not have been envisioned by the Legislature. One cannot assume that the jury reached its verdict by ignoring the large quantity of

marijuana in the backseat , focusing only on the useable amount. So is it a stretch to think that the Legislature considered the potentially dire confluence of drugs, guns and driving in making it illegal for users to possess firearms?

As defense counsel points out, Maine law does not define the term "user" as it relates to consumption of marijuana. In the absence of a definition, the word should be afforded its plain and customary meaning. The State argues that said meaning does not contain any implication that the use must be repeated. Again, it does not seem unreasonable that the Legislature would seek to regulate those who have guns and may be ingesting drugs for the first time. The Legislature might have reasonably assumed that a first time ingestion of a substance the sole purpose of which is to alter one's "normal" state, might affect the user's ability to make rational decisions about how to handle a handgun. By way of example, let us assume for a moment that it is the first day of deer season and Mr. Brown has been invited to go hunting with his best friend. Would Mr. Brown feel comfortable going into the woods with an armed companion if that companion announced that he was ready to go, but that he needed to finish smoking his first joint before departure? Brother Cooldidge urges a "commons sense" analysis of addiction to marijuana as opposed to "hard" drugs. But by adopting the term "user", the Legislature seems to have opted in favor of a bright line test, which makes sense, because it would be nearly impossible to enforce the firearms prohibition statute if one had to establish the possessor's status as an addict. How would the line be drawn between use and addiction, and who would draw it? The Legislature opted for a simple, sensible, straightforward statute which says that if one uses drugs, one cannot possess a firearm.

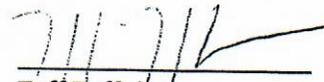
Defense counsel states that the violation was too trivial to warrant the condemnation of conviction because if he had testified, Mr. Tonini would have said that he used marijuana to make medicinal ointment. But Mr. Tonini did not testify, and the Court must be mindful of the evidence which established that Mr. Tonini did not have a medical marijuana card. This speaks to the "background, experience and character of the defendant" as discussed in *Kargar*.

It is curious that at the end of its well-written motion, the defense concedes that henceforth,, Mr. Tonini will be on notice that he can be a marijuana user under Maine law or he can possess firearms, but not both. How will he be on notice if the Court dismisses a conviction rendered by the jury? It would seem that the relief sought by Mr. Tonini would only reinforce his belief that he can mix guns and drugs.

Motion for Judgement of Acquittal

In the first section of its brief, the defense repeats its argument concerning the definition of "user", and the State offers the same response. The defense next argues that use cannot be inferred from possession. There are other instances where possession gives rise to an inference of criminality, e.g. the theft statutes. Further, if the jury found that Mr. Tonini possessed marijuana in his personal vehicle, but that he was not trafficking, then it makes sense that the jury concluded that he was a user. And as noted above, the jury could have considered the large amount of marijuana found in the car. If that was the consensus, then the motion court should conclude that the jury felt that all that marijuana was for Mr. Tonini's consumption, and by volume, that he was a regular user. These are logical and rational conclusions supported by the evidence, and allowed by Maine's standard jury instructions.

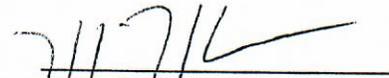
Date: April 30, 2019


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CERTIFICATE OF SERVICE

On the date shown below, I delivered a copy of this document to Attorney Coolidge by placing same in his drop box and by emailing him that the document had been so deposited.

Date: April 30, 2019


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STATE OF MAINE
HANCOCK, SS.

SUPERIOR COURT
Docket No. CD-CR-2018-01171

STATE OF MAINE

v.

Richard A. Tonini,
Defendant.

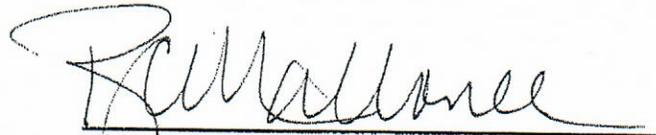
Order on Post-Trial Motions

Pending before the court are Defendant's post-trial motions, one for acquittal and one for dismissal, following his conviction by jury verdict of one count of possession of a firearm by a prohibited person. Defendant's motions are supported by written argument and have been answered by the State.

The court has reviewed the parties' submissions as well as its own trial notes. Although the verdict presents anomalous features, the court finds no basis for disrupting the jury's decision. Defendant's motions are therefore DENIED.

The Clerk may incorporate this Order upon the docket by reference.

Dated: June 6, 2019


The Hon. Bruce C. Mallonee
Justice, Maine Superior Court