



Law Court to ponder legality of ATV stops

Search-seizure protection at center of case

BY JUDY HARRISON
OF THE NEWS STAFF

PORTLAND — The Maine Supreme Judicial Court today will consider whether the law that allows game wardens to stop ATV riders for any reason violates constitutional protections against unreasonable searches and seizures. Oral arguments will be heard in the court's chambers in the Cumberland County Courthouse.

The case stems from the Aug. 5, 2007, stop of Brent L. McKeen, 51, of Mars Hill, who was riding his ATV on a trail in his hometown. After the warden required McKeen to stop, he administered a field sobriety test and charged him with operating under the influence of intoxicants.

McKeen requested a jury trial and the case was moved from 2nd District Court to Aroostook County Superior Court.

Last year, Superior Court Justice E. Allen Hunter found that the law is unconstitutional.

Prosecutors appealed to the state's high court to resolve what appears to be a state statute that is incompatible with the U.S. and Maine constitutions.

"The Fourth Amendment of the U.S. Constitution as well as Article 5 of the Maine Constitution protect all citizens against unreasonable searches and protects their privacy," McKeen's attorney, Alan Harding of Presque Isle, said Monday. "The U.S. Supreme Court previously said that police officers did not have the right to stop automobiles simply to check their license and registration."

The law that allows wardens to stop ATV and snowmobile riders has been on the books for more than 50 years and included cars until the U.S. Supreme Court issued a decision in 1979, he said.

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That decision found that law enforcement officers had to have a reasonable suspicion to stop drivers.

Maine amended its law shortly after that decision to prevent the police from stopping drivers for any reason, according to Harding, but left intact the provisions that applied to off-road vehicles and snowmobiles.

"A person operating an ATV probably has a greater expectation of privacy than the average citizen operating an automobile," Harding said, "because an ATV rider is normally in unpopulated areas, goes past few homes, few businesses and meets little passing traffic in contrast to automobiles on highways."

Todd Collins, assistant district attorney for Aroostook County, who will argue the case

on the state's behalf, said Monday that there is a big difference between cars and recreational vehicles such as ATVs and snowmobiles.

But Collins argued in his brief that the state has three reasons for allowing wardens to stop ATV riders for any reason:

- Checking to see whether ATVs are registered to improve the collection of registration fees, a portion of which is used to acquire and manage public lands.

- Expanding access to private property for recreational use.

- Protecting public safety.

"Automobiles in modern society are part and parcel of everyday life," he said Monday. "ATVs, [which] are basically big toys, should be subject to a greater degree of scrutiny. An ATV can pretty much go anywhere — fields, streams, off roads, in the woods — on what is primarily privately owned land. I'll be asking the Law Court to look at the Legislature's intent in using these kinds of stops as

a tool to curb abuses so that private land remains open to the public."

The Maine Civil Liberties Union has filed a "friend of the court" brief in support of McKeen.

"This statute grants powers to the Warden Service that go far beyond what is acceptable under the Fourth Amendment," Zachary Heiden, legal director of the MCLU, said last week in a press release about the case. "Under our Constitution, people should be free from unreasonable searches, and citizens should be left alone unless there is specific reason to believe they have committed a crime."

There is no timetable under which the court must issue its decision.

Other cases the court will consider this week include:

- Peter Tuller's appeal of his life sentence for murdering Michael Demmons, 47, of Glenburn in June 2006 in an apartment on Pier Street in Bangor. Superior Court Justice Joseph

Jabar found that Tuller deserved life because of the extreme cruelty of the crime. Demmons was found badly beaten and hogtied, with plastic garbage bags over his head.

- The appeal of an Aroostook County man's lawsuit against the Maine District Court seeking damages because he was misidentified in the court's computer system as being banned from possessing a firearm.

- The Maine Department of Corrections' appeal from a decision by the Public Utilities Commission that the DOC does not have the authority to place surcharges on inmates' phone calls from the facilities it operates.

- The appeal of Nestle Waters North America Inc. from the Fryeburg Planning Board's decision in 2005 to deny the company a permit to build a water facility there. Nestle owns Poland Spring Bottling Co.