

TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 417 – Ought to Pass

An Act To Protect Maine Drivers from Pretextual Traffic Stops

Joint Standing Committee on
Criminal Justice and Public Safety

February 24, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Michael Kebede and I am Policy Counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I am here to testify in favor of LD 417.

In the United States, everyone drives on the same pavement, yet that pavement is divided by insidious color lines. Those lines are maintained, among other things, through pretext or pretextual traffic stops. A pretextual stop is a traffic stop a police officer says they make for one reason, like a minor traffic or vehicle equipment violation, but that the officer actually makes for a different reason that would not provide a lawful basis to make the stop under the constitution, like finding the driver's race, location, sex, car or record “suspicious.” That’s where implicit or explicit racial bias comes into play.

The best national data we have on pretextual traffic stops tells a consistent story: black, brown, and Indigenous people are more likely than anybody else to be stopped, and more likely than anybody else to be searched. After crunching data from almost 100 million traffic stops compiled by Stanford University’s Open Policing Project, NBC news found “that police stopped and searched black and Latino drivers on the basis of less evidence than used in stopping white drivers.”¹ The same researchers concluded that white drivers, “who are searched less often . . . are more likely to be found with illegal items.”² Maine conforms with this national picture.

On August 15, 2019, Maine State Trooper John Darcy pulled over a Black man who was driving north through York on Interstate 95. The internal microphone in the cruiser recorded his comments to another trooper moments before the traffic stop. Darcy said, “This guy kinda looks like a thug to be

¹ Eric Ortiz, *Inside 100 million police traffic stops: New evidence of racial bias*, March 13, 2019, NBC News, <https://www.nbcnews.com/news/us-news/inside-100-million-police-traffic-stops-new-evidence-racial-bias-n980556>

² *Id.*

honest with you,” according to a transcript in one motion in that case.³ Darcy also said that the driver, an African American man, looked “like a thug” because “he’s wearing a wifebeater” and “he’s got dreads.”⁴ This specific case is a small window into a larger picture of dramatic disparities in who is pulled over in Maine.

According to a national ACLU study released last year, black people in Maine were four times more likely than white people to be arrested for cannabis possession in 2018.⁵ In York county, black people are more than twelve times more likely than white people to be arrested for cannabis possession.⁶ These disparate arrest rates do not reflect a disparate rate of possession of cannabis; instead, these rates reflect a racially disparate rate of police interactions with the public. In many cases not captured in these data, pretextual stops result in no charge. But the impact on of pretextual traffic cannot be overstated; pretext stops can erode respect for the law, and traumatize drivers, especially drivers of color.

This bill would help Maine take a small step away from the harms associated with pretextual stops. If enacted, LD 417 would prohibit police from stopping a driver that police officer suspects is engaging in criminal activity for a driving violation not related to that criminal activity. This bill would also prevent the admission in court of evidence obtained in violation of the bill. Both of these changes would help ensure that Mainers of color enjoy the same constitutional rights that white Mainers enjoy.

Thank you for your attention.

³ Megan Gray, *Criminal case dropped as state trooper faces racial profiling allegations*, Press Herald, Oct. 8, 2020, <https://www.pressherald.com/2020/10/08/criminal-case-dropped-as-state-trooper-faces-racial-profiling-allegations/>

⁴ *Id.*

⁵ A Tale of Two Countries Racially Targeted Arrests in the Era of Marijuana Reform, ACLU, July 1, 2020, at 68, https://www.aclu.org/sites/default/files/field_document/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform_revised_7.1.20_0.pdf

⁶ *Id.*