STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. Yor-23-89

CALEB GAUL,

Plaintiff – Appellant,

v.

JOSHUA E. MORNEAU,

Defendant – Appellee.

ON APPEAL FROM AN ORDER OF THE
YORK COUNTY SUPERIOR COURT

BRIEF OF DEFENDANT-APPELLEE JOSHUA E. MORNEAU

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INTRODUCTION

Defendant-Appellee Joshua E. Morneau, in his capacity as a York County Sheriff's Deputy, witnessed Plaintiff-Appellant Caleb Gaul commit a class D crime. Consistent with Maine law and the Maine Constitution, Deputy Morneau arrested Gaul and took him into custody. Gaul sued Deputy Morneau, asserting claims under Maine law for, in pertinent part, unreasonable arrest and unlawful pretrial punishment. The York County Superior Court, (Douglas, J.), granted Deputy Morneau summary judgment, ruling Deputy Morneau's actions were lawful and, in any event, that he was protected from liability by qualified immunity. The Superior Court's rulings on these issues were correct, and this Court should affirm them on appeal.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

I. FACTUAL BACKGROUND

At about 7:45 a.m. on January 30, 2018, Deputy Morneau was dispatched to the intersection of Ossipee Hill Road and Gold Mine Trail in Waterboro for a report of a male blocking a RSU 57 school bus from leaving. Appendix at A-159, ¶ 1 (hereinafter "App. at __"). At the time Deputy Morneau received the call, he was working a regular shift for the York County Sheriff's Office as a patrol deputy, he was dressed in his sheriff's deputy uniform, and he was operating a marked County Sheriff's cruiser. App. at A-159, ¶ 2.

Upon arrival at the scene, Deputy Morneau observed a school bus backed into Gold Mine Trail[1] from Ossipee Hill Road. App. at A-159, ¶ 3. Deputy Morneau also observed a 2016 Toyota Tacoma pickup truck ("the pickup") parked in front of the school bus and perpendicular to the front of the bus such that the bus could not get around it to leave. App. at A-159, ¶ 4. The pickup he saw on arrival was not running and there was no one in it. App. at A-160, ¶ 5. Deputy Morneau noted that the surface of that section of Gold Mine Trail was covered with ice pack and was slippery, despite some indications that sand had been applied. App. at A-160, ¶ 7.

Deputy Morneau requested registration information for the pickup from dispatch using the license plate number and learned that it was registered to Caleb Gaul. App. at A-160, ¶ 6. As Deputy Morneau approached the bus to speak to its occupants, he saw a man walking down Gold Mine Trail toward him. App. at A-159, ¶ 8. Deputy Morneau stopped to talk to the man. App. at A-160, ¶ 8.

Deputy Morneau learned that the man's name was Caleb Gaul and that he owned the pickup. App. at A-160, ¶ 9. Deputy Morneau further learned that Gaul had moved the pickup in front of the bus after a discussion with the bus driver

[1] In his brief, Gaul characterizes the road as his home's driveway. Blue Br. at 3. That characterization is not supported by the record, which reflects that Gold Mine Trail is a private road over which Gaul had a right of way. App. at A-191, ¶¶ 59-61. Therefore, contrary to the representation in Gaul's brief, the bus was not parked on his property. Blue Br. at 5.

during which Gaul asked the bus driver to leave and the bus driver failed to do so.[2] App. at A-160, ¶ 10. Deputy Morneau learned that, after parking the pickup directly in front of and perpendicular to the bus, Gaul left the scene on foot, preventing the school bus from leaving. App. at A-161, ¶ 11. Deputy Morneau asked Gaul to move the pickup and Gaul indicated that he would not do so until the bus driver apologized to him. App. at A-161, ¶ 12.[3]

Deputy Morneau then interviewed the occupants of the bus – the driver, Craig Theriault, and the bus monitor, Catherine Shriver. App. at A-162, ¶ 13. Theriault stated that they routinely parked the bus at this location in the morning, but that on this morning Gaul had confronted them and asked them to leave. App. at A-162, ¶ 14.[4] Theriault and Shriver indicated that Gaul appeared agitated and made them nervous. App. at A-162, ¶ 15. They told Deputy Morneau that they

[2] Gaul suggests that he parked where he did because it was the "safest place available." Blue Br. at 4. This suggestion is both inaccurate and irrelevant. It was undisputed that Gaul had other options available to him, including parking on the shoulder of Ossipee Hill Road or in a nearby neighbor's driveway. App. at A-193 to A-194, ¶¶ 74-75 (responses by Defendants, citing the depositions of the parties for the proposition). There is no evidence that either of those options would have been less safe than parking directly in front of a school bus. In any event, even if Gaul maintained this subjective belief, there is no evidence in the record to suggest that he ever communicated it to Deputy Morneau. Based on the undisputed record, all Deputy Morneau knew was that Gaul deliberately parked his vehicle perpendicular to and directly in front of the bus.

[3] Although Gaul's response to this fact was a denial, he did not produce any competent record evidence to contest the assertion that he told Deputy Morneau that he would not move the pickup until the bus driver apologized.

[4] Gaul objects to this fact (and the other statements in this factual summary by the bus driver and the attendant) on the basis of hearsay. However, the statements are admissible to show the information Deputy Morneau had at the time he acted. *See United States v. Murphy*, 193 F.3d 1, 5 n.2 (1st Cir. 1999) ("[A]n out-of-court statement might be offered to show that the declarant had certain information, or entertained a specific belief . . . or it might be offered to show the effect of the words spoken on the listener (e.g. to supply a motive for the listener's action).").

watched as Gaul parked his pickup in front of the bus and left, taking the keys with him. App. at A-163, ¶ 16. Theriault indicated that they could not leave, as he could not go forward around the pickup and he was concerned – given the icy road conditions – that he might hit the truck if he tried to back up. App. at A-164, ¶ 17. Theriault further stated that the pickup, parked where it was, was preventing them from starting their route to pick up students. App. at A-164, ¶ 18.

Deputy Morneau spoke by telephone with Matthew Kerns, the RSU 57 transportation director, about what was occurring with the school bus that morning. App. at A-165, ¶ 19. Kerns indicated that RSU 57 wanted to press charges against Gaul for his actions that morning. App. at A-165, ¶ 20.

Deputy Morneau determined that the totality of the information in his possession at that time – including the information he had received from dispatch, his discussions with Gaul, Theriault, and Shriver, and his own observations – gave him probable cause to believe that Gaul had committed the crime of obstructing governmental administration. App. at A-165, ¶ 21.[5]

Deputy Morneau informed Gaul that he was arresting him on the charge of obstructing government administration. App. at A-166, ¶ 22. Deputy Morneau took Gaul into custody because he thought it was extremely alarming that somebody would blockade a bus, and he wanted Gaul to be subject to bail conditions to

[5] Gaul has not challenged this probable cause determination on appeal.

prevent future issues with the school district. App. at A-166, ¶ 23.[6] Deputy Morneau's arrest of Gaul was based solely on Deputy Morneau's assessment that Gaul had committed a class D crime of obstructing governmental administration, and it was not influenced by any ill will, bad faith, or improper motive. App. at A-168, ¶ 36.

After Gaul refused to comply with several instructions to turn around so that Deputy Morneau could apply handcuffs, Deputy Morneau physically turned him around and secured him with handcuffs. App. at A-166, ¶ 24. In applying the handcuffs to Gaul, Deputy Morneau followed the procedures required by the County and ensured the handcuffs were secured so that they were not too tight around Gaul's wrists. App. at A-167, ¶ 25. Deputy Morneau asked Gaul to walk with him over to his cruiser, but Gaul refused to comply. App. at A-167, ¶ 26. Deputy Morneau took Gaul by the arm and slid his feet along the ice toward his cruiser. App. at A-167, ¶ 27. Gaul concedes that he refused to comply with Deputy Morneau's instructions to walk over to the cruiser. App. at A-167, ¶ 28. Gaul's wife captured on a cell phone video what happened when Deputy Morneau secured Gaul and slid him over to his cruiser. App. at A-167, ¶ 29.

[6] Although Gaul denies this fact, the record material he cites does not refute it. To the contrary, the cited material tends to support this fact. *See* App. at A-159, ¶ 20 (Morneau Dep. Exh. 50 (Bus Audio) at 31:55-31:43) (Deputy Morneau's comments that "it's completely unreasonable to blockage a bus and make, you know, worry them like he did.").

Deputy Morneau conducted a pat search of Gaul's clothing incident to arrest and before placing him in the rear of his cruiser. App. at A-168, ¶ 31. Deputy Morneau then placed Gaul in the rear of his cruiser and secured him with a seat belt. App. at A-168, ¶ 32.

Deputy Morneau transported Gaul to the York County Jail ("the Jail"). App. at A-168, ¶ 33. After turning Gaul over to the corrections officers at the Jail and completing paperwork pertaining to his arrest, Deputy Morneau left the Jail. App. at A-168, ¶ 34. Deputy Morneau was not involved in any further searches of Gaul after they arrived at the York County Jail.[7] App. at A-168, ¶ 35.

II. PROCEDURAL BACKGROUND

The operative pleading is Gaul's Second Amended Complaint ("the Complaint"), which consists of seven counts. App. at A-74 to A-97. The Complaint asserts the following claims: unreasonable warrantless misdemeanor arrest under the Maine Constitution Article I, §§ 1 & 5 and the Maine Civil Rights Act, 5 M.R.S. §§ 4681-4685 ("MCRA") against Deputy Morneau (Count I); unreasonable warrantless misdemeanor arrest under 17-A M.R.S. § 15 and the

[7] Gaul suggests on a number of occasions in his brief that he was strip searched at the York County Jail. That suggestion was disputed, even based on Gaul's own testimony. App. at A-206 to A-207, ¶ 127 (Defendants' response, citing Gaul's deposition testimony that during the alleged search "he was in a shower stall with the curtain drawn completely across the opening and he could not recall whether the officer was standing inside the stall on his side of the curtain or on the outside when he removed his clothing" (C. Gaul Dep. at 78/8 to 79/23)). This dispute was never resolved, as the claims based on that alleged search were dismissed with prejudice by stipulation of the parties. App. at A-10. However, the allegation has no relevance to Gaul's claim against Deputy Morneau, as it is undisputed that he was not present for any alleged searches at the Jail.

MCRA against Deputy Morneau (Count II); false arrest against Deputy Morneau (Count III); battery against Deputy Morneau (Count IV); unreasonable search under the Maine Constitution and the MCRA against Defendants York County Corrections Officer Corcoran, York County Sheriff William King (in his official capacity only), and York County (Count V); breach of contract against Officer Corcoran, Sheriff King (in his official capacity only), and the County (Count VI); and unlawful pretrial punishment under Maine Constitution Article I, § 1 & 6-A and the MCRA against Deputy Morneau (Count VII). The Defendants all responded to the Complaint and asserted numerous affirmative defenses, including: failure to state cognizable claims and immunity of individual Defendants with regard to the civil rights claims.

At the close of discovery, all Defendants moved for summary judgment. In response to the motion, Gaul abandoned his claims in Counts III and IV for false imprisonment and battery, respectively. App. at A-16 & n.4. The Superior Court granted Deputy Morneau summary judgment with regard to the Counts I, II, and VII. Based on the undisputed record materials, the Superior Court determined that Deputy Morneau had probable cause to believe that Gaul committed a crime in his presence, which justified Gaul's arrest. App. at A-19 to A-20. In addition, the Superior Court ruled that Deputy Morneau was protected from liability by qualified immunity. Finally, the Superior Court denied Officer Corcoran, Sheriff King, and the County's request for summary judgment on Counts V and VI.

By a stipulation filed on February 27, 2023, the parties dismissed Counts V

and VI with prejudice. App. at A-10. In doing so, Gaul reserved his right to appeal the Superior Court's grant of summary judgment in Deputy Morneau's favor with regard to Counts I, II, and VII. *Id*. Gaul filed a notice of appeal on March 16, 2023.[8] *Id*. In his appellate brief, Gaul abandoned all of his remaining claims other that his claim against Deputy Morneau in Count I for unreasonable warrantless misdemeanor arrest under the Maine Constitution. Blue Br. at 7 n.3.

STATEMENT OF ISSUES FOR REVIEW

I. Whether an officer who effects a custodial arrest based on probable cause that the suspect has committed at Class D crime in the officer's presence violates the Maine Constitution.

II. Whether an officer who effects a custodial arrest based on probable cause that the suspect has committed at Class D crime is protected from liability under the Maine Civil Rights Act by qualified immunity.

LEGAL STANDARD OF REVIEW

This Court reviews an order granting summary judgment *de novo* for errors of law. *See Carroll v. City of Portland*, 1999 ME 131, ¶ 5, 736 A.2d 279; *Pratt v. Ottum*, 2000 ME 203, ¶ 15, 761 A.2d 313. The Court will affirm summary judgment "if the record reflects that there is no genuine issue of material fact and

[8] Deputy Morneau notes that the caption to the Briefing Schedule issued by this Court refers to "York County et al." as Defendants. Since the notice of appeal only pertains to Gaul's claims against Deputy Morneau, Deputy Morneau has omitted Officer Corcoran, Sheriff King, and the County from the caption of this Brief.

the movant is entitled to a judgment as a matter of law." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573 (citing *Carroll*, 1999 ME 131, ¶ 5, 736 A.2d 279). "A material fact is one having the potential to affect the outcome of the suit." *Id*. (citing *Kenny v. Dep't. of Human Servs.*, 1999 ME 158, ¶ 3, 740 A.2d 560). "A genuine issue exists when sufficient evidence supports a factual contest to require a factfinder to choose between competing versions of the truth at trial." *Id*. (citing *Prescott v. State Tax Assessor*, 1998 ME 250, ¶ 5, 721 A.2d 169). This Court has emphasized that summary judgment is not an extreme remedy; rather, "[i]t is simply a procedural device for obtaining judicial resolution of those matters that may be decided without fact-finding." *Curtis v. Porter*, 2001 ME 158, ¶ 7, 784 A.2d 18.

SUMMARY OF ARGUMENT

Consistent with Article I, Section 5 of the Maine Constitution ("Section 5") and 17-A M.R.S. § 15(1)(B), Deputy Morneau was legally authorized to arrest Gaul on the charge of obstructing government administration, a class D crime. Gaul's repeated references on appeal to observations by this Court that it is free to interpret the Maine Constitution to provide different protection than the United States Constitution appear to be an effort to obscure what this Court has already held in construing Section 5. This Court has said previously and repeatedly that the concept of reasonableness in Section 5 is coextensive with that in the Fourth Amendment to

the Constitution, and that established construction governs the issue in this case. Even if it did not, Gaul's claim does not present the Court with an appropriate opportunity to deviate from that precedent because Gaul was charged with an offense punishable by up to a year in jail and because Gaul's erratic behavior raised safety concerns for Deputy Morneau. Finally, in light of his argument in this case, Gaul can hardly contend that the constitutional standard was clearly established at the time of his arrest or that a reasonable officer in Deputy Morneau's position would have known that his actions would violate clearly established rights. Therefore, Deputy Morneau is protected from liability by qualified immunity. For these reasons, the Superior Court correctly held that Deputy Morneau was entitled to summary judgment, and this Court should affirm that ruling.

ARGUMENT

I. DEPUTY MORNEAU'S ARREST OF GAUL COMPLIED WITH MAINE LAW AND THE MAINE CONSTITUTION.

Gaul's alleges Deputy Morneau violated the Maine Constitution and the MCRA[9] by arresting him. Notably, Gaul does not argue that Deputy Morneau lacked

[9] Gaul does not challenge this Court's interpretation of the MCRA, which this Court has held is applied consistent with the MCRA's federal counterpart, 42 U.S.C § 1983. "The MCRA … is patterned after § 1983 and 'provides a private cause of action for violations of constitutional rights by "any person."'" *Doe v. Williams*, 2013 ME 24, ¶ 72, 61 A.3d 718 (quoting *Jenness v. Nickerson*, 637 A.2d 1152, 1158 (Me. 1994)). In fact, this Court has emphasized that it sees "no rational basis to treat a claim asserting a violation of and disregard for statutory mandates and due process and Fourth Amendment protections brought pursuant to the [MCRA] any differently than we would treat such a claim brought pursuant to the Federal Civil Rights Act." *Clifford v. Me. Gen. Med. Ctr.*, 2014 ME 60, ¶ 50, 91 A.3d 567 (citing *Doe*, 2013 ME 24, ¶ 72, 61 A.3d 718 (stating that the MCRA is patterned after section 1983)). Therefore, there is no question that

probable cause for the arrest. Therefore, for the purposes of this appeal, it is undisputed that Deputy Morneau had probable cause to believe that Gaul had violated a criminal statute making it unlawful to obstruct government administration, which is a class D crime. *See* 17-A M.R.S. § 751(3) ("A person is guilty of obstructing government administration if the person intentionally interferes by force, violence or intimidation or by any physical act with a public servant performing or purporting to perform an official function."). As a class D crime, Gaul would be subject to a maximum term of imprisonment of up to a year, if convicted. 17-A M.R.S. § 1604(1)(D). Nor can there be any doubt that Maine law expressly authorized Deputy Morneau to effect Gaul's arrest: "Except as otherwise specifically provided, a law enforcement officer may arrest without a warrant … [a]ny person who has committed or is committing in the officer's presence any Class D or Class E crime." 17-A M.R.S. § 15(1)(B).

Gaul's sole contention is that Deputy Morneau violated his rights under Section 5 by taking him into custody, rather than issuing him a summons. Section 5 provides as follows: "The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor

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from a remedial standpoint, federal precedent governs Gaul's claim.

without probable cause -- supported by oath or affirmation." Me. Const. art. I, § 5. Primarily based on the observation that Section 5 contains the word "all," Gaul suggests that this provision is substantively different from the Fourth Amendment to the United States Constitution[10] and, therefore, provides greater protection. Blue Br. at 17. This Court has rejected such a reading of the two provisions: "Both the Fourth Amendment to the Constitution of the United States and our own Section 5 of Article I of the Constitution of Maine provide that the people shall have the right to be secure in their persons, houses, papers, effects and possessions from *all* unreasonable searches and seizures and that no warrant to search or seize shall issue without probable cause, [but upon probable cause], supported by oath or affirmation." *State v. Cadigan*, 249 A.2d 750, 756 (Me. 1969) (emphasis added); *see also State v. Gulick*, 2000 ME 170, ¶ 9 n.3, 759 A.2d 1085 ("The Maine Constitution, article I, section 5, contains language that is for the most part identical to the U.S. Constitution.").

For this reason, the Law Court has repeatedly held that Section 5 is coextensive with the Fourth Amendment. As early as the 1970s, this Court referred to Section 5 as "comparable" to the Fourth Amendment or as "offering equivalent protection," and it relied upon United States Supreme Court precedent construing

[10] The Fourth Amendment provides, in pertinent part, as follows: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…." U.S. Const. amend. IV.

the Fourth Amendment in resolving questions under Section 5. *See, e.g., State v. Heald*, 314 A.2d 820, 828-29 (Me. 1973) (since Section 5 provided protection "equivalent" to the Fourth Amendment, the Court held that it would follow the preponderance standard of *Lego v. Twomey*, 404 U.S. 477 (1972) for cases raising claims under Section 5); *State v. Koucoules*, 343 A.2d 860, 873 (Me. 1974) (since Section 5 was "comparable" to the Fourth Amendment, the Court relied on Supreme Court Fourth Amendment precedent to resolve consent question under Section 5). Since then, this Court has recognized in increasingly explicit language that the protections of Section 5 and the Fourth Amendment coincide: "[Section 5's] language provides protections that are identical to the federal counterpart, and we have interpreted the Maine provision coextensively with the Fourth Amendment." *Gulick*, 2000 ME 170, ¶ 9 n.3, 759 A.2d 1085; *see also Clifford v. Me. Gen. Med. Ctr.*, 2014 ME 60, ¶ 67 n.21, 91 A.3d 567 ("To the extent that Clifford alleges a violation under the Maine Constitution, article I, section 5, which contains language nearly identical to that of the Fourth Amendment, is interpreted coextensively with its federal counterpart.") (citing *Gulick*, 2000 ME 170, ¶ 9 n.3, 759 A.2d 1085); *State v. Blier*, 2017 ME 103, ¶ 8 n.3, 162 A.3d 829 ("Article I, section 5 of the Maine Constitution provides the same protections as the Fourth Amendment.") (citing *Gulick*, 2000 ME 170, ¶ 9 n.3, 759 A.2d 1085).

There is no doubt that this Court's construction of Section 5 as coextensive with the Fourth Amendment applies in the context of seizures of the person. For

example, in *State v. Patterson*, 2005 ME 26, 868 A.2d 188, where this Court was required to determine whether an interaction between a police officer and the plaintiff constituted a seizure, it expressed the underlying constitutional standard as follows: "The Fourth Amendment to the U.S. Constitution, and Article 1, Section 5 of the Maine Constitution, offer identical protection against unreasonable searches and seizures." *Id.* ¶ 10. Similarly, in the context of a traffic stop, this Court stated:

> "The Fourth Amendment to the United States Constitution and article I, section 5 of the Maine Constitution protect motorists from being unreasonably stopped by police." *State v. LaForge*, 2012 ME 65, ¶ 8, 43 A.3d 961. For a traffic stop to be constitutional, "a police officer must have an objectively reasonable, articulable suspicion that either criminal conduct, a civil violation, or a threat to public safety has occurred, is occurring, or is about to occur." *State v. Sylvain*, 2003 ME 5, ¶ 11, 814 A.2d 984 (footnote omitted).

State v. Sasso, 2016 ME 95, ¶ 7, 143 A.3d 124; *see also State v. Griffin*, 459 A.2d 1086, 1089 (Me. 1983) (relying upon Fourth Amendment precedent to evaluate an investigatory stop under Section 5); *State v. Caron*, 534 A.2d 978, 979 (Me. 1987) (relying upon Fourth Amendment precedent to evaluate an investigatory stop under Section 5); *State v. Nelson*, 638 A.2d 720, 722 (Me. 1994) (relying upon Fourth Amendment precedent to evaluate a traffic stop under Section 5).

Finally, warrantless arrests under both the Fourth Amendment and Section 5 are governed by the same "reasonableness" standard. The Supreme Court has held that a warrantless arrest is reasonable – and therefore complies with the Fourth Amendment – "if the officer has probable cause to believe that the suspect

committed a crime in the officer's presence."[11] *District of Columbia v. Wesby*, 138 S. Ct. 577, 586, 199 L. Ed. 2d 453 (2018) (citing *Atwater v. City of Lago Vista*, 532 U. S. 318, 354 (2001)); *see also Acosta v. Ames Dep't Stores, Inc.*, 386 F.3d 5, 9 (1st Cir. 2004) ("When there is probable cause for an arrest, the Fourth Amendment's prohibition against unreasonable searches and seizures is not offended.") (citing *Atwater*, 532 U.S. at 354; *Roche v. John Hancock Mut. Life Ins. Co.*, 81 F.3d 249, 254 (1st Cir. 1996)). Similarly, this Court has held that a warrantless arrest is reasonable under Section 5 if it is based on probable cause – which this Court has held exists "where facts and circumstances within the knowledge of the officers and of which they have reasonably trustworthy information would warrant a prudent and cautious person to believe that the arrestee did commit or is committing the felonious offense." *State v. Parkinson*, 389 A.2d 1, 8 (Me. 1978) (citing *State v. Smith*, 277 A.2d 481, 488 (Me. 1971); *State v. LeBlanc*, 347 A.2d 590, 593-94 (Me. 1975)).

Based on the standard of reasonableness that the Fourth Amendment and Section 5 share, the Supreme Court has held that "[i]f an officer has probable cause

[11] Many federal courts have held that the Fourth Amendment does not even impose a requirement that an officer witness a misdemeanor offense in order to effect an arrest. *See Daggett v. York Cty.*, No. 2:18-cv-00303-JAW, 2021 U.S. Dist. LEXIS 42845, at *124-25 (D. Me. Mar. 8, 2021), *aff'd*, 2022 U.S. App. LEXIS 2144 (1st Cir. Jan. 25, 2022) (collecting cases that support the proposition from the United States Courts of Appeals for the First, Fourth, Sixth, Seventh, and Ninth Circuits). Therefore, the Supreme Court's holdings in *Wesby* and *Atwater* (and the cases the Supreme Court cites in those cases as authority for that principle) constitute a heightened standard designed to protect citizens from unreasonable governmental action.

to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater*, 532 U.S. at 354. Notably, in *Atwater*, the Supreme Court expressly rejected the argument that an officer violates the Fourth Amendment by effecting a custodial arrest (as opposed to issuing a summons) once the officer establishes probable cause. *Id.* at 345-47. In that regard, the Supreme Court noted: "we have traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review." *Id*. at 347. Rather, the Supreme Court favored an interpretation of the Fourth Amendment that would both ensure reasonable governmental action – by requiring probable cause – and provide clear guidance to officers: "Courts attempting to strike a reasonable Fourth Amendment balance thus credit the government's side with an essential interest in readily administrable rules." *Id*. (citing *New York* v. *Belton*, 453 U.S. 454, 458 (1981) (Fourth Amendment rules "'ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged'" and not "'qualified by all sorts of ifs, ands, and buts'")).

Therefore, Gaul is simply incorrect when he suggests that the constitutional standard applicable to his arrest has not been addressed by this Court. As noted

above, this Court has interpreted Section 5 to "provide[] protections that are coextensive with the Fourth Amendment." *State v. Martin*, 2015 ME 91, ¶ 17 n.2, 120 A.3d 113 (citing *Clifford*, 2014 ME 60, ¶ 67 n.21, 91 A.3d 567); *Gulick*, 2000 ME 170, ¶ 9 n.3, 759 A.2d 1085 ("[Section 5's] language provides protections that are identical to the federal counterpart, and we have interpreted the Maine provision coextensively with the Fourth Amendment."). In the context of seizures, it has interpreted the concept of reasonableness in Section 5 to track the standards adopted by the Supreme Court in construing the Fourth Amendment – including the standard for reasonable articulable suspicion for investigatory stops and the standard for probable cause for arrests. *Compare Sasso*, 2016 ME 95, ¶ 7, 143 A.3d 124 (applying a reasonable articulable suspicion standard under Section 5 for an investigatory stop) *with Terry v. Ohio*, 392 U.S. 1, 30 (1968) (applying a reasonable articulable suspicion standard under the Fourth Amendment for an investigatory stop); *compare also Parkinson*, 389 A.2d at 8 (applying a probable cause standard under Section 5 for an arrest) *with Wesby*, 138 S. Ct. at 586 (applying a probable cause standard under the Fourth Amendment for an arrest). Since it is undisputed that Deputy Morneau had probable cause to believe that Gaul had committed a class D crime in his presence, his arrest of Gaul conformed to the standard of reasonableness in both Section 5 and the Fourth Amendment.

The Court should reject Gaul's efforts to undermine clear law by erecting a straw man argument. This Court's construction of Section 5 – as reflected by long-

standing and explicit decisions – can hardly be dismissed as "general statements about 'coextensiveness.'" Blue Br. at 12. Rather, this Court has specifically addressed the crux of Gaul's argument – and his reference to Maine's "longstanding traditions and values" relative to warrantless seizures – by holding on several occasions that the protections afforded by Section 5 are the same as those provided by the Fourth Amendment.[12] *See Gulick*, 2000 ME 170, ¶ 9 n.3, 759 A.2d 1085; *Clifford*, 2014 ME 60, ¶ 67 n.21, 91 A.3d 567; *Martin*, 2015 ME 91, ¶ 17 n.2, 120 A.3d 113; *Blier*, 2017 ME 103, ¶ 8 n.3, 162 A.3d 829.

Contrary to Gaul's suggestion, this Court has never rejected the concept that Section 5 and the Fourth Amendment embody the same standard of reasonableness in the context of warrantless arrests. And his reliance on *State v. Melvin*, 2008 ME 118, 955 A.2d 245, to suggest otherwise is misplaced. This Court's comment in *Melvin* that Gaul quotes was made in the context of an unsettled question of federal law – namely, whether certain factors discussed in the Supreme Court's decision in *New York v. Burger*, 482 U.S. 691 (1987) were exclusive in assessing the legality of a search. *Melvin*, 2008 ME 118, ¶ 13 ("The Court's majority opinion in *Burger* did

[12] What Gaul refers to as the Superior Court's "lockstep application" of Supreme Court decisions is actually adherence to this Court's long-standing precedents. In this respect, Gaul errs in suggesting that the Superior Court was required to "independently construe" Section 5 in a manner that was inconsistent with precedent. *See State v. Lovell*, No. CR-20-191, 2021 Me. Super. LEXIS 101, *8-9 (Me. Super. Ct. Apr. 12, 2021) ("[I]n the absence of a contrary ruling from the Law Court, trial courts are obliged to follow the existing guidance that Art. I, § 5 of the Maine Constitution is interpreted as coextensive with the Fourth Amendment of the U.S. Constitution.") (citing *State v. LaFond*, 2002 ME 124 ¶ 6 n.2, 802 A.2d 425; *Gulick*, 2000 ME 170 ¶ 9 n.3, 759 A.2d 1085).

not purport to provide the exclusive criteria by which the constitutional reasonableness of a specific administrative search is determined."). Therefore, the Law Court was not guided by clear precedent from the Supreme Court on constitutional reasonableness in that particular context. Conversely, *Wesby* and *Atwater* specifically address the question raised by Gaul with regard to the reasonableness of his custodial arrest under the Fourth Amendment standard. Moreover, it is notable that this Court in *Melvin* did follow Fourth Amendment precedent – specifically, the factors set forth in *Burger* – to measure the reasonableness of the seizure at issue under both the Fourth Amendment *and* Section 5. *See id*. ¶¶ 10-12.

In any event, it is Gaul – and not the Superior Court – who has taken generalized statements out of context in an effort to subvert the clear meaning of Section 5. For example, Gaul quotes an excerpt from *State v. Bouchles*, 457 A.2d 798, 802 (Me. 1983) – in which the Court eschews a "straightjacket approach" to constitutional interpretation – that was divorced from the Court's full discussion. Immediately after the quoted language, the Court reasoned as follows:

> On the other hand, the absence of Maine authority on the issue forces us to seek guidance from the precedents of other jurisdictions, including the federal, construing their similar constitutional search-and-seizure clauses. *Cf. State v. Howes*, 432 A.2d 419, 423 (Me. 1981) (double jeopardy clause). Furthermore, we cannot be blind to the immense body of fourth amendment precedent in both state and federal courts. Nor can we ignore the experience of the Supreme Court that culminated in its *Ross* decision, groping for a rule that would give law enforcement officers and courts clear guidance and at

> the same time preserve the limits imposed by history upon the *Carroll* exception for automobile searches.

Id. Based on the *Bouchles* Court's full and measured discussion of constitutional interpretation, it ultimately held that the Maine and federal Constitutions imposed the same standards: "While we acknowledge a duty to declare independently the meaning of the search-and-seizure clause of the Maine Constitution, we should not plunge down doctrinal trails in disregard of the lessons of the federal experience." *Id*. Therefore, even if the issue Gaul raises on appeal required the Court to write on a "clean slate," this Court should expressly adopt the rule articulated in *Atwater*, which has been Fourth Amendment law for over twenty years. For all of these reasons, Gaul's arrest was reasonable under Section 5, and this Court should affirm summary judgment in favor of Deputy Morneau.[13]

II. THIS CASE DOES NOT PRESENT AN APPROPRIATE OPPORTUNITY FOR THE COURT TO ALTER ITS INTERPRETATION OF SECTION 5.

Gaul invokes a dissent in a Supreme Court case, interpretations by other courts of their states' constitutions, and recent social science research in an attempt to convince this Court to abandon decades of cases construing the scope of Section 5. For reasons that should be apparent, Gaul's reliance on these writings is

[13] Gaul argues that the Court should vacate summary judgment on his request for declaratory relief even if Deputy Morneau is protected from liability by qualified immunity. However, since Deputy Morneau did not violate Gaul's rights under Section 5, his claim for declaratory relief cannot survive summary judgment. *See Gilbert v. Cambridge*, 745 F. Supp. 42, 52 (D. Mass. 1990) ("Logically, 'no constitutional violation' means no violation for declaratory relief purposes as well as for any damages purposes.").

misplaced. None of these materials are binding precedent, nor are they germane to the facts and issues in this case. Therefore, even if the Court's precedents in this area are not directly on point to resolve Gaul's appeal, the Court should decline Gaul's invitation to abandon its long-standing and consistent approach to interpreting Section 5.

This Court has for many years expressed a reluctance to construe analogous provisions of the Maine Constitution and the federal Constitution to provide different protections. "We have traditionally exercised great restraint when asked to interpret our state constitution to afford greater protections than those recognized under the federal constitution." *State v. Buzzell*, 617 A.2d 1016, 1018 n.4 (Me. 1992) (citing *State v. Tarantino,* 587 A.2d 1095, 1098 (Me. 1991); *Blount v. Department of Educ. & Cultural Servs.,* 551 A.2d 1377, 1385 (Me. 1988); *City of Portland v. Jacobsky,* 496 A.2d 646, 648-49 (Me. 1985)); *accord Bagley v. Raymond Sch. Dep't*, 1999 ME 60, ¶ 13, 728 A.2d 127 (quoting *Buzzell*, 617 A.2d at 1018 n.4); *Doe*, 2013 ME 24, ¶ 70, 61 A.3d 718 (quoting *Bagley*, 1999 ME 60, ¶ 13, 728 A.2d 127). For this reason, the Court has declined on numerous occasions to adopt an interpretation of the Maine Constitution that is more expansive than its federal counterpart. *See Buzzell*, 617 A.2d at 1018 (noting that no court had held that the Due Process Clause of the Fourteenth Amendment required electronic recording of a custodial interrogation and declining to adopt a more expansive interpretation of the Maine Constitution); *see also Tarantino*, 587 A.2d at 1098

(conforming Maine law to a change in federal Fourth Amendment law and declining to adopt an exclusionary rule that extended greater protection under Maine's Constitution than that required under the federal Constitution); *Blount*, 551 A.2d at 1385 (declining to interpret the Maine Constitution's free exercise clause to provide greater protection than the First Amendment based on a comparison of the two texts); *Doe*, 2013 ME 24, ¶ 70, 61 A.3d 718 (declining to expand the Court's interpretation of Maine's Constitution to include a generalized right to fundamental fairness) (citation omitted).

None of the materials Gaul relies upon require the Court to relax its traditional restraint in construing Section 5. Although *Atwater* was decided by a 5-4 vote, the Supreme Court has never been questioned – let alone overruled – the decision in twenty-two years. Whether that majority was "slim" or unanimous, the opinion is still controlling law. *See, e.g., Collins v. Univ. of N.H.*, 664 F.3d 8, 14 (1st Cir. 2011) (applying *Atwater* to reject the argument that the Constitution prohibits arrest for offenses that do not involve the potential for incarceration); *McClure v. Ports*, 914 F.3d 866, 874 (4th Cir. 2019) ("An officer may arrest someone without violating the Fourth Amendment if the officer 'has probable cause to believe that an individual has committed even a very minor criminal offense in his presence.'") (quoting *Atwater*, 532 U.S. at 354). Moreover, the dissent in *Atwater* – which, naturally, has no binding authority – lacks any persuasive authority in the present case because that opinion was premised on a

fact that does not exist in this case. Specifically, Justice O'Connor characterized the issue in *Atwater* to be "the constitutionality of a warrantless arrest for an offense *punishable only by fine*." *Atwater*, 532 U.S. at 362 (emphasis added) (O'Conner, J., dissenting). However, it is undisputed in this case that Deputy Morneau had probable cause to charge Gaul with a class D crime, which carries with it the potential of up to a year in jail. *See* 17-A M.R.S. § 751(3) (providing that obstructing government administration is a class D crime); 17-A M.R.S. § 1604(1)(D) (providing that persons convicted of class D crimes are subject to a maximum term of imprisonment of up to a year). Therefore, whatever relevance Justice O'Connor's comments may have in the context of a fine-only offense, they are inapposite to the charge against Gaul.

Justice O'Connor's dissent in *Atwater* is also irrelevant because the present case involves considerations that Justice O'Connor conceded would justify an arrest. For example, Justice O'Connor agreed that an officer could arrest a person charged with a fine-only misdemeanor if there were facts known to the officer that would merit the custodial seizure: "I would require that when there is probable cause to believe that a fine-only offense has been committed, the police officer should issue a citation *unless the officer is 'able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the additional] intrusion' of a full custodial arrest*." *Id*. at 366 (emphasis added) (citing *Terry*, 392 U.S. at 21). As established by the record in the present

case, such specific and articulable facts supported Deputy Morneau's decision to arrest Gaul. Deputy Morneau had a concern about Gaul's behavior and felt that bail conditions – which are only available if an arrest occurs – would provide an impetus against future erratic behavior. While Gaul may attempt to dismiss those concerns as unwarranted, they were entirely reasonable given the information Deputy Morneau had – including the fact that Gaul deliberately impeded a school bus and then engaged in a confrontation with the occupants of the bus that caused them concern for their safety. Therefore, even under Justice O'Connor's proposed interpretation of the Fourth Amendment, Deputy Morneau's decision to arrest Gaul was reasonable.

For similar reasons, Gaul's reliance on decisions from other states that question the application of *Atwater* under state law is misplaced. In some instances, the decisions are grounded on the fact that the arrest at issue was for a non-jailable offense or a traffic infraction without additional circumstances that warranted immediate arrest. *See, e.g., Montana v. Bauer*, 36 P.3d 892, 897 (Mont. 2001) (non-jailable offense); *New Mexico v. Bricker*, 134 P.3d 800, 802 (N.M. Ct. App. 2006) (non-jailable offense); *Nevada v. Bayard*, 71 P.3d 498, 502 (Nev. 2003) (traffic infraction); *Ohio v. Brown*, 792 N.E.2d 175, 177 (Ohio 2003) (minor offense of jaywalking). Since Gaul was charged with an offense that was more significant than a mere traffic infraction and for which jail is a possible punishment, those cases are inapplicable. In other jurisdictions, the courts found

their state's history of prohibiting warrantless arrest for misdemeanors that did not include a breach of the peace was in contrast to the Supreme Court's survey of common law. *See Lunn v. Massachusetts*, 78 N.E.3d 1143, 1155 n.20 (Mass. 2017). Since Gaul was charged with an offense that did involve breach of the peace – namely, intentional interference by force, violence or intimidation or by any physical act with a public servant performing or purporting to perform an official function – those decisions are inapposite. *See* § 751(3). Finally, other courts decline to follow *Atwater* because it was not settled law in those states that their constitutional provisions were coextensive with the Fourth Amendment. *See, e.g.*, *Bricker*, 134 P.3d at 804 ("New Mexico courts interpret Article II, Section 10 … more broadly than its federal counterpart, and specifically appl[y] that broader protection to motorists." (quoting *New Mexico v. Cardenas-Alvarez*, 25 P.3d 225 (N.M. 2001)). However, in states like Missouri (for example) – in which, like Maine, the law is settled that its constitutional "search and seizure" guarantee is coextensive with the Fourth Amendment – the courts have followed *Atwater*. *See, e.g.*, *Missouri v. Mondaine*, 178 S.W.3d 584, 588-89 (Mo. Ct. App. 2005) (citations omitted), *transfer denied*, 2005 Mo. LEXIS 511 (Mo. Dec. 20, 2005). Therefore, the cases Gaul cites from other courts interpreting other states' constitutions are not persuasive authority.

Finally, the recent social science research upon which Gaul relies for his argument obviously does not inform the meaning of Section 5 of the Maine

Constitution. As a number of courts have noted, social science research generally does not assist in the interpretation of constitutional provisions ratified decades or centuries before the research occurred. *See, e.g., Wisconsin v. Roberson*, 935 N.W.2d 813, 822 (Wisc. 2019) ("Social science cannot change the original meaning of the Wisconsin Constitution, any more than it can change the meaning of the United States Constitution."); *New Jersey v. Bey*, 548 A.2d 887, 900 (N.J. 1988) (stating that "we believe that the results of 'ongoing social science research,' … do not compel a change in constitutional interpretation") (superseded in part by statute); *Missouri v. Jenkins*, 515 U.S. 70, 114 (1995) (Thomas, J., concurring) (eschewing reliance on "questionable social science research rather than constitutional principle" and noting that assumptions and social science research "cannot form the basis upon which we decide matters of constitutional principle"); *Roberson*, 935 N.W.2d at 829 (Bradley, J., concurring) (noting that courts should never "consult social science research to interpret the Constitution").

In short, the facts of this case do not afford the Court an appropriate opportunity to abandon its traditional restraint in construing Section 5. Gaul was charged with a class D crime, which was punishable to up to a year in prison; therefore, the authorities Gaul relies upon that are premised on "fine-only" offenses or minor traffic infractions are inapplicable. Moreover, Deputy Morneau's decision to arrest Gaul for that crime was supported by concerns about Gaul's erratic behavior and a desire to have bail conditions imposed to discourage further

altercations. Consequently, even if Deputy Morneau needed to engage in further "balancing" in order to effect Gaul arrest – which he clearly did not, based on this Court's decisions construing Section 5's protections to be identical to those of the Fourth Amendment – the record is undisputed that he did so. For all of these reasons, this case does not present the Court with an appropriate opportunity to modify its construction of Section 5[14] and the Court should reject Gaul's invitation to do so.

III. QUALIFIED IMMUNITY PROTECTS DEPUTY MORNEAU FROM CIVIL RIGHTS LIABILITY.

Deputy Morneau is protected from civil rights liability in this matter by qualified immunity. This Court has held that "[c]laims of qualified immunity raised under the MCRA are analyzed similarly to qualified immunity claims raised in federal civil rights actions." *Clifford*, 2014 ME 60, ¶ 54 n.17, 91 A.3d 567 (citing *Jenness v. Nickerson*, 637 A.2d 1152, 1159 (Me. 1994); *Norton v. Hall*, 2003 ME 118, ¶¶ 17 & 20 & n.3, 834 A.2d 928). Therefore, this Court relies upon decisions applying Section 1983 to resolve MCRA claims. *See, e.g., Jenness*, 637 A.2d at 1158 (applying Supreme Court precedent interpreting Section 1983 to resolve issue under the MCRA).

[14] To be clear, for the reasons indicated above, Deputy Morneau does not believe that Gaul has presented this Court with any meritorious justification for modifying its interpretation of Section 5. However, since the facts of this case are inconsistent with the premises of Gaul's flawed arguments, this Court should reject those arguments as irrelevant.

Qualified immunity protects government officials from liability for civil damages for actions taken under color of state law. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Supreme Court has held that "officers are entitled to qualified immunity under §1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *Wesby*, 138 S. Ct. at 589 (quoting *Reichle v. Howards*, 566 U. S. 658, 664 (2012)). The Supreme Court has clarified that "[t]he protection of qualified immunity applies regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation omitted). In short, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Therefore, a government official may invoke qualified immunity when the alleged actions, though causing injury, did "not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Kisela v. Hughes*, 138 S. Ct. 1148, 1152, 200 L. Ed. 2d 449 (2018) (*per curiam*) (internal quotation marks omitted); *Conlogue v. Hamilton*, 906 F.3d 150, 154 (1st Cir. 2018) (quoting *Harlow*, 457 U.S. at 818)).

The Supreme Court has adopted a "two-pronged inquiry" in applying qualified immunity. *Tolan v. Cotton*, 572 U.S. 650, 655 (2014). The first area of inquiry "asks whether the facts, '[t]aken in the light most favorable to the party

asserting the injury, . . . show the officer's conduct violated a [federal] right[.]'" *Id*. at 655-56 (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). The second area of inquiry "asks whether the right in question was 'clearly established' at the time of the violation." *Id*. at 656 (citing *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)). The First Circuit has emphasized that "[t]he burden of demonstrating the law was clearly established at the time of the alleged constitutional violation is on the plaintiff…." *McGrath v. Tavares*, 757 F.3d 20, 29 (1st Cir. 2014) (citations omitted). Finally, although the areas are enumerated, the Supreme Court has held that the order in which a court conducts its inquiry is left to the court's sound discretion. *Id*. (citing *Pearson*, 555 U.S. at 236).

In the context of qualified immunity, "'[c]learly established' means that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." *Wesby*, 138 S. Ct. at 589 (internal quotation marks omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quoting *Anderson* v. *Creighton*, 483 U.S. 635, 640 (1987))). The legal rule at issue "must be settled law, which means it is dictated by controlling authority or a robust consensus of cases of persuasive authority." *Id*. at 589-90 (citations and internal quotation marks omitted). A rule that is merely "suggested by then-existing precedent" is not "clearly established"; "[t]he precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Id*. (citing *Reichle*, 566

U.S. at 666). In several recent decisions, the Supreme Court has emphasized the focus of the "clearly established" inquiry: "existing law must have placed the constitutionality of the officer's conduct '*beyond debate*.'" *Id*. (emphasis added) (quoting *al-Kidd*, 563 U.S. at 741).

Even if a plaintiff can demonstrate the existence of "'controlling authority' or a 'consensus of cases of persuasive authority,'" *Alfano v. Lynch*, 847 F.3d 71, 75 (1st Cir. 2017), a governmental official who violates such precedent is still immune from civil liability unless the plaintiff can also demonstrate that "an objectively reasonable official in the defendant's position would have known that his conduct violated that rule of law." *Id*. (citation omitted). "The question is not whether the official actually abridged the plaintiff's constitutional rights but, rather, whether the official's conduct was unreasonable, given the state of the law when he acted." *Id*. (citation omitted). This requirement affords "some breathing room for a police officer even if he has made a mistake (albeit a reasonable one) about the lawfulness of his conduct." *Conlogue*, 906 F.3d at 155.

Finally, the Supreme Court has repeatedly reminded the federal courts "not to define clearly established law at a high level of generality." *al-Kidd*, 563 U.S. at 742 (citations omitted). The Court has instructed that "this inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (quoting *Saucier*, 533 U.S. at 201). "The dispositive question is 'whether the violative nature of

particular conduct is clearly established.'" *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (emphasis supplied by the Supreme Court) (quoting *al-Kidd*, 563 U.S. at 742).

Under these standards, Deputy Morneau is protected by qualified immunity. It is undisputed that he had probable cause to believe that Gaul had committed a class D crime in his presence. Maine law expressly authorizes an officer to arrest a person who commits a class D crime in the officer's presence. 17-A M.R.S. § 15(1)(B). Moreover, as discussed at length above, this Court has held for decades that the protections afforded by Section 5 are identical to those afforded by the Fourth Amendment. Finally, *Atwater* – which was decided over twenty years ago – holds that an officer who has probable cause to believe a crime has occurred may arrest the suspect without violating the Fourth Amendment, even if the offense at issue is minor. Therefore, clearly established law indicated that Deputy Morneau's actions were *lawful* – and not the opposite. At the very least, by arguing that the issue in this case constitutes a "clean slate," Blue Br. at 13, Gaul fails to meet his burden of demonstrating that Deputy Morneau's actions were so clearly contrary to established law that the constitutionality of those actions was "beyond debate" – particularly in the context of the decisions cited above. *See Wesby*, 138 S. Ct. at 589 (citations omitted). Moreover, based on the holdings of this Court and the Supreme Court, a reasonable officer in Deputy Morneau's position could have believed that taking Gaul into custody would not violate his constitutional rights. For these reasons, the Superior Court correctly ruled that Deputy Morneau was

entitled to summary judgment based on qualified immunity and this Court should affirm that decision.

CONCLUSION

For the reasons discussed, the Superior Court correctly granted summary judgment to Deputy Morneau and against Gaul on his claim of unreasonable arrest. This Court should deny Gaul's appeal and affirm the Superior Court's order.

DATED at Portland, Maine, this day, September 1, 2023.

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CERTIFICATE OF SERVICE

I, John J. Wall, III, Attorney for Appellee, hereby certify that I have today served the required number of copies of the foregoing Brief of Appellee on the other parties to this appeal by mailing the same to counsel of record at the following address:

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