

STATE OF MAINE

v.

MICHAEL TOWNE

Submitted on Briefs May 12, 2006
Decided June 29, 2006

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, CALKINS, LEVY, and
SILVER, JJ.

MEMORANDUM OF DECISION

Michael Towne appeals from an order entered in the District Court (Portland, *Beaudoin, J.*) denying his motion to suppress. Because Towne failed to comply with M.R. Crim. P. 11(a)(2), he did not preserve for appellate review his challenge that he was arrested pursuant to an illegal search and seizure in violation of the Fourth Amendment, and the judgment must be affirmed. M.R. Crim. P. 11(a)(2) (requiring that, before a conditional guilty plea is preserved for appellate review, the record must contain a written conditional guilty plea, and written certification in the record by the court and the State indicating that (1) the record is adequate for appellate review, and (2) the case is not appropriate for application of

the harmless error doctrine); *State v. Smith*, 2004 ME 148, ¶¶ 8-10, 866 A.2d 85, 87-88 (same); accord *State v. K.L.*, 663 A.2d 21, 22-23 (Me. 1995); *State v. Fowler*, 633 A.2d 80, 81 (Me. 1993).

Nevertheless, even if Towne had complied with the provisions of Rule 11(a)(2), our review of the record leads to a conclusion that the court did not err in finding that: (1) the officers received initial consent from the tenant in possession of the apartment to enter into the apartment, see *State v. Sargent*, 2005 ME 78, ¶ 7, 875 A.2d 125, 127 (noting the standard of review); *State v. Ullring*, 1999 ME 183, ¶ 10, 741 A.2d 1065, 1067-68 (consent to search can be manifested by words or gestures); *State v. Boutot*, 325 A.2d 34, 38 (Me. 1974) (discussing Fourth Amendment standing); and (2) there were exigent circumstances justifying the officers' entry into the back room of the apartment to determine whether Towne was injured and in need of assistance because, although the officers no longer had the tenant's consent to enter the back room, the officers had probable cause to believe that Towne posed a suicide threat, and may have been injured, *State v. Lewisohn*, 379 A.2d 1192, 1198 (Me. 1977) (noting that an exigent circumstance arises when an officer, as a reasonable and prudent person, determines that any delay caused by waiting to obtain a search warrant might result in the death of a person within the home).

The entry is:

Judgment affirmed.

Attorneys for State:

Stephanie Anderson, District Attorney
Julia A. Sheridan, Asst. Dist. Attorney
142 Federal Street
Portland, ME 04101

Attorney for defendant:

Robert J. Ruffner, Esq.
Vincent Kantz & Ruffner
80 Exchange Street, Suite 32
Portland, ME 04101