

Maine Voices: End racial profiling on Maine’s highways

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This past November, U.S. District Court Judge Nancy Torresen suppressed evidence obtained during a traffic stop of two Black motorists on Interstate 95. Maine State Trooper John Darcy, who gained notoriety following his recorded comments in an earlier stop of a Black motorist – saying that the motorist looked “like a thug” – was also the arresting officer in this incident.

Although Darcy allegedly observed a car cross the fog line three times, review of his cruiser cam footage belied that testimony. The vehicle never crossed the line. Based on review of that video evidence, the court ultimately found that Darcy’s version of events was simply not credible.

ABOUT THE AUTHORS

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Following this decision, Maine State Police Col. John Cote penned an open letter expressing his dismay. He emphasized that the court made no explicit finding of racial profiling and pointed to two other drug prosecutions stemming from stops by Darcy, in which the evidence had not been suppressed. However, these cases do not exonerate his troopers from the allegations that have been laid at their feet.

In 1996, the U.S. Supreme Court held in Whren v. United States that the legality of a stop turns on whether there is any “objective basis” for it. In other words, as long as an officer can point to some infraction – no matter how minor and regardless of the officer’s true, even nefarious, intention for the stop – the resulting stop and detention are lawful.

For 25 years, Whren has been criticized for barring judicial inquiry into whether a given traffic stop is in fact motivated by racial bias. Looking at the case of Damon Fagan, court documents reveal that Darcy first observed Fagan as he drove through the tollbooth – observing no infractions. Darcy followed the car anyway. Three minutes later, after witnessing Mr. Fagan pass another vehicle and then move to the right lane, Darcy initiated a stop, alleging an “unsafe lane change.” (Records also revealed that immediately before stopping Mr. Fagan, Darcy stopped yet another Black motorist for driving in the middle lane without passing anyone. A search revealed no contraband.)

In denying Mr. Fagan’s motion, U.S. District Court Judge Brock Hornby explained he “assume(d) for purposes of this decision that Darcy did use racial criteria.” However, as the court further believed the traffic infraction itself was legitimate, the court found Mr. Fagan’s detention to be lawful.

As criminal defense attorneys here in Maine, we hear countless stories of stops of motorists of color by Darcy and the Proactive Criminal Enforcement Team for pretextual reasons: driving in the middle lane without passing, moving to the right lane too soon after passing, or a window allegedly above the legal tint threshold – to name just a few. We learn of text-messaged requests for drug-sniffing dogs before a car is even stopped. We see troopers’ aggressive demands for motorists and passengers to exit the vehicle and subjecting these people to invasive and prolonged frisks and searches.

Yes, some of these questionable stops result in the discovery of some amount of drugs, but the overwhelming majority do not. (Fewer than 5 percent, in Darcy’s case.) Is this the price we are willing to pay for such incursions on our liberty? The abuses of law enforcement – stretching the bounds of the Constitution beyond anything we would recognize as either just or free – must be curtailed by judicial intervention.

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Policymakers could also take steps to curb these abuses. A necessary bill before the Legislature this session proposes reclassifying a slate of low-level infractions to secondary offenses – meaning they could no longer be the sole basis for a traffic stop. Passage of this bill could certainly help curtail stops such as those conducted by the PACE Team.

Here in Maine, a trooper's underlying motivations for making a given stop should matter – regardless of unfavorable case law and its application. And where racial bias is suspected, these traffic stops should and must be subject to vigorous scrutiny – by defense attorneys, prosecutors and all Mainers – including those who patrol our highways.

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