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248 A.3d 212

Supreme Judicial Court of Maine.

Joshua A. GRAY

v.

DEPARTMENT OF PUBLIC SAFETY

Docket: Ken-20-168

|

Argued: February 10, 2021

|

Decided: April 6, 2021

Attorneys and Law Firms

Roger L. Hurley, Esq. (orally), Camden, for appellant
Joshua A. Gray

Aaron M. Frey, Attorney General, and Kent Avery,
Asst. Atty. Gen. (orally), Office of the Attorney General,
Augusta, for cross-appellant Department of Public
Safety

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HOR-
TON, and CONNORS, JJ.

Opinion

HUMPHREY, J.

[¶1] In this appeal, we consider whether the First
Amendment rights of an applicant for a professional

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license were abridged by the application of statutory competency standards to his conduct on social media.¹

[¶2] Joshua A. Gray appeals from a judgment of the Superior Court (Kennebec County, *Murphy, J.*) affirming the Department of Public Safety's denial of Gray's application for a professional investigator license based on posts and comments that Gray made on social media, using an account bearing the name of his out-of-state private investigation business, concerning a Maine State Police lieutenant. Gray argues that the court erred in concluding that the Department had not, in denying his application, violated his free speech rights conferred by the First and Fourteenth Amendments of the United States Constitution.² Although Gray challenges the determination that he acted with

¹ Gray raises the free speech provisions of only the United States Constitution, U.S. Const. amend. I, and does not make any argument regarding the Maine Constitution's free speech protections. See Me. Const. art. I, § 4; *City of Bangor v. Diva's, Inc.*, 2003 ME 51, ¶¶ 10-11 & n.4, 830 A.2d 898; *Portland v. Jacobsky*, 496 A.2d 646, 648-49 (Me. 1985).

² Gray also argues that the court abused its discretion in deciding the matter without holding oral argument. Oral argument was not required by M.R. Civ. P. 80C(1), see *Lindemann v. Comm'n on Governmental Ethics & Election Pracs.*, 2008 ME 187, ¶ 26, 961 A.2d 538, and we discern no abuse of discretion in the court's decision not to hear oral argument before deciding the matter. Gray did not bring any independent claims, and the court rejected as untimely his notice of objection to the record—a ruling that Gray does not challenge on appeal. See M.R. Civ. P. 80C(f) (requiring that notice of an objection to the record be served on the agency within ten days after the record is filed).

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“actual malice”³ in posting and commenting on social media, we conclude that actual malice need not be shown and that we must apply intermediate scrutiny to review the licensing standards as applied to Gray here. Applying that standard, we affirm the judgment.

I. BACKGROUND

[¶3] On January 26, 2018, Gray applied to the Department for a professional investigator license. *See* 32 M.R.S. § 8107 (2020). The Chief of the Maine State Police issued the decision of the Department denying Gray’s application on August 31, 2018. *See* 32 M.R.S. §§ 8103(1-B), 8113 (2020). The Department found that Gray had made “materially false” statements on social media, including on his private investigation business’s Facebook page, which cast into question Gray’s “ability to competently investigate and then report investigative findings with accuracy, objectivity, and without bias,” and, as a result, that Gray lacked the requisite competency and fitness of character to act as a professional investigator in Maine.

[¶4] Gray appealed to the Superior Court. *See* 5 M.R.S. § 11001(1) (2020); M.R. Civ. P. 80C. The court held that the Department could not deprive Gray of a

³ Statements are made with “actual malice” when they are made with knowledge that they are false or with reckless disregard of their truth or falsity. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279 80, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964); *see Pickering v. Bd. of Educ.*, 391 U.S. 563, 573-75, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).

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license for having expressed himself on social media unless the statements he made fell outside the protection of the First Amendment. The court remanded for the Department to determine whether the limited privilege that applies to even false statements about public figures on matters of public concern was overcome by a finding, by clear and convincing evidence, that Gray made the statements on social media with “actual malice,” meaning with knowledge that the statements were false or with reckless disregard of their truth or falsity. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964); see *Pickering v. Bd. of Educ.*, 391 U.S. 563, 573-75, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).

[¶5] On remand, the Department propounded thirty-nine questions to Gray about certain assertions he had made using a social media account identifying himself as a “PI” and including the name of his Massachusetts private investigation business, NSI Surveillance & Investigation. Gray responded to the questions and admitted that he had made on social media posts and comments that stated that a Maine State Police lieutenant was “[p]ossibl[y] drunk” during the time of a police incident that resulted in a woman’s death and that the lieutenant had “murdered” the woman. He asserted to the Department that the statements were opinions, not facts, and that when he learned that another officer—not the lieutenant whom he had named—had shot the woman, he provided that information on social media. He also admitted that he had

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stated on social media that the lieutenant had been the subject of multiple internal affairs investigations, though he again asserted that his statement was an expression of opinion.

[¶6] During its examination of Gray's responses, the Department reviewed affidavits from (1) the lieutenant in question, who swore that he had not consumed alcohol on the day of the incident or at any time during his life, and (2) the commander of the Department's Office of Professional Standards (OPS), formerly the Office of Internal Affairs, who reported that only one complaint had been made against the lieutenant—a complaint initiated by Gray that had resulted in an investigation. The Department also considered hundreds of pages of printouts of Gray's posts and comments on social media and other internet platforms.

[¶7] The Department issued a second decision denying Gray's application, finding that Gray had made certain statements on social media with actual malice—knowing that they were false or with reckless disregard of their truth or falsity—including statements about the lieutenant's intoxication; statements that the lieutenant had “murdered,” “executed,” or “killed” the woman who died in the incident; and statements that the lieutenant had been subject to multiple complaints filed with the OPS.

[¶8] The decision also stated, however, that the actual malice standard did not apply because even if Gray had the right to say the things he did, he was not

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entitled to a professional license if he did not meet the competency and character standards for a professional investigator. The Department found that Gray had reported erroneous, uninvestigated conclusions on social media, placing behind those conclusions “the authority of the reputation of [Gray’s] business” and of “the private investigator license of the State of Massachusetts.” The Department also found that Gray “lacks the basic competency and requisite good moral character” to hold a professional investigator’s license and that his “communications have demonstrated a pattern of reckless disregard for the truth.”

[¶9] On October 28, 2019, Gray again appealed to the Superior Court by filing a petition for review of the Department’s denial of his application for a license. *See* 5 M.R.S. § 11001(1); M.R. Civ. P. 80C. The court entered a judgment on June 1, 2020, affirming the Department’s decision, concluding that the Department’s finding of actual malice was supported by the administrative record. Gray timely appealed, and the Department cross-appealed. *See* 5 M.R.S. § 11008 (2020); M.R. App. P. 2B(c)(1).

II. DISCUSSION

[¶10] We review an administrative agency’s decision “directly for errors of law, abuse of discretion, or findings not supported by substantial evidence in the record.” *Palian v. Dep’t of Health & Hum. Servs.*, 2020 ME 131, ¶ 10, 242 A.3d 164 (quotation marks omitted). To

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conduct this review here, we will (A) summarize the standards governing the licensing of professional investigators in Maine and (B) review whether the Department, in denying Gray’s license application, violated the First Amendment.

A. Standards for Licensing Professional Investigators

[¶11] Licensed professional investigators in Maine are authorized to conduct private investigations, including by accepting consideration to obtain information about a crime committed in violation of the law or “[t]he identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person.” 32 M.R.S. § 8103(4-A)(A), (B) (2020). The statutes governing the licensing of professional investigators in Maine establish qualifications for a license, an application process, and standards for denying an application. *See* 32 M.R.S. §§ 8105, 8107, 8113 (2020).

[¶12] To qualify for a professional investigator license, a person must have “demonstrated good moral character.” *Id.* § 8105(4). The Chief of the Maine State Police may refuse to issue a license if an applicant is incompetent, meaning that the applicant “[e]ngaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to the client or the general public” or “[e]ngaged in conduct that evidences a lack of knowledge or an inability to apply

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principles or skills to carry out the practice” for which the person seeks the license. *Id.* § 8113(6). A license may also be denied if the applicant has violated “standards of acceptable professional conduct adopted by rule” by the Chief of the Maine State Police. *Id.* § 8113(11); *see* 32 M.R.S. § 8103(1-B). No standards of conduct have been adopted by rule, however,⁴ meaning that the applicable standards are those provided by statute.

B. First Amendment

[¶13] The construction of the First Amendment presents a question of law that we review de novo. *See Palian*, 2020 ME 131, ¶ 10, 242 A.3d 164; *Burr v. Dep’t of Corr.*, 2020 ME 130, ¶ 20, 240 A.3d 371.

[¶14] The First Amendment provides, “Congress shall make no law . . . abridging the freedom of speech. . . .” U.S. Const. amend. I. By virtue of the Fourteenth Amendment, the prohibition against governmental abridgement of the freedom of speech applies to state governments. *See* U.S. Const. amend. XIV, § 1 (“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . .”); *Jones v. Sec’y of State*, 2020 ME 113, ¶ 19, 238 A.3d 982.

⁴ The only adopted rule pertaining to professional investigators requires a written examination regarding “handgun safety, weapons handling mechanical operations, and use of force.” 16-222 C.M.R. ch. 9, § 9.03 (effective Aug. 1, 1998).

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[¶15] Gray argues that the record does not support a finding of actual malice, but the Department argues in response that the actual malice standard is not applicable. To resolve this dispute, we (1) determine the proper standard for evaluating whether the First Amendment has been violated in these circumstances, and (2) apply that standard in reviewing the Department’s decision on Gray’s application.

1. Standard for Determining a First Amendment Violation

[¶16] We review the constitutionality of the applicable statutes as they were applied and do not treat Gray’s argument as a facial constitutional challenge because Gray does not argue that the challenged statutes “cannot be applied constitutionally on any set of facts.” *Guardianship of Chamberlain*, 2015 ME 76, ¶ 10, 118 A.3d 229.

[¶17] Gray analogizes his situation to that of the teacher in *Pickering v. Board of Education*, whose employment was terminated after he criticized the local board of education in a published letter to the editor of a newspaper. 391 U.S. at 564-65, 88 S. Ct. 1731. Unlike in *Pickering*, however, Gray has not had government employment terminated based on his exercise of the right to speak as a private citizen on a matter of public concern.⁵ *See id.* at 564-65, 573-74, 88 S. Ct. 1731.

⁵ Such a termination of government employment may violate First Amendment rights because teachers cannot “constitutionally

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Rather, he has been subjected to regulations governing the licensing of professional investigators based on his conduct as a member of the profession for which he seeks a license. *Cf. Garcetti v. Ceballos*, 547 U.S. 410, 421, 426, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006) (“We reject . . . the notion that the First Amendment shields from discipline the expressions employees make pursuant to their professional duties.”). The analysis set forth in *Pickering* is, therefore, inapposite.

[¶18] Because of the power of government to regulate conduct, governmental authority “to regulate the professions is not lost whenever the practice of a profession entails speech.” *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, 879 F.3d 101, 109 (4th Cir. 2018) (quotation marks omitted). “States may regulate professional conduct, even though that conduct incidentally involves speech.” *Nat’l Inst. of Fam. & Life Advocs. [NIFLA] v. Becerra*, ___ U.S. ___, 138 S. Ct. 2361, 2372, 201 L. Ed. 2d 835

be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work.” *Pickering*, 391 U.S. at 568, 88 S. Ct. 1731. In such instances, courts must “arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Id.* The Supreme Court therefore held that “absent proof of false statements knowingly or recklessly made by [a teacher], a teacher’s exercise of [the] right to speak on issues of public importance may not furnish the basis for [the teacher’s] dismissal from public employment.” *Id.* at 574, 88 S. Ct. 1731.

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(2018). The State “bears a special responsibility for maintaining standards among members of the licensed professions” and “does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity.” *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 456, 460, 98 S. Ct. 1912, 56 L. Ed. 2d 444 (1978).

[¶19] Occupational licensing requirements are not categorically exempt from First Amendment scrutiny, however, *see Vizaline, L.L.C. v. Tracy*, 949 F.3d 927, 934 (5th Cir. 2020), and the Supreme Court has signaled that professional speech does not fall into a unique category that is exempt from First Amendment protections, *see NIFLA*, 138 S. Ct. at 2373-75. The pertinent standard for determining whether a regulation governing entry into a profession violates the First Amendment has become a subject of some confusion throughout the United States.

[¶20] Following the issuance of *Lowe v. Securities and Exchange Commission* in 1985, many courts cleaved to the standard set forth in Justice White’s concurring opinion in that matter: “Regulations on entry into a profession, as a general matter, are constitutional if they have a rational connection with the applicant’s fitness or capacity to practice the profession.” 472 U.S. 181, 228, 105 S. Ct. 2557, 86 L. Ed. 2d 130 (1985) (White, J., concurring) (quotation marks omitted); *see, e.g., Hines v. Alldredge*, 783 F.3d 197, 201-02 & n.17 (5th Cir. 2015), *abrogation recognized by Vizaline*, 949 F.3d at 933-34; *Nat’l Ass’n for the Advancement of*

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Multijurisdiction Prac. v. Howell, 851 F.3d 12, 16, 19-20 (D.C. Cir. 2017) (applying rational basis review to restrictions on who may appear as counsel before a local federal court); *Nat’l Ass’n for the Advancement of Multijurisdiction Prac. v. Castille*, 799 F.3d 216, 221 (3d Cir. 2015) (“It has long been true that [a] State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, so long as any requirement has a rational connection with the applicant’s fitness or capacity to practice law.” (alteration in original) (quotation marks omitted)).

[¶21] Because, however, the Supreme Court held in 2018 that it has never recognized “professional speech as a unique category that is exempt from ordinary First Amendment principles,” *NIFLA*, 138 S. Ct. at 2375, it is unclear whether the “rational connection” test is appropriately applied even as to standards of qualification to practice a profession, *see Vizaline*, 949 F.3d at 934 (“While we hold the district court erred by categorically exempting occupational-licensing requirements from First Amendment scrutiny, we express no view on what level of scrutiny might be appropriate for applying Mississippi’s licensing requirements to [the plaintiff]’s practice.”).

[¶22] The Supreme Court *has* made clear that if regulations impose *content-based* restrictions on speech, strict scrutiny or intermediate scrutiny may be applied, depending on whether the affected speech was commercial speech. *See NIFLA*, 138 S. Ct. at 2374-75;

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Otto v. City of Boca Raton, 981 F.3d 854, 859-68 (11th Cir. 2020) (applying strict scrutiny to an ordinance prohibiting sexual orientation change therapies because the ordinance imposed content- and viewpoint-based restrictions on speech); *see also Holder v. Humanitarian L. Project*, 561 U.S. 1, 27-28, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010) (stating that although a law may be directed at conduct, the conduct triggering the application of that law may consist of communicating a particular message and therefore may require a court to apply First Amendment principles).⁶

[¶23] The treatment of regulations governing the licensing of professionals that place a merely incidental burden on speech is, however, unclear. Free speech concerns are implicated in such cases because “constitutional violations may arise from the deterrent, or chilling, effect of governmental [efforts] that fall short of a direct prohibition against the exercise of First

⁶ Before *National Institute of Family & Life Advocates [NIFLA] v. Becerra*, ___ U.S. ___, 138 S. Ct. 2361, 2372, 201 L. Ed. 2d 835 (2018), some intermediate level of scrutiny was applied in reviewing content-based standards governing attorney conduct that included “actual malice” language prohibiting a lawyer from making “a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications, integrity, or record of a judge.” *Standing Comm. on Discipline of the U.S. Dist. Ct. v. Yagman*, 55 F.3d 1430, 1437 (9th Cir. 1995) (quotation marks omitted) (applying an objective test of whether the attorney “had a reasonable factual basis for making the statements, considering their nature and the context in which they were made”); *In re Dixon*, 994 N.E.2d 1129, 1132-37 (Ind. 2013) (same).

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Amendment rights.” *Bd. of Cnty. Comm’rs v. Umbehr*, 518 U.S. 668, 674, 116 S. Ct. 2342, 135 L. Ed. 2d 843 (1996) (alteration in original) (quotation marks omitted) (explaining that “unconstitutional conditions” may not be placed on government benefits).⁷ However, it is unclear whether such regulations are subject to the “rational connection” test, *see Lowe*, 472 U.S. at 228, 105 S. Ct. 2557 (White, J., concurring), or must survive intermediate scrutiny, meaning that they “must be narrowly tailored to serve a significant governmental interest,” *Packingham v. North Carolina*, ___ U.S. ___, 137 S. Ct. 1730, 1736, 198 L. Ed. 2d 273 (2017) (quotation marks omitted). The Supreme Court did not decide the question in *NIFLA*, 138 S. Ct. at 2373-75, but a handful of courts have since opined on the issue.

[¶24] The United States Court of Appeals for the Fourth Circuit recently considered a North Carolina ban on the practice of law by corporations—a professional regulation that incidentally affected speech. *Capital Associated Indus. v. Stein*, 922 F.3d 198, 207 (4th Cir. 2019). As that court stated, “Many laws that regulate the conduct of a profession or business place incidental burdens on speech, yet the Supreme Court has treated them differently than restrictions on speech.” *Id.* at 207-08.

⁷ “[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited.” *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

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[¶25] The court held that the practice of law involved both communicative and noncommunicative aspects and that the pertinent statutes did not target “the communicative aspects of practicing law, such as the advice lawyers may give to clients” but instead focused on who may act as a lawyer. *Id.* at 208. “Licensing laws inevitably have some effect on the speech of those who are not (or cannot be) licensed. But that effect is merely incidental to the primary objective of regulating the conduct of the profession.” *Id.*

[¶26] The court observed that, although intermediate scrutiny ordinarily applies to regulations of conduct that incidentally impact speech, “the [Supreme] Court’s cases have not been crystal clear about the appropriate standard of review” given that regulations relating to admission to a profession fall in “an area in which [the Court] ‘has afforded *less* protection for professional speech.’” *Id.* (quoting *NIFLA*, 138 S. Ct. at 2372); *see also AMA v. Stenehjem*, 412 F. Supp. 3d 1134, 1148-49 (D.N.D. 2019) (following *Stein*). The court concluded, however, that intermediate scrutiny should be applied, stating, “We think this a sensible result, as it fits neatly with the broad leeway that states have to regulate professions.” *Stein*, 922 F.3d at 209; *but see Doyle v. Palmer*, 365 F. Supp. 3d 295, 304-05 (E.D.N.Y. 2019) (holding that the requirement of a sponsor’s affidavit for Bar admission “is nothing more than a standard regulation of the legal profession that . . . passes rational basis review”).

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[¶27] Confronting the question of the proper level of scrutiny, another court described the legal ambiguity as follows:

[T]he Court in *NIFLA* explained that a lower level of scrutiny should be applied to two kinds of content-neutral restrictions: (1) laws that require professionals to disclose factual, noncontroversial information in their commercial speech[]; and (2) *regulations of professional conduct that incidentally burden speech*. Although the Court in *NIFLA* did not specifically state what level of review—how much lower than strict scrutiny—applied to regulations of professional conduct that incidentally burden speech, the Court appeared to apply intermediate scrutiny.

McLemore v. Gumucio, No. 3:19-cv-00530, 2020 WL 7129023 at *20, 2020 U.S. Dist. LEXIS 228082 at *59 (M.D. Tenn. Dec. 4, 2020) (emphasis added) (quotation marks omitted) (citation omitted). That court, citing *Stein*, 922 F.3d at 209, assumed for purposes of deciding a motion to dismiss that intermediate scrutiny would apply if the merits were reached. *Id.* at *60-61.

[¶28] In light of *NIFLA* and *Stein*, we similarly conclude that intermediate scrutiny is the proper test to apply when a regulation of conduct that does not explicitly target speech but incidentally burdens it is challenged on First Amendment grounds.⁸ Here, the

⁸ Although we apply intermediate scrutiny based on our reading of *NIFLA*, 138 S. Ct. at 2370-75, applying the less stringent

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licensing standards, requiring good character and competency in investigating matters, do not on their face prohibit or constrain speech. *Cf. NIFLA*, 138 S. Ct. at 2372. The licensing statutes incidentally affect an applicant’s speech, however, because determining whether an applicant meets the requirements of good character and competency may depend—as it does here—upon the applicant’s communications. *See id.*; 33 M.R.S. §§ 8105(4), 8113(6). We therefore apply intermediate scrutiny to review the Department’s application of the licensing statutes to Gray’s application.

2. Application of Intermediate Scrutiny

[¶29] Unlike a determination of actual malice, which “involve[s] legal, as well as factual, elements,” and requires an independent examination of the record, intermediate scrutiny does not involve that level of review, and we will accept the facts found by the Department unless they are unsupported by evidence in the record. *Hernandez v. New York*, 500 U.S. 352, 367-68, 111 S. Ct. 1859, 114 L. Ed. 2d 395 (1991); *see Palian*, 2020 ME 131, ¶ 10, 242 A.3d 164. Thus, we proceed to (a) review the findings of the Department and (b) apply intermediate scrutiny to the licensing standards as applied.

“rational connection” test would yield the same result, *Lowe v. S.E.C.*, 472 U.S. 181, 228, 105 S. Ct. 2557, 86 L. Ed. 2d 130 (1985) (White, J., concurring) (quotation marks omitted).

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a. Review of Findings

[¶30] We review the decision of the Department to determine whether its findings are “supported by substantial evidence in the record.” *Palian*, 2020 ME 131, ¶ 10, 242 A.3d 164 (quotation marks omitted).

[¶31] In its final decision, the Department specifically found that Gray made uninvestigated and false statements, using the social media account of his investigation business, in which he suggested that the lieutenant was intoxicated; stated that the lieutenant had “murdered,” “executed,” or “killed” a woman; and indicated that the lieutenant had been subject to multiple complaints filed with the OPS. Gray admitted, through his responses to the Department’s written questions, that the statements, which were made part of the evidentiary record, were his.

[¶32] Substantial evidence in the record supports the Department’s determination that Gray used a social media account bearing his investigation business’s name to repeatedly publicize uninvestigated and false statements. The evidence also supports the Department’s ultimate finding that Gray’s behavior demonstrated that he lacked the necessary good character and competency to serve as an investigator in Maine. *See* 32 M.R.S. § 8105(4) (requiring the demonstration of “good moral character”); *id.* § 8113(6) (authorizing the denial of a professional investigator’s license if the applicant lacks competency to carry out the duties of an investigator); *id.* § 8103(4-A)(A), (B) (establishing a

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professional investigator's role in investigating the crimes, conduct, reputation, or character of others). The record also supports the Department's finding that Gray's responses to the questions propounded on him demonstrated a lack of capacity to distinguish between fact and opinion—an ability that a professional investigator must possess. *See id.* § 8113(6)(B). The Department therefore did not err in its findings.

b. Intermediate Scrutiny of the Licensing Standards as Applied

[¶33] The question before us is whether the statutory licensing standards, as applied in Gray's case, were “narrowly tailored to serve a significant governmental interest.” *Packingham*, 137 S. Ct. at 1736 (quotation marks omitted); *see NIFLA*, 138 S. Ct. at 2372.

[¶34] The Department denied the license application because, as the record supports, Gray published uninvestigated speculation as fact using his job title and the name of his Massachusetts private investigation business—conduct that demonstrated a lack of capacity to distinguish between fact and opinion, and to investigate and honestly report facts. *See* 32 M.R.S. §§ 8103(4-A)(A), (B), 8105(4), 8113(6); *see also Office of Pro. Regul. v. McElroy*, 175 Vt. 507, 824 A.2d 567, 568-69, 571 (2003). The government has a significant interest in maintaining standards of good character and competency for those who investigate and report on the intimate details of others' lives. *See* 32 M.R.S.

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§ 8103(4-A)(A), (B); *Fla. Bar v. Went for It, Inc.*, 515 U.S. 618, 625, 115 S. Ct. 2371, 132 L. Ed. 2d 541 (1995) (“States have a compelling interest in the practice of professions within their boundaries, and . . . as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions.” (quotation marks omitted)).

[¶35] The Department denied Gray’s application not because of the viewpoint he expressed on social media but because of the false, uninvestigated information that Gray presented as fact using the name of his Massachusetts private investigation business. The Department’s rationale for its decision goes to the heart of professional responsibility concerns and does not chill any speech other than that which would, for a professional investigator, violate standards of conduct in a profession that is focused on the investigation and accurate communication of facts. *See In re R. M. J.*, 455 U.S. 191, 203, 102 S. Ct. 929, 71 L. Ed. 2d 64 (1982) (holding that, when a state regulates in a way that affects speech, it must have “a substantial interest and the interference with speech must be in proportion to the interest served”). The Department’s application of the statutes was, therefore, narrowly tailored to serve the significant governmental interest in maintaining standards for licensing professional investigators, who are responsible for researching and reporting on some of the most consequential details of people’s

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lives by investigating “[t]he identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character” of others. 32 M.R.S. § 8103(4-A)(A), (B); *see Packingham*, 137 S. Ct. at 1736. In short, the Department’s application of the licensing standards to Gray did not violate the First Amendment.

The entry is:

Judgment affirmed.

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2020 WL 4517878 (Me.Super.) (Trial Order)
Superior Court of Maine.
Kennebec County

Joshua GRAY, Petitioner,

v.

STATE of Maine, Department of Public Safety,
Respondent.

No. AP-19-49.

May 22, 2020.

CIVIL ACTION

Order on Petitioner's 80C Appeal

Before the Court is Petitioner Joshua Gray's 80C petition for review of the Department of Public Safety's (the "Department's") denial of his application for a Professional Investigator's License. For the following reasons, the petition is denied.

Background

Joshua Gray is licensed as a professional investigator in Tennessee, Vermont, Massachusetts and New Hampshire. On January 26, 2018, Mr. Gray applied for a professional investigator's license in Maine. On August 31, 2018, the Chief of the Maine State Police (the "Chief") denied Mr. Gray's Application. On October 11, 2018, Mr. Gray filed an 80C petition for review of the denial of his application. On July 18, 2019, this court remanded Mr. Gray's application to the Department for the purposes of allowing the Commissioner

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to determine whether certain allegedly false statements that Mr. Gray published on social media were published with “actual malice.” *Gray v State of Maine, Dep’t of Public Safety*, KENSC-AP-18-65, (Me. Super. Ct., Kennebec Cty., July 17, 2019) After conducting a further investigation, the Chief issued a written decision on October 2, 2019 in which he determined that Mr. Gray had made certain false statements with actual malice and that these statements demonstrated that Mr. Gray was not fit to obtain a professional investigator license. This appeal followed.

Standard of Review

The Court reviews an administrative agency’s decision for an abuse of discretion, error of law, or findings not supported by the evidence. *Uliano v. Bd. of Envtl. Prot.*, 2009 ME 89, ¶ 12, 977 A.2d 400 (citation omitted). Questions of law are subject to de novo review. *Id.* (citing *York Hosp. v. Dep’t of Health & Human Servs.*, 2008 ME 165, ¶ 32, 959 A.2d 67). The reviewing court will affirm findings of fact if they are supported by “substantial evidence in the record”, even if the record contains inconsistent evidence or evidence contrary to the result reached by the agency. *Passadumkeag Mountain Friends v. Bd. of Environmental Prot.*, 2014 ME 116, ¶¶ 12, 14, 102 A.3d 1181. The party seeking to overturn an administrative decision must “demonstrate that no competent evidence supports the [agency’s] decision and that the record compels a contrary result.” *Richardson v. Bd. of Trs. of the Me. State Ret. Sys.*, 1998 ME 171, ¶ 4, 714 A.2d 154.

*Appendix B***Discussion**

In order to obtain a professional investigator license, an applicant must demonstrate that he possesses good moral character. 32 M.R.S. § 8105(4). Further, the Chief may refuse to issue a license if the applicant has:

- A. Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or the general public; or
- B. Engaged in conduct that evidences a lack of knowledge or an inability to apply principles or skills to carry out the practice for which the person is licensed.

Id. § 8113(6).

In this case, the record contains competent evidence to support a finding that Mr. Gray engaged in conduct evidencing a lack of fitness to discharge duties owed to the general public as well as the inability to apply principles necessary to act as a professional investigator. For instance, there is record evidence that Mr. Gray published statements on social media that a Lieutenant in the Maine State Police was “most likely drunk” when the Lieutenant was involved in an incident which resulted in the death of two individuals. (R. 157-58, 162.) There is also evidence that Mr. Gray made these statements based solely on the fact that the Lieutenant was off-duty at the time of the incident and that the incident occurred close to the Lieutenant’s

Appendix B

home. (R. 383.) Further, there is evidence that Mr. Gray has a lengthy history of engaging in online diatribes against the same Lieutenant. (*See e.g.* R. 125, 130, 133, 198-200, 206, 239-41, 245-47; *see also* R. 377.) Finally, Mr. Gray admits that his statements were speculative and that he never had any facts about the Lieutenant's alcohol consumption. (Pet'r's Br. at 6.)

Given that the context of this case is a professional licensing matter, this evidence supports a finding that Mr. Gray's publication of statements to which a defamatory meaning could be attributed, *see Haworth v. Feigson*, 623 A.2d 150, 156-57 (Me. 1993) (holding that it was not error for the factfinder to attribute a defamatory meaning to the appellation "drunk"), based on nothing more than speculation constitutes reckless disregard for the truth which is sufficient to deny his application for a professional investigator license. *See* 32 M.R.S. §§ 8105(4), 8113(6).

The entry is

The Decision of the Chief of the Maine State Police to Deny Joshua Gray's Application for a State of Maine Professional Investigator License is AFFIRMED

Date: 5/22/2020

<<signature>>

Justice, Superior Court

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[SEAL]

**STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE**

JANET T. MILLS
GOVERNOR

COL JOHN E. COTE
CHIEF

MICHAEL J. SAUSCHUCK
COMMISSIONER

LTC WILLIAM S. HARWOOD
DEPUTY CHIEF

2 October 2019

Mr. Joshua A. Gray
c/o Mr. Roger L. Hurley, Esq.
48 Washington Street
Camden, ME 04843

**RE: *Joshua Gray v. State of Maine, Department
of Public Safety (Kennebec County
Superior Court – Augusta Dkt. No. AP-18-65)***

Dear Mr. Gray:

I have reviewed your responses to the 39 questions that were sent to your attorney to assist with the determination as to whether, per the presiding Maine Superior Court's 18 July 2019 Order, your statements on your NSI Investigative & Surveillance business' Facebook page "were made with actual malice as defined by Maine law." "Order on Petitioner's Appeal" at 7, *Gray v. State of Maine, Department of Public Safety*, Maine Superior Court Dkt. No. AP-18-65 (07/18/2019).

Even if the pending administrative licensing matter were a defamation action – which it is not – and the

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“actual malice” legal standard were the correct standard to apply, the record as of the date of this letter contains clear evidence that you made at least some of your statements on your business’ Facebook page with actual malice – i.e., “‘with knowledge that [they were] false or with reckless disregard of whether [they were] false or not.’” *Plante v. Long*, 2017 ME 189, ¶ 10 (2017) (quoting *Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 659 (quoting *Times v. Sullivan*, 376 U.S. 254, 279-280 (1964))).

The record in this matter thus evidences the lack of competency, analytical reasoning skills, and good moral character needed to qualify for a Professional Investigator license issued by the State of Maine.

The record developed to date contains clear evidence that at least some of your statements on your business’ Facebook page were made with actual malice – i.e., “‘with knowledge that [they were] false or with reckless disregard of whether [they were] false or not.’” *Id.* Three of the most apparent examples are (1) your statements implying that LT Scott W. Ireland was not only drinking, but was “possibl[y] drunk” or “most likely drunk” at the time of the incident that resulted in the death of the late Ms. Amber Fagre; (2) your statements that LT Ireland “murdered,” “executed,” or “killed” the late Ms. Fagre; and (3) your statements that LT Ireland has a history of “complaints” filed with the Maine State Police Office of Internal Affairs (now

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called the Office of Professional Standards (“OPS”)) and of Internal Affairs “investigations.”

With respect to your statements that LT Ireland was “possibl[y] drunk” or “most likely drunk” – as well as your statement that you “suspect[ed LT Ireland] was drinking” – at the time of the incident that resulted in the death of the late Ms. Amber Fagre:

In your responses to the 39 questions that you submitted, you repeatedly asserted that you based those various statements on the following:

1. That LT Ireland “was Off Duty” [sic]; and
2. That the incident “happened close to [LT Ireland’s] home/personal residence.”

According to your responses to the questions, those were the two factors that led you to speculate on your business’ publicly-accessible Facebook page that LT Ireland was “possibl[y] drunk” or “most likely drunk” at the time of the incident that resulted in the death of the late Ms. Fagre.

LT Ireland could have been engaged in countless activities while he was at home and off duty. Based on the record now before me, there is no indication that he was drinking alcoholic beverages. The record reflects that LT Ireland does not consume – and never has consumed – alcoholic beverages. See “Affidavit of LT Scott W. Ireland,” *Joshua Gray v. State of Maine, Department of Public Safety*, (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65).

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You stated in many of your responses to the questions about such statements that they were not written with “malicious intent,” i.e., with mean-spiritedness. The record demonstrates, however, that for a sustained period of time – years now – you repeatedly have expressed animus toward LT Ireland, calling him – among other things – a “dirty cop,” “corrupt,” and “evil.” It is not credible that your statements about LT Ireland being “possibl[y]” or “most likely” “drunk” at the time of the incident were made without “malicious intent” (i.e., mean-spiritedness). The statements instead reflect a continuing effort to portray LT Ireland publicly in a negative light through defamatory falsehoods.

With respect to your statements that LT Ireland “murdered,” “executed,” or “killed” the late Ms. Fagre:

Despite the fact that at least two officers were involved in the incident that resulted in Ms. Fagre’s death, you explained in responses to the 39 questions that you “initially assumed” that LT Ireland fired the shot that struck Ms. Fagre because “the shooting happened near Lt Irelands [sic] residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several articles.” (My underlined italicization added.)

Only almost a full year after the incident did you correct your misstatements to inform those visiting your business’ website that LT Ireland did not fire the

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round that struck Ms. Fagre. During the intervening time, individuals from anywhere in the world who visited your business' website might have read such statements and believed (and still might believe) incorrectly that LT Ireland fired the round that struck Ms. Fagre. And you only corrected those statements because the Maine Office of the Attorney General issued its report about the incident that identified another officer – and not LT Ireland – as having shot the round that struck Ms. Fagre.

As with the comments about LT Ireland being “possibl[y] drunk” or “likely drunk,” you qualified the responses to questions about these statements by saying that they were not made with “malicious intent,” i.e., with mean-spiritedness. When you described LT Ireland as a “killer,” and stated that he “Killed” [sic], “murdered,” and “executed Amber Fagre in the back of the head in cold blood,” your statements were not only reckless because they disregarded fact, but also reflect a sustained animus toward LT Ireland and a continued effort to portray him publicly in a negative light through defamatory falsehoods.

With respect to your statements that LT Ireland has a history of “complaints” filed with the OPS and has a history of Internal Affairs/OPS “investigations”:

The record before me now shows that, based on the records available to the OPS, LT Ireland has been the subject of only one (1) complaint and one (1) OPS

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investigation during his over 25-year career with the Maine State Police. That sole investigation resulted from your complaint. See “Affidavit of LT Anna H. Love,” *Joshua Gray v. State of Maine, Department of Public Safety*, (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65).

You nonetheless have recklessly perpetuated a sustained narrative – based on alleged stories told to you by unnamed individuals – that LT Ireland’s career has been plagued with complaints and OPS/Internal Affairs investigations. You continued to perpetuate that myth in your responses to the 39 questions, further compounding your recklessness. (On a related note, you had also stated on your business’ Facebook page that LT Ireland has a history of “suspensions” (my underlined italicization). In a response to one of the 39 questions, you explained that the added “s” to “suspensions” was a “typo.” Given the record before me, I do not find that explanation credible.)

As with the prior statements I discussed above, you again qualified your responses about these statements by saying they were not made with “malicious intent,” i.e., with mean-spiritedness. Again, your declaration that you had no “malicious intent” in leading individuals who visited your website to think that LT Ireland has been or is – as you continually have tried to make him seem – a “corrupt,” “dirty cop,” is not credible. The apparent purpose in making the statements about complaints and investigations was to continue portray LT Ireland publicly in a negative light through

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defamatory falsehoods. Indeed, the many misstatements also appear to violate the standards of leading industry trade groups – specifically, the Codes of Ethics of both the National Association of Legal Investigators (“NALI”) and the Maine Licensed Private Investigators Association (“MLPIA”).

The discussion here so far has been premised on the presumption that the “actual malice” standard that the Maine Superior Court presiding over this matter applied is the correct standard to apply. If that were the correct standard, the record contains clear evidence that the standard has been met.

Respectfully, however, I do not think the “actual malice” standard is applicable in the pending matter. This is not a defamation case. Rather, the pending matter is an administrative licensing case in which the licensing authority must determine whether an applicant has the competency and character to qualify for a license to be, and be entrusted to work as, a Professional Investigator in the State of Maine. *See* 32 M.R.S.A. §§ 8105(4), 8113(6).

For the reasons I have discussed thus far, I find that you do not. Based on your responses to the 39 questions that were forwarded to you, I have concluded that you seem unable to discern a factual statement from a statement of opinion, and that you lack the basic analytical skills to be a Professional Investigator licensed by the State of Maine.

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You and Mr. Hurley have sought to frame the pending administrative licensing matter as a First Amendment case. To be sure: I believe you have every right to express yourself however you choose, within the law. But, in making my decision of whether to entrust you with a Professional Investigator license, I have the responsibility to assess your competency and character to be a Professional Investigator, including by weighing the integrity of what you express to the world on your NSI Investigation and Surveillance business' Facebook website.

A Professional Investigator has a duty to establish and report facts; indeed, that is the fundamental responsibility of such an investigator. Based on the record before me, I have concluded that you are not able to do so. The record clearly shows that you closely looked into the February 2017 shooting incident (you even admitted doing so in your "spare time" in one of your 39 responses) and reported your conclusions on your business' Facebook page – a Facebook page that has not only the authority of the reputation of your business behind it, but the authority of at least the private investigator license of the State of Massachusetts behind it as well. Yet you eventually had to correct a number of those conclusions when the actual facts came to light or were brought to your attention (including brought to your attention by the Assistant Attorney General representing my agency in this matter). The fact that you belatedly corrected your misstatements of fact does not mitigate the fact of your

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poor judgment in making the assertions in the first place.

As a matter of consumer protection, I cannot issue a State of Maine Professional Investigator license to someone who lacks the basic competency and requisite good moral character to hold such a license. Your communications have demonstrated a pattern of reckless disregard for the truth.

Accordingly, I am **denying** your application for a State of Maine Professional Investigator license.

/s/ John E. Cote

COL JOHN E. COTE
CHIEF, MAINE STATE POLICE

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STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-18-65

JOSHUA GRAY,
Petitioner
v.
STATE OF MAINE,
DEPARTMENT OF
PUBLIC SAFETY,
Respondent

AFFIDAVIT OF
LT SCOTT W. IRELAND

LT Scott W. Ireland states as follows upon his personal knowledge:

1. I am the Commander of the Computer Crimes Unit, which is located within the Bureau of State Police of the Maine Department of Public Safety.
2. I have worked for the Maine State Police for more than twenty-five (25) years,
3. I did not consume alcoholic beverages of any kind (including, but not limited to, beer, liquor, or wine) on 10 February 2017,
4. I did not consume alcoholic beverages of any kind (including, but not limited to, beer, liquor, or wine) on 9 February 2017.

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5. I did not consume alcoholic beverages of any kind (including, but not limited to, beer, liquor, or wine) during 2017.

6. I have not consumed alcoholic beverages of any kind (including, but not limited to, beer, liquor, or wine) at any point during my career with the Maine State Police, up to and including the date given below.

7. I have never consumed an alcoholic beverage of any kind (including, but not limited to, beer, liquor, or wine) during my life.

2 October 2019 /s/ Scott W. Ireland
LT Scott W. Ireland
Maine State Police

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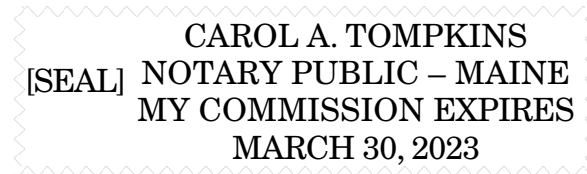
**STATE OF MAINE
KENNEBEC COUNTY**

LT Scott W. Ireland personally appeared before me to-day and made oath that the statements made in his Affidavit are true based upon his personal knowledge.

Dated: 2 October 2019

/s/ Carol A. Tompkins

Notary Public/Attorney-At-Law



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STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-18-65

JOSHUA GRAY,)
)
 Petitioner)
)
 v.)
)
STATE OF MAINE,)
DEPARTMENT OF)
PUBLIC SAFETY,)
)
 Respondent)

AFFIDAVIT OF
LT ANNA H. LOVE

LT Anna H. Love states as follows upon her personal knowledge:

1. I am the Commander of the Office of Professional Standards (formerly called the Office of Internal Affairs), which is located within the Bureau of State Police of the Maine Department of Public Safety.

2. That, having reviewed records of the Office of Professional Standards (“OPS”) available to me, I am reporting:

A. That a total of one (1) investigation of LT Scott W. Ireland has been initiated and conducted by OPS as a result of a personnel complaint – made by a Mr. Joshua Gray against LT Ireland – during LT Ireland’s career with the Maine State Police; and

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- B. That a total of one (1) personnel complaint against LT Scott W. Ireland has been received by OPS during LT Ireland's career with the Maine State Police – namely, the aforementioned personnel complaint made by a Mr. Joshua Gray.

2 October 2019 /s/ Lt. Anna H. Love
LT Anna H. Love
Maine State Police

**STATE OF MAINE
KENNEBEC COUNTY**

LT Anna H. Love personally appeared before me today and made oath that the statements made in her Affidavit are true based upon her personal knowledge.

Dated: 2 October 2019

/s/ Carol A. Tompkins
Notary Public/Attorney-At-Law

CAROL A. TOMPKINS
[SEAL] NOTARY PUBLIC – MAINE
MY COMMISSION EXPIRES
MARCH 30, 2023

*Appendix C***QUESTION 1**

On page 58 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“Medical Examiners report states clearly that Kadhar was shot in the back. Specifically back of neck where back and neck come together.”

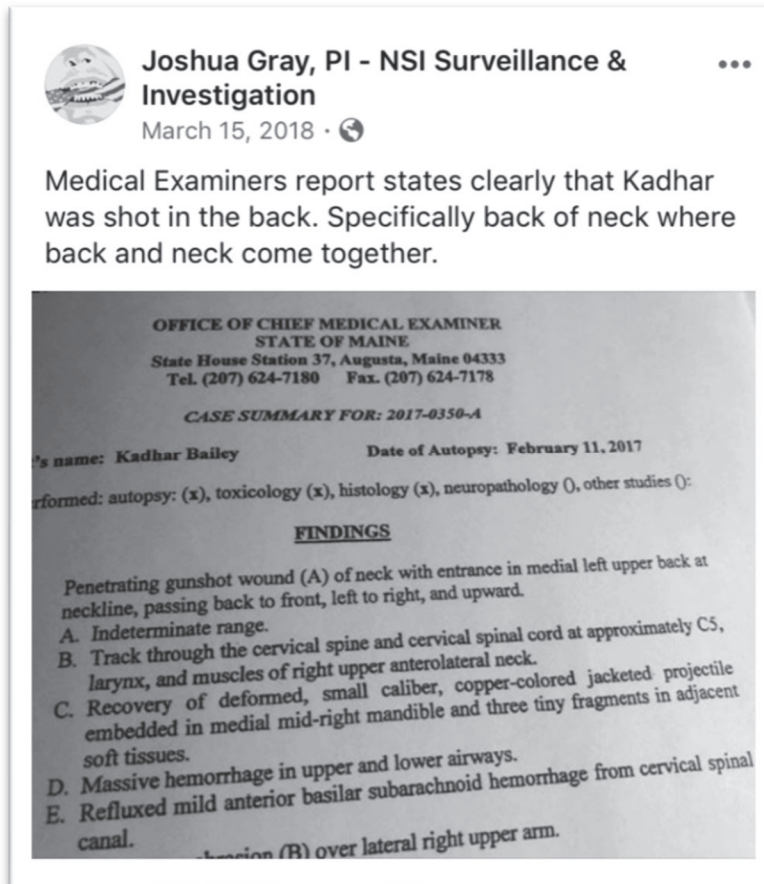
At the time you made the assertion that the “Medical Examiners report states clearly that Kadhar was shot in the back. Specifically back of neck where back and neck come together,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that the “Medical Examiners report states clearly that Kadhar was shot in the back. Specifically back of neck where back and neck come together”? Please also briefly explain how those facts became known to you.

ANSWER:

Here is a picture of this actual post:

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This is my opinion and not a 'fact' as suggested in the question.

This post was written on 3/15/18 after I received a picture of a portion of the report. The social media post was based solely on the attached picture of part of the medical examiner's report. The picture was part of the post and was intended for the reader to look at both

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the social media post and the text on the picture that goes into specificity about the shooting. Specifically the following

“Penetrating gunshot wound (A) of neck with entrance in medial left upper back at neckline, passing back to front, left to right, and upward.”

The photo, that was part of the original post, contains addition text about the shooting. The picture also has ‘Kadhar Bailey’s’ name in the upper left side of the picture.

I believed at the time, and now, this social media post to be protected first amendment speech. It was certainly not written with malicious intent.

QUESTION 2

On page 59 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

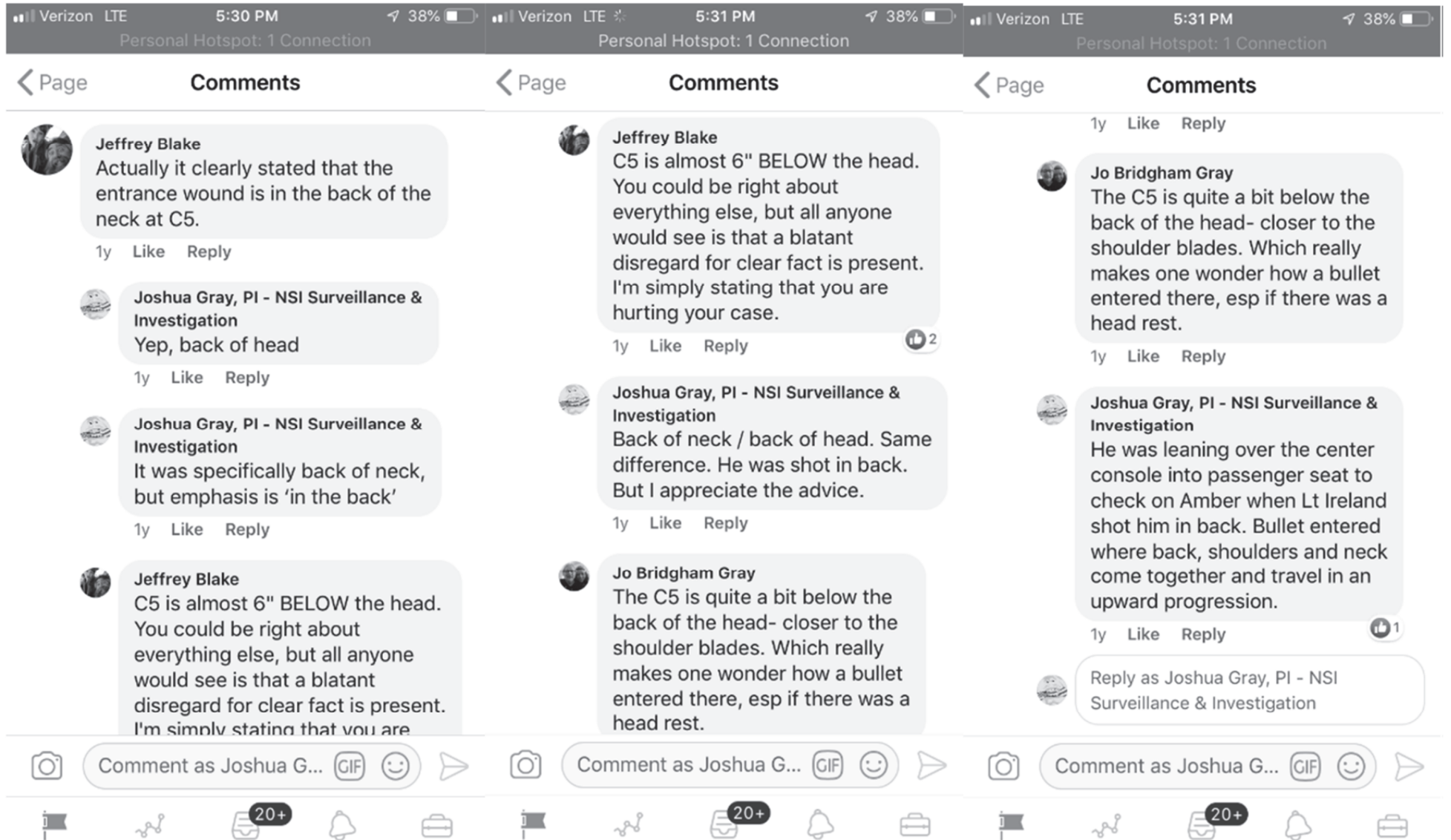
“He was leaning over the center console into passenger seat to check on Amber when Lt Ireland shot him in the back. Bullet entered where back, shoulders and neck come together and travel in an upward progression.”

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At the time you made the assertion that “[h]e was leaning over the center console into passenger seat to check on Amber when Lt Ireland shot him in the back. Bullet entered where back, shoulders and neck come together and travel in an upward progression,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that “[h]e was leaning over the center console into passenger seat to check on Amber when Lt Ireland shot him in the back. Bullet entered where back, shoulders and neck come together and travel in an upward progression”? Please also briefly explain how those facts became known to you.

ANSWER:

This was not a social media post. This was a response to a comment made on the social media post referred to in question one (1) above. The screen shots of the actual comments are as follows:



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This is my opinion and not a ‘fact’ as suggested in the question. The comments were made as part of a conversation with Jeffrey Blake and Jo Bridgham Gray about a social media post. When you put the comment in context with the conversation, you can see that I was specifically responding to information written by the commenters and expressing my opinion based on the context of the conversation. In addition, I was expressing an opinion that was informed by the picture of the medical examiners report. My opinion was based on the information available to me at the time.

I believed at the time, and now, this comment to be protected first amendment speech. It was not written with malicious intent. Most reasonable people assume that comments made on social media are the opinion of the person who writes the comment.

QUESTION 3

On page 63 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page in reference to a photo:

“Bottom is when a Possible [sic] drunk, off duty and corrupt Lt Scott Ireland of Maine State Police murdered Amber Fagre who was the passenger in the vehicle on the bottom and was not a threat to him.”

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At the time you made the assertion that LT Scott Ireland was “[p]ossible [sic] drunk,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that LT Scott Ireland was “[p]ossible [sic] drunk”? Please also briefly explain how those facts became known to you

ANSWER:

Here is the actual Facebook Post:

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Joshua Gray, P.I. - Not Surveillance & Investigation
November 15, 2017 · 🌐


Look at the difference in windshields. Top is recent police shooting in California. Bottom is when a Possible drunk, off duty and corrupt Lt Scott Ireland of Maine State Police murdered Amber Fagre who was the passenger in the vehicle on the bottom and was not a threat to him.

Verizon LTE 10:32 AM 10% 🔋

< Notes 📎 🗑️ 📁 ✍️



What a vehicle look like when police shoot and kill a threatening driver.



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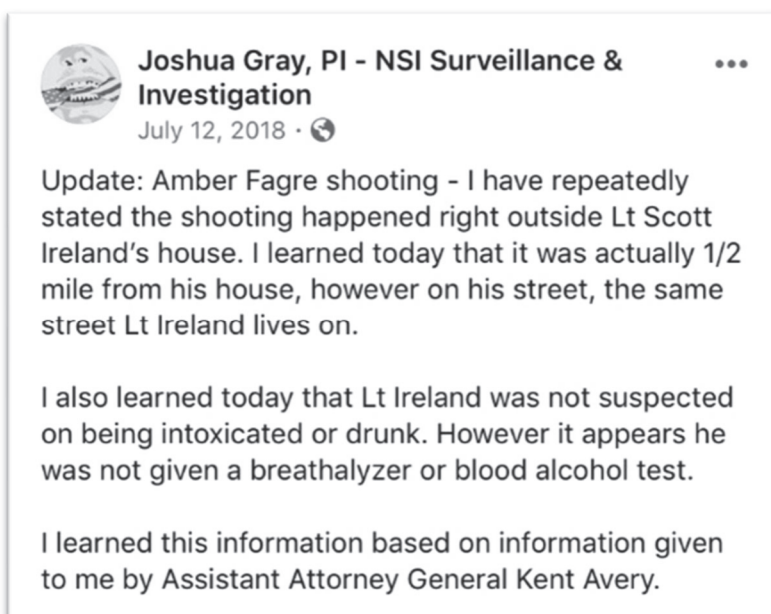
This is my opinion and not a 'fact' as suggested in the question.

I expressed my opinion that Lt Ireland was 'Possible drunk'. This opinion was based on information that Lt

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Ireland was Off Duty at the time of the shooting and it happened close to his home / personal residence. When I learned the State Police and AG office did not suspect him of being drunk, I immediately posted the following on social media: (see right & bottom pictures)



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STATEMENT	SOURCE//FINDING
“Look at the difference in windshields. Top is recent police shooting in California. Bottom is when a Possible drunk, off duty and corrupt Lt Scott Ireland of Maine State Police murdered Amber Fagre who was the passenger in the vehicle on the bottom and was not a threat to him.”	DIR. MacMaster; Det. Gioia: Gray is making a false comparison from a shooting in California to the Vassalboro shooting. In addition, Det. Gioia met with Lt. Ireland almost immediately upon his arrival to the scene and detected nothing that would indicate any alcohol use. Also, as stated earlier, Lt. Ireland did not shoot and kill Fagre.
“What a vehicle looks like when a possibly drunk Lt Scott Ireland murders a passenger.”	DIR. MacMaster; Det. Gioia: Det. Gioia met with and interviewed Lt. Ireland. He detected nothing that would indicate any alcohol use.

While the State did not think he was drunk based on ‘detecting nothing that would indicate alcohol use’, it seems that no scientific tests were conducted to confirm that. Scientific test of all police involved in this shooting would have eliminated this “possible” opinion.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

*Appendix C***QUESTION 4**

On page 63 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page in reference to a photo:

“Bottom is when a Possible [sic] drunk, off duty and corrupt Lt Scott Ireland of Maine State Police murdered Amber Fagre who was the passenger in the vehicle on the bottom and was not a threat to him.”

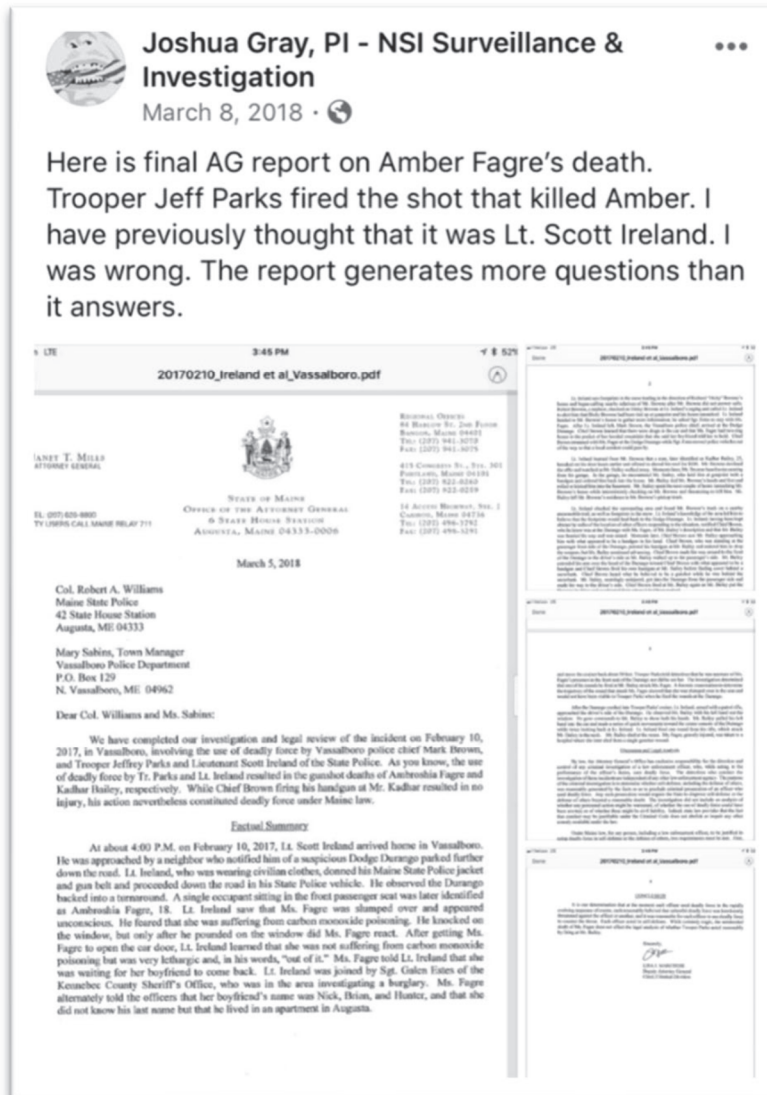
At the time you made the assertion that LT Scott Ireland “murdered Amber Fagre,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 15 November 2017), on what facts known to you were you basing the assertion that LT Scott Ireland “murdered Amber Fagre”? Please also briefly explain how those facts became known to you.

ANSWER:

I did initially think that Lt Ireland Shot Amber Fagre. When I learned that Trooper Parks actually shot her, I immediately updated that information on social media with the following post. (see picture to right)

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I initially assumed Lt Ireland fired the shot that killed Amber Fagre based on the information I had available to me at the time. Notably the shooting happened near

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Lt Irelands personal residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles.

I believed at the time, and now, this social media post to be protected first amendment speech.

QUESTION 5

On page 72 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“[LT Scott Ireland’s] crime spree will continue until he is held accountable.”

At the time you made the assertion that LT Scott Ireland’s “crime spree will continue,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 24 April 2017), on what facts known to you were you basing the assertion that LT Scott Ireland’s “crime spree will continue”? Please also briefly explain how those facts became known to you.

*Appendix C***ANSWER:**

Here is the original post: (see picture to right)



Joshua Gray, PI - NSI Surveillance & Investigation



April 24, 2017 · 🌐

Most insurance fraud cases start with a legitimate claim. The claimant just gets comfortable with collecting benefits and it turns into fraud. Likewise, most dirty cops start out with the best intentions, they get frustrated with all the politics and inefficient court system and start taking the law into their own hands. This is what happened to Lt Scott Ireland and Det David Pelletier at Maine State Police. They crossed over to the dark side years ago and now should be considered armed and dangerous. Lt. Ireland has intimidated suspects, retaliated against people that won in court and murdered Amber Fagre. His crime spree will continue until he is held accountable in the court system. He must be charged and given a fair trial. This is more than his victims got, but is the only way.

This is my opinion and not a 'fact' as suggested in the question.

As you can see, this quote is part of a much longer post that is not mentioned in the question. Cutting up the actual social media post and asking a question based on partial information seems disingenuous at best. The longer post answers your question.

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I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 6

On page 73 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page in reference to a photo:

“The dead end, narrow street that Amber Fagre was murdered on. This is the same street her killer, Lt Scott Ireland, lives on.”

At the time you made the assertion that LT Scott Ireland was the “killer” of the late Ms. Fagre, what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 18 April 2017), on what facts known to you were you basing the assertion that LT Scott Ireland was the “killer” of the late Ms. Amber Fagre? Please also briefly explain how those facts became known to you.

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ANSWER:

Here is the actual post: (see picture to right)



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This is my opinion and not a ‘fact’ as suggested in the question.

I initially assumed Lt Ireland shot her based on the information I had available to me at the time. Notably the shooting happened near Lt Irelands personal residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles. When I learned that Lt Ireland did not shoot Amber Fagre, I posted the following correction on 3/8/18 “ . . . Trooper Jeff Parks fired the shot that killed Amber. I have previously thought that it was Lt. Scott Ireland. I was wrong . . . ”

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 7

On page 73 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page in reference to a photo:

“The dead end, narrow street that Amber Fagre was murdered on. This is the same street her killer, Lt Scott Ireland, lives on.”

At the time you made the assertion that “[t]his is the same street . . . Lt Scott Ireland[] lives on,” what was

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the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 18 April 2017), on what facts known to you were you basing the assertion that “[t]his is the same street . . . Lt Scott Ireland[] lives on”? Please also briefly explain how those facts became known to you.

ANSWER:

This is the same social media post from question 6. This is my opinion and not a ‘fact’ as suggested in the question.

I believe that I learned Lt Ireland lived on the same street as the shooting using public information that is readily available to anyone via online search engines.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 8

On page 76 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page in reference to a photo:

“Pictured is a very dirty & evil cop name Lt. Scott Ireland. His latest crime was the killing of Amber Fagre.”

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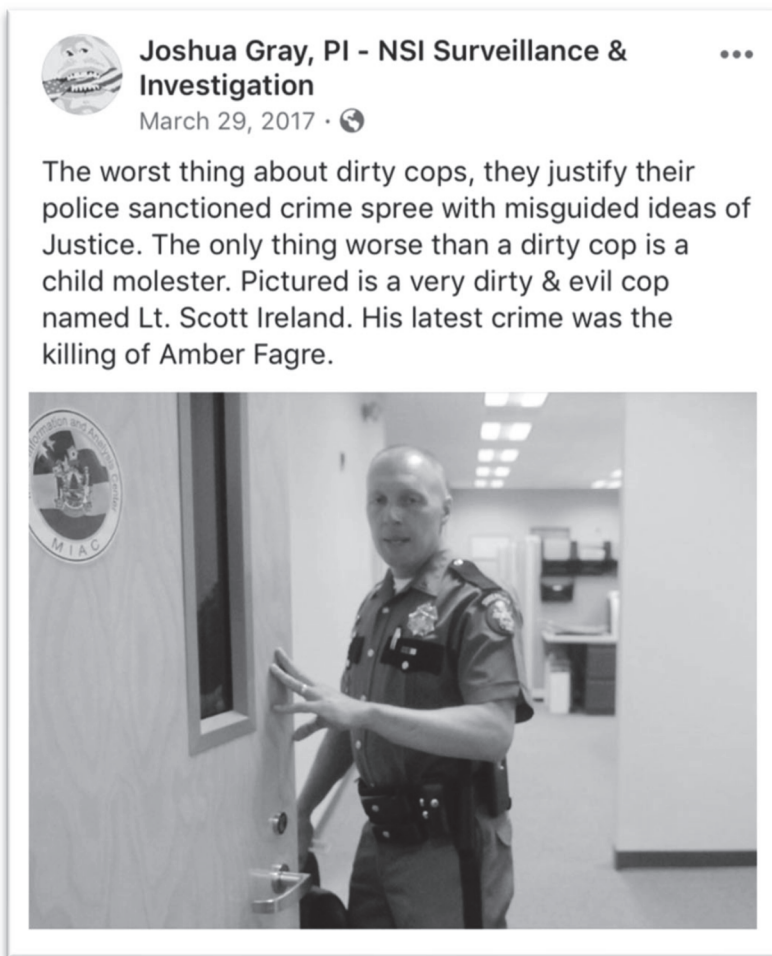
At the time you made the assertion that “the killing of Amber Fagre” was LT Scott Ireland’s “latest crime,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 29 March 2017), on what facts known to you were you basing the assertion that “the killing of Amber Fagre” was LT Scott Ireland’s “latest crime”? Please also briefly explain how those facts became known to you.

ANSWER:

Here is the actual Post:

60a

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This is my opinion and not a 'fact' as suggested in the question.

I initially assumed Lt Ireland shot her based on the information I had available to me at the time. . Notably the shooting happened near Lt Irelands personal residence, and he was the ranking officer on scene, prior

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complaints about Lt Ireland and he was named as a shooter in several newspaper articles. When I learned that Lt Ireland did not shoot Amber Fagre, I posted the following correction on 3/8/18 “ . . . Trooper Jeff Parks fired the shot that killed Amber. I have previously thought that it was Lt. Scott Ireland. I was wrong . . . ”

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 9

On page 78 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“I am now receiving lawsuit threats for warning people about Dirty State Trooper Lt Scott Ireland who has been named the primary shooter in the death of Amber Fagre.”

At the time you made the assertion that LT Scott Ireland was “named the primary shooter in the death of Amber Fagre,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 28 February 2017), on what facts known to you were you basing the assertion that LT Scott Ireland was “named the primary shooter in

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the death of Amber Fagre”? Please also briefly explain how those facts became known to you.

ANSWER:

Here is the actual Post:



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This is my opinion and not a ‘fact’ as suggested in the question.

I initially assumed Lt Ireland shot her based on the information I had available to me at the time. . Notably the shooting happened near Lt Irelands personal residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles. When I learned that Lt Ireland did not shoot Amber Fagre, I posted the following correction on 3/8/18 “ . . . Trooper Jeff Parks fired the shot that killed Amber. I have previously thought that it was Lt. Scott Ireland. I was wrong . . . ”

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 10

On page 84 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“Lt. Scott Ireland has been on a police sanctioned crime spree for the past two decades.”

At the time you made the assertion that LT Scott Ireland “has been on a police sanctioned crime spree for the past two decades,” what was the factual basis of the

64a

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assertion? In other words, at the time you made that assertion (namely, on or about 17 February 2017), on what facts known to you were you basing the assertion that LT Scott Ireland “has been on a police sanctioned crime spree for the past two decades”? Please also briefly explain how those facts became known to you.

ANSWER

Here is the Facebook post



This opinion is based on prior complaints filed against Lt Ireland with the State Police and postings on social media by people complaining about Lt Ireland using his position to intimidate people. Including several YouTube videos.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

*Appendix C***QUESTION 11**

On page 85 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“One of the officers involved is a dirty cop who has a history of internal affairs and civilian complaints. He is Lt Scott Ireland.”

At the time you made the assertion that LT Scott Ireland “has a history of internal affairs and civilian complaints,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that LT Scott Ireland “has a history of internal affairs and civilian complaints”? Please also briefly explain how those facts became known to you.

ANSWER:

Here is the actual post:

66a

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Joshua Gray, PI - NSI Surveillance & Investigation

...

February 17, 2017 · 🌐

Update on Death of Ambrosia Fagre:

I can tell you that the police story is full of holes and they are going to cover up the truth. I want to make sure that does not happen, but it will be hard. It appears that Miss Fagre was not involved in any of the crimes that day and was possibly just getting a ride from a stranger on a cold winter day. One of the officers involved is a dirty cop who has a history of internal affairs and civilian complaints. He is Lt Scott Ireland. He also lives on the road the shooting happened and was most likely not on duty and possibly drinking. Lt. Ireland has a history of violating peoples constitutional and civil rights by subverting due process and making himself judge, jury and executioner. He was possibly good friends with the man who was robbed earlier in the day and his emotions were running high. He did not want his friends burglar to get off on a technicality and so he took the law into his own hands and committed First Degree Murder of Ambrosia Fagre and Kadhar Bailey.

I am confident that is what happened, the problem is that Lt. Ireland is protected at all levels. He always manages to get cleared by Internal Affairs Lt. Anna Love. He is friends with Attorney General Investigator Brian MacMaster. The only chance of Justice, is for the FBI to take over the investigation, however they are unlikely to do this without significant pressure. I tried to warn people about this dirty cop for years, nobody listened. I spent over \$15,000 of my own money trying to prevent this from happening by researching and writing articles and posting on blogs. But the Maine State Police, Maine Attorney General and Maine Governor Paul LePage would not listen.

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This is my opinion and not a ‘fact’ as suggested in the question.

You can see that a significant portion of this social media post is not included in the question.

I have made an internal affairs complaint about Lt Ireland. I have heard of others that made complaints about Lt Ireland. There is at least one YouTube video of a Maine citizen making a complaint against Lt Ireland. I informed Lt Anna Love during my internal affairs complaint there were others who shared my concerns. I sincerely believed then, and now, that Lt Ireland has a history of internal affairs complaints. I never said the complaints were sustained or not sustained. In fact I wrote in this post “He always manages to get cleared by internal affairs . . .”

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 12

On page 85 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page in reference to a photo:

“Here is a picture of Ambroshia Fagre, 18 the young girl Lt. Scott Ireland Killed outside his house. . . .”

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At the time you made the assertion that LT Scott Ireland “Killed” the late Ms. Amber Fagre, what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 16 February 2017), on what facts known to you were you basing the assertion that LT Scott Ireland “Killed” the late Ms. Amber Fagre? Please also briefly explain how those facts became known to you.

ANSWER:

Here is the actual social media post:

69a

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This is my opinion and not a 'fact' as suggested in the question.

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I initially assumed Lt Ireland shot her based on the information I had available to me at the time. Notably the shooting happened near Lt Irelands personal residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles. When I learned that Lt Ireland did not shoot Amber Fagre, I posted the following correction on 3/8/18 “ . . . Trooper Jeff Parks fired the shot that killed Amber. I have previously thought that it was Lt. Scott Ireland. I was wrong . . . ”

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 13

On page 147 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“I have been in contact with some family members and know for a fact they want justice. They sent me the report.”

At the time you made the assertion that you “have been in contact with some family members and know for a fact they want justice. They sent me the report,” what was the factual basis of the assertion? In other

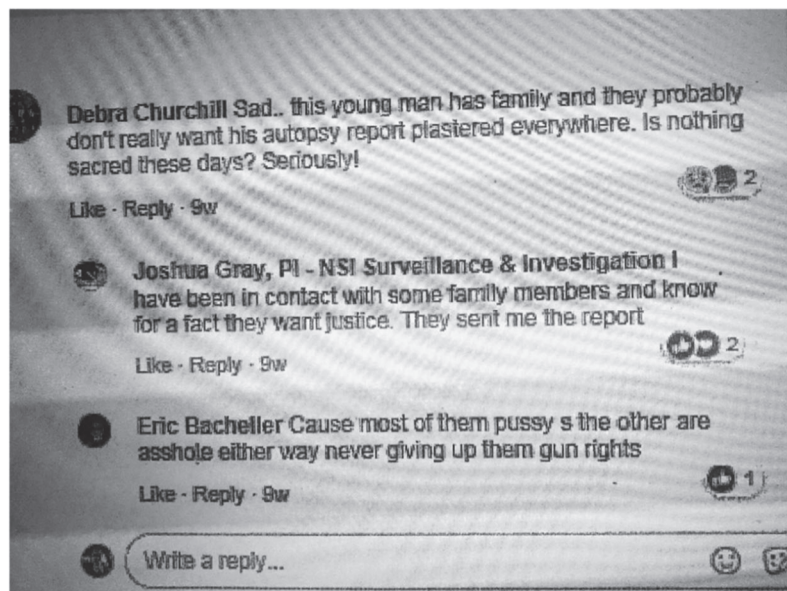
71a

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words, at the time you made that assertion, on what facts known to you were you basing the assertion that you “have been in contact with some family members and know for a fact they want justice. They sent me the report”? Please also briefly explain how those facts became known to you.

ANSWER:

Here is a screen shot of the Statement.



This was not a social media post. This was a comment. I was replying to a comment from Debra Churchill. When you read the comment in context, it offers the answer to the States question. Debra Churchill was suggesting the family would not want information posted about their deceased relative and I was

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answering her. ‘The report’ mentioned in this comment, refers to the Medical Examiners report. However I should clarify that I was only sent a picture of part of the report.

I believed at the time, and now, this comment to be protected first amendment speech. It was not written with malicious intent.

QUESTION 14

On page 158 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page in reference to a photo:

“What a vehicle looks like when a possibly drunk Lt Scott Ireland murders a passenger.”

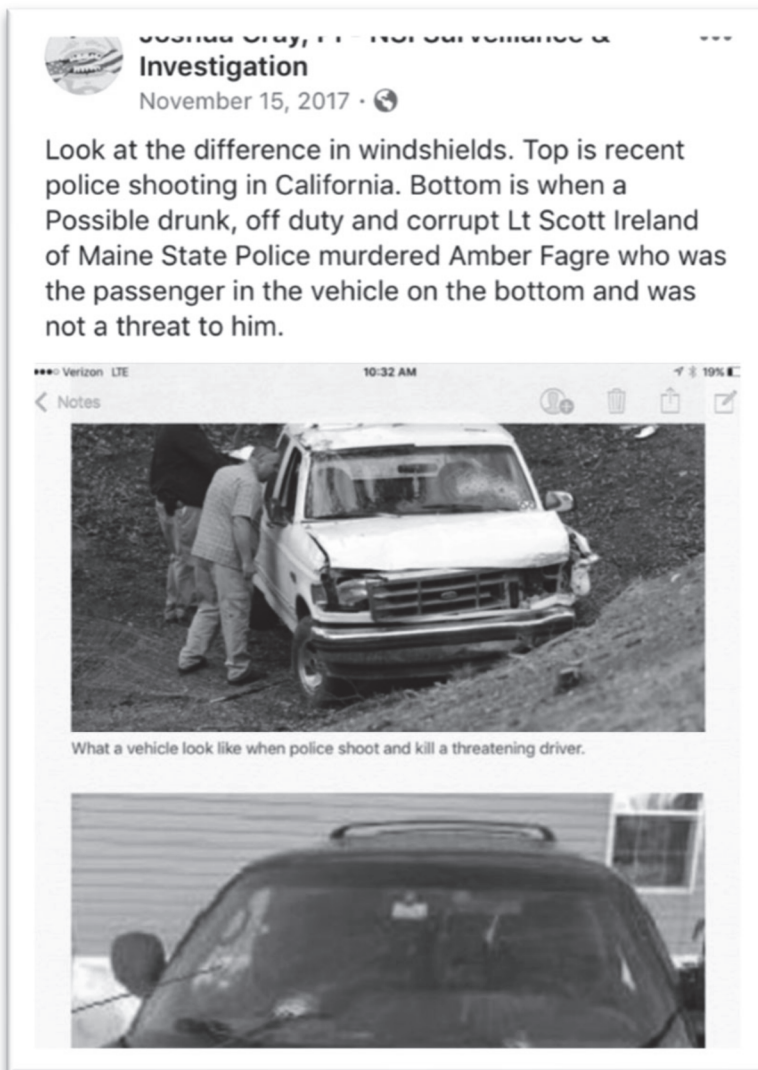
At the time you made the assertion that LT. Ireland was “possibly drunk,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 15 November 2017), on what facts known to you were you basing the assertion that LT. Ireland was “possibly drunk”? Please also briefly explain how those facts became known to you.

ANSWER:

Here is the actual Post:

73a

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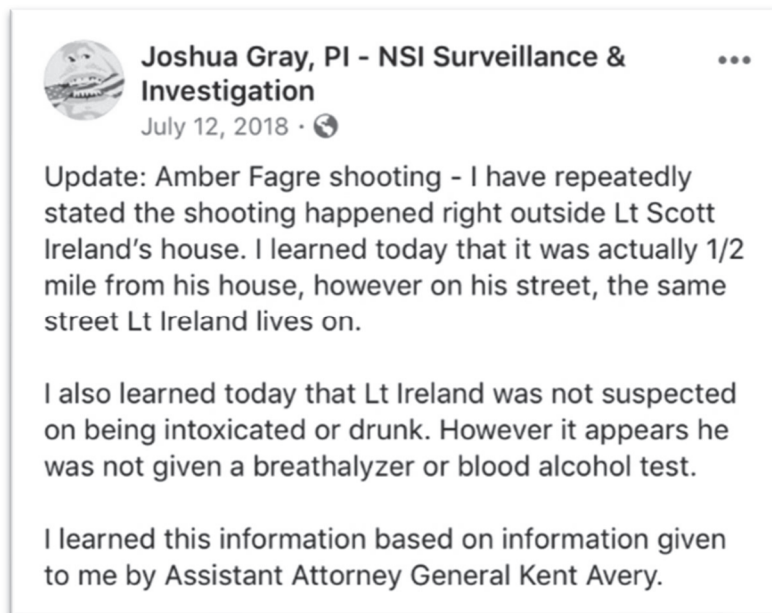
See following page for complete answer

This is my opinion and not a 'fact' as suggested in the question.

75a

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I expressed my opinion that Lt Ireland was ‘Possible drunk’. This opinion was based on information that Lt Ireland was Off Duty at the time of the shooting and it happened close to his home / personal residence. When I learned the State Police and AG office did not suspect him of being drunk, I immediately posted the following on social media: (see right & bottom pictures)



While the State did not think he was drunk based on ‘detecting nothing that would indicate alcohol use’, it seems that no scientific tests were conducted to confirm that. Scientific test of all police involved in this shooting would have eliminated this “possible” opinion.

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I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 15

On page 159 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“It takes a viral video and public outrage for police to be held accountable. Without the video and public pressure, this corrupt cop would continue his crime spree and possibly get a promotion. Much like Maine Troopers Lt Scott Ireland and Det. David Pelletier who do this kind of stuff on a daily basis.”

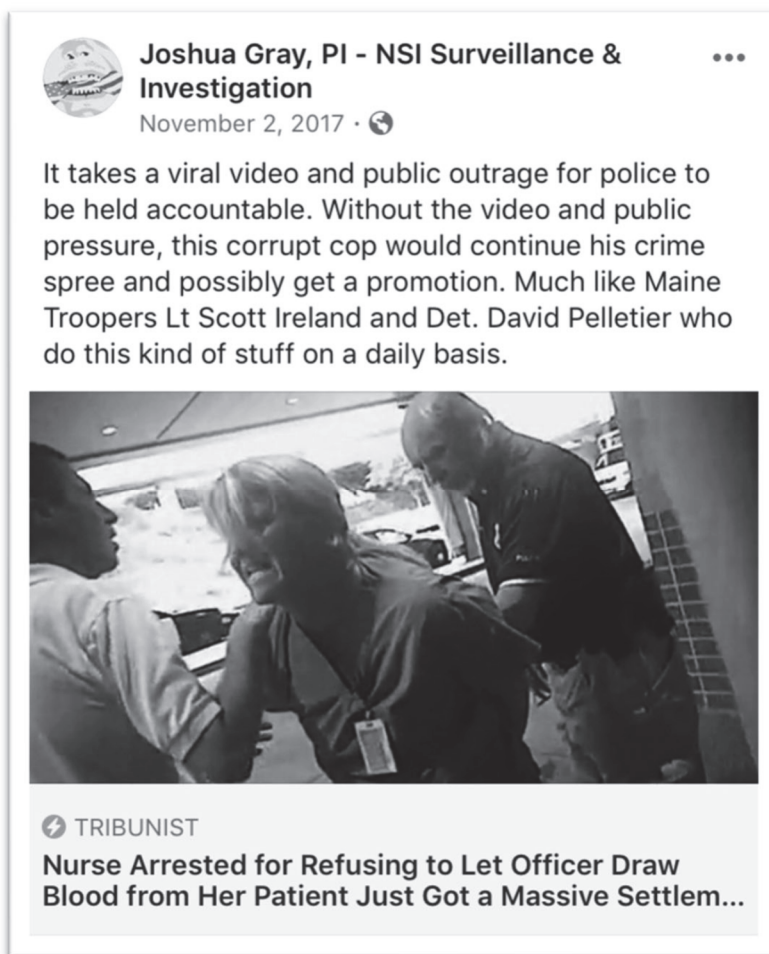
At the time you made the assertion that LT Ireland “do[es] this kind of stuff on a daily basis,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 2 November 2017), on what facts known to you were you basing the assertion that LT Ireland “do[es] this kind of stuff on a daily basis”? Please also briefly explain how those facts became known to you.

ANSWER:

Here is the actual social media post.

77a

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This is my opinion and not a 'fact' as suggested in the question. I was making a comment on a viral video about a nurse who was arrested for refusing to take blood from an unconscious man. I am entitled to have an opinion. This opinion was based on prior

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complaints, YouTube videos and several newspapers articles.

I believed at the time, and now, this social media post to be protected first amendment speech.

QUESTION 16

On page 160 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“Despite all my efforts, on February 10 2017, [LT Scott Ireland] murdered an innocent 18 year old girl.”

At the time you made the assertion that LT Scott Ireland “murdered an innocent 18 year old girl,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 19 September 2017), on what facts known to you were you basing the assertion that LT Scott Ireland “murdered an innocent 18 year old girl”? Please also briefly explain how those facts became known to you.

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ANSWER:



<- Lt. Scott W Ireland (Know Dirty Cop)

2013 I warned he was a dirty
cop who would kill someone
2014 I warned again
2015 I warned some more
2016 I continued to warn
Feb. 10, 2017 he murdered
Amber Fagre.
Charge Him With Murder

Amber Fagre Killed at only 18 Years Old

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This is my opinion and not a 'fact' as suggested in the question.

I initially assumed Lt Ireland shot her based on the information I had available to me at the time. Notably the shooting happened near Lt Irelands personal

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residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles. When I learned that Lt Ireland did not shoot Amber Fagre, I posted the following correction on 3/8/18 “ . . . Trooper Jeff Parks fired the shot that killed Amber. I have previously thought that it was Lt. Scott Ireland. I was wrong . . . ”I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 17

On page 161 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“Also this [namely, a use of deadly force incident that involved LT Scott Ireland] happened right outside Lt Irelands personal residence! He was off duty at the time and possible [sic] drunk.”

At the time you made the assertion that “this happened outside Lt Irelands personal residence,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that “this happened outside Lt Irelands personal residence”?

82a

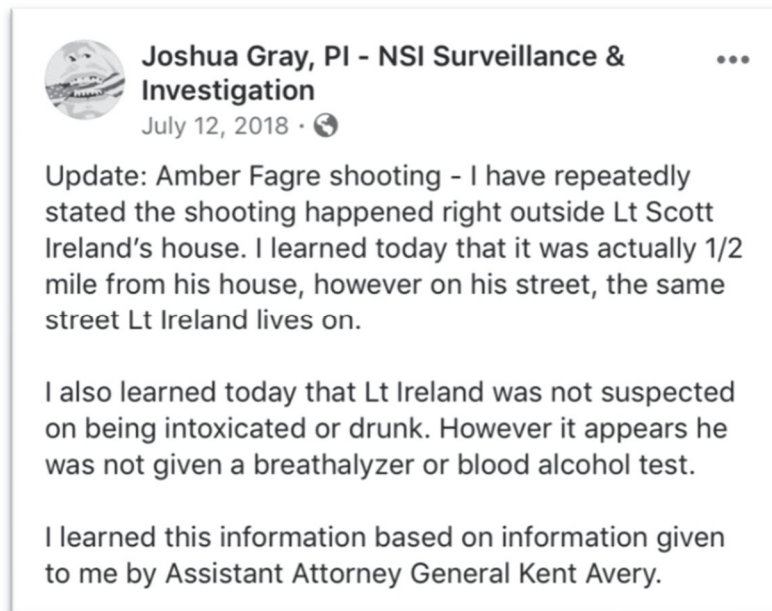
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Please also briefly explain how those facts became known to you.

ANSWER:

This is my opinion and not a 'fact' as suggested in the question.

The State confirmed that it happened ½ mile down the road from his house. I posted this correction immediately after learning this information: (see picture to right)



I posted this opinion based on the information that was available to me at the time. Namely that Lt Ireland lived on the same road, it was a short dead end road and it was in a semi-rural area. Meaning that up to one

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(1) mile from the house would be considered ‘right outside your house’ in my opinion. I certainly did not have malicious intentions.

I believed at the time, and now, this social media post to be protected first amendment speech.

QUESTION 18

On page 161 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“Also this happened right outside Lt Irelands personal residence! He was off duty at the time and possible [sic] drunk.”

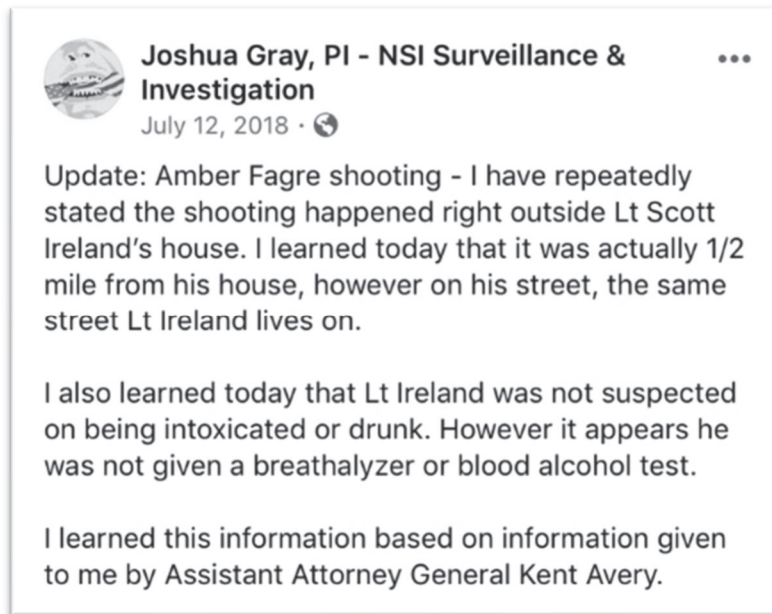
At the time you made the assertion that LT Scott Ireland was “possible [sic] drunk,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that LT Scott Ireland was “possible [sic] drunk”? Please also briefly explain how those facts became known to you.

ANSWER:

This is my opinion and not a ‘fact’ as suggested in the question.

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I expressed my opinion that Lt Ireland was 'Possible drunk'. This opinion was based on information that Lt Ireland was Off Duty at the time of the shooting and it happened close to his home / personal residence. I never stated that he was drunk. When I learned the State Police and AG office did not suspect him of being drunk, I immediately posted the following on social media: (see right)



While the State did not think he was drunk based on 'detecting nothing that would indicate alcohol use', it seems that no scientific tests were conducted to confirm that. Scientific test of all police involved in this shooting would have eliminated this "possible" opinion.

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I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 19

On page 161 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“Over two dozen people have come forward claiming Lt Ireland violated their rights. . . . He has a history of threatening people, internal affairs trouble and now suspensions.”

At the time you made the assertion that LT Scott Ireland has “suspensions,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that LT Scott Ireland has “suspensions”? Please also briefly explain how those facts became known to you.

ANSWER

This is my opinion and not a ‘fact’ as suggested in the question. However specifically pertaining to suspensions. I have always been under the impression that when an officer is placed under an internal affairs

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investigation, they are suspended or placed on modified desk duty. This was my sincerely held belief at the time and now. I was also told that Lt Ireland had been placed on paid administrative leave until the conclusion of the AG's investigation into the shooting.

As to the word 'suspensions', that is a typo, it should have been the word "suspension", but again it is my understanding that as a police officer, if you fire your weapon and kill someone, you are placed on suspension with pay until the outcome of the investigation.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 20

On page 162 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

"The bullet trajectories clearly show the cops were not in front of the vehicle. They were well off to the side and out of danger. Not to mention Lt Ireland was most likely drunk!!!"

At the time you made the assertion that the "bullet trajectories clearly show the cops were not in front of the vehicle," what was the factual basis of the assertion?

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In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that the “bullet trajectories clearly show the cops were not in front of the vehicle”? Please also briefly explain how those facts became known to you

ANSWER:

This is my opinion and not a ‘fact’ as suggested in the question. This opinion was based on looking at some pictures that were sent to me. I also showed them to some other PI friends. I posted about this on April 5, 2017:

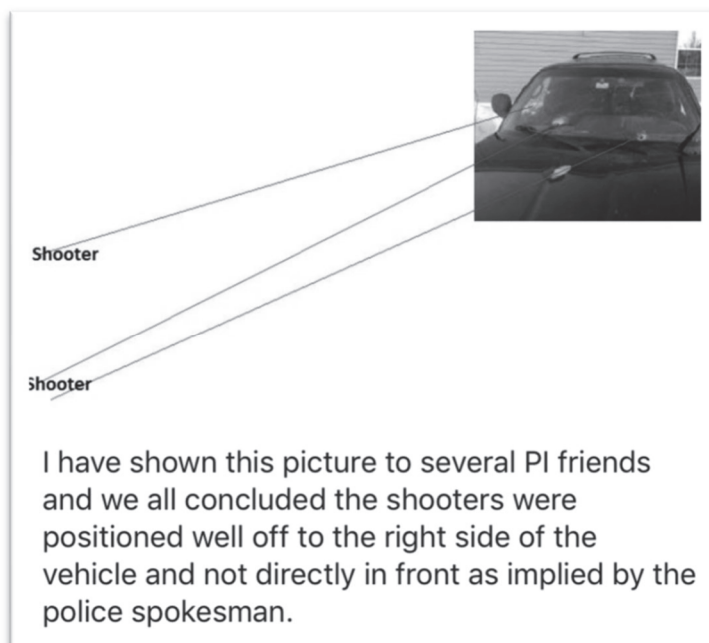
88a

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89a

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90a

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Front Bumper

Minor damage can be observed to the front bumper. This most likely happened after the driver deceased. It could also be damage from a previous impact. It is clearly not significant enough to be from a vehicle ramming a police cruiser as implied by the police spokesman.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

*Appendix C***QUESTION 21**

On page 162 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“The bullet trajectories clearly show the cops were not in front of the vehicle. They were well off to the side and out of danger. Not to mention Lt Ireland was most likely drunk!!!”

At the time you made the assertion that “Lt Ireland was most likely drunk,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that “Lt Ireland was most likely drunk”? Please also briefly explain how those facts became known to you.

ANSWER:

This is my opinion and not a ‘fact’ as suggested in the question.

I expressed my opinion that Lt Ireland was ‘most likely drunk’. This opinion was based on information that Lt Ireland was Off Duty at the time of the shooting and it happened close to his home / personal residence. When I learned the State Police and AG office did not suspect him of being drunk, I immediately posted the following on social media: (see right)

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While the State did not think he was drunk based on 'detecting nothing that would indicate alcohol use', it seems that no scientific tests were conducted to confirm that. Scientific test of all police involved in this shooting would have eliminated this "possible" opinion.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 22

On page 164 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County

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Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

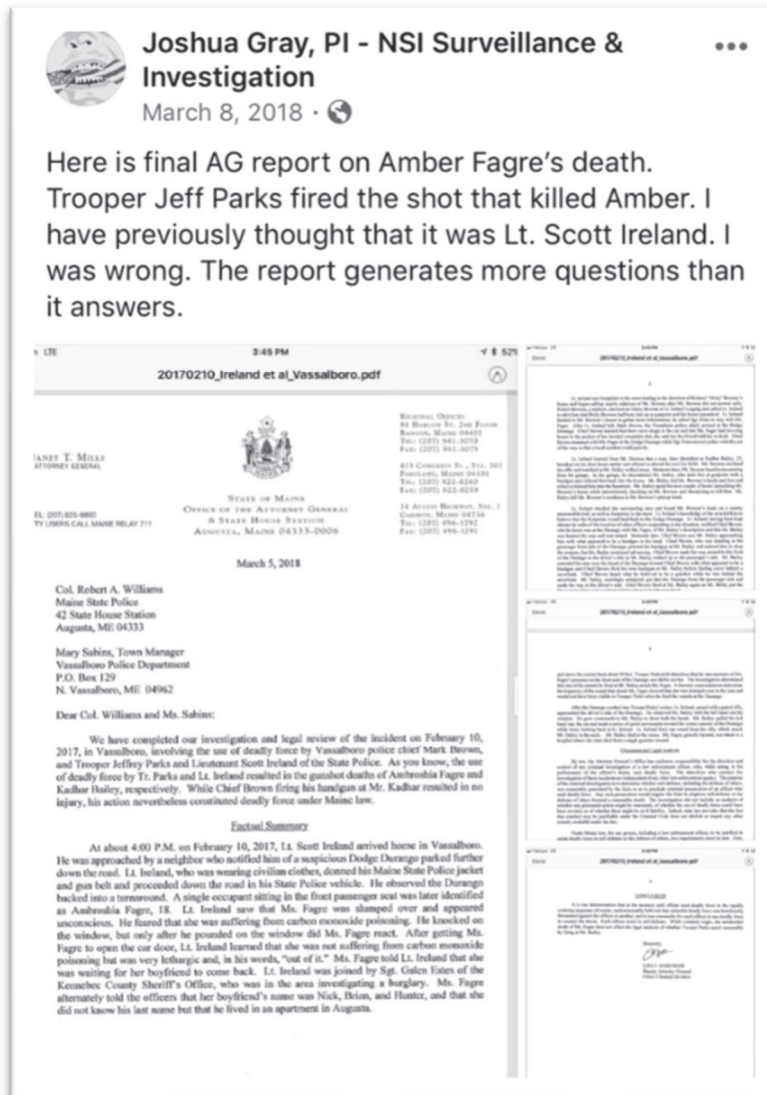
“I predicted he [LT Scott Ireland] would kill someone based on previous contact with him. So when he actually killed this 18 year old girl, I felt guilty I had not done more to warn people.”

At the time you made the assertion that LT Scott Ireland “actually killed this 18 year old girl,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that LT Scott Ireland “actually killed this 18 year old girl”? Please also briefly explain how those facts became known to you.

ANSWER

I did initially think that Lt Ireland Shot Amber Fagre. When I learned that Trooper Parks actually shot her, I immediately updated that information on social media with the following post. (see picture to right)

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I initially assumed Lt Ireland shot her based on the information I had available to me at the time. Notably the shooting happened near Lt Irelands personal

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residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles.

I believed at the time, and now, this social media post to be protected first amendment speech.

QUESTION 23

On page 165 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“The trajectory of the bullets prove they were not in fear for their lives.”

At the time you made the assertion that “[t]he trajectory of the bullets prove they were not in fear for their lives,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that “[t]he trajectory of the bullets prove they were not in fear for their lives”? Please also briefly explain how those facts became known to you.

ANSWER

This is my opinion and not a ‘fact’ as suggested in the question. This opinion was based on looking at some pictures that were sent to me. I also showed them to

96a

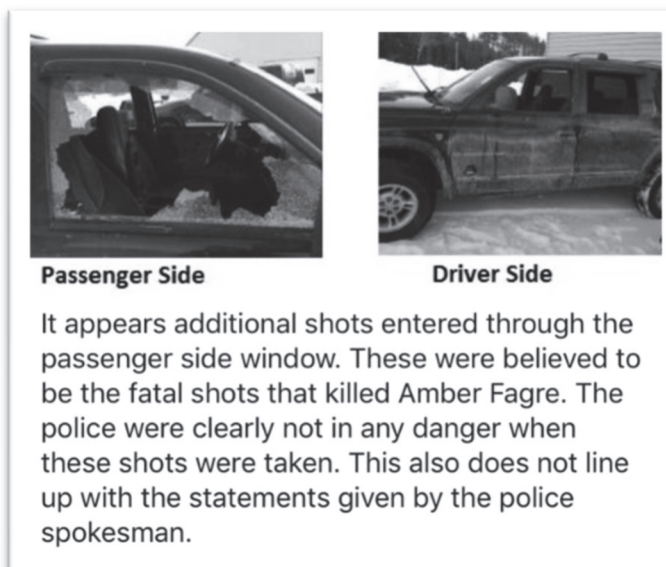
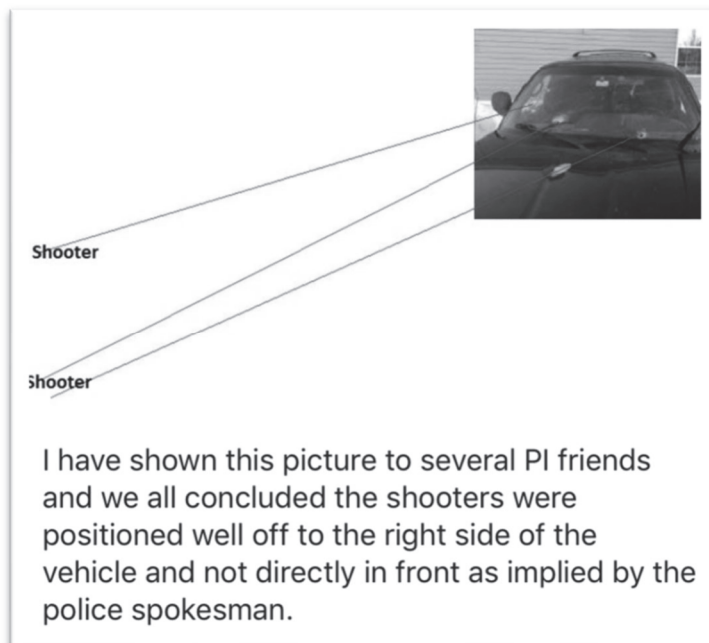
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some other PI friends. I posted about this on April 5, 2017:



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Front Bumper

Minor damage can be observed to the front bumper. This most likely happened after the driver deceased. It could also be damage from a previous impact. It is clearly not significant enough to be from a vehicle ramming a police cruiser as implied by the police spokesman.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

*Appendix C***QUESTION 24**

On page 166 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“I have seen the vehicle Amber [Fagre] was in and the damage is not consistent with ramming.”

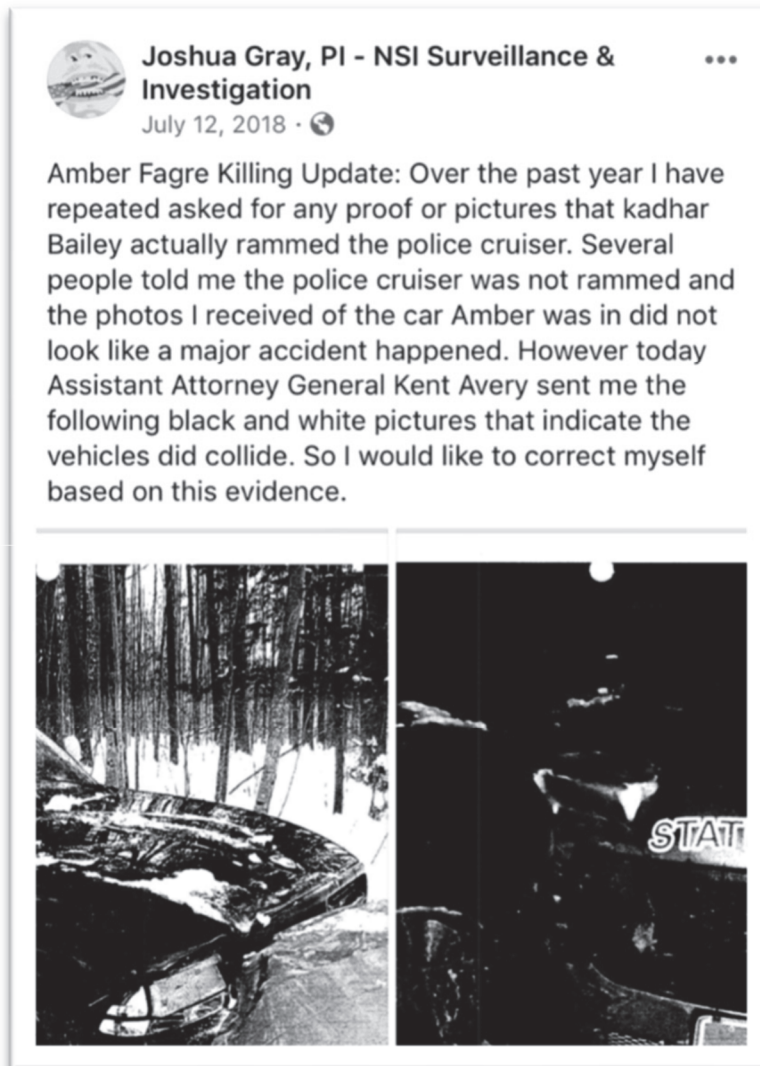
At the time you made the assertion that you “have seen the vehicle Amber [Fagre] was in and the damage is not consistent with ramming,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that you “have seen the vehicle Amber [Fagre] was in and the damage is not consistent with ramming”? Please also briefly explain how those facts became known to you.

ANSWER

This is my opinion and not a ‘fact’ as suggested in the question. I had seen a picture of the vehicle. In fact, I shared that picture on social media. It was my opinion at the time the damage in the picture was inconsistent with a vehicle violently ramming another vehicle. When I learned the vehicles did collide with one another, I immediately posted this correction: see picture on right.

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As you can see in this correction, posted July 12, 2018, I answered the question that is currently being asked. I wrote in the post "over the past year I have

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repeated(ly) asked for any proof or pictures that Kadhar Bailey actually rammed the police cruiser. Several people told me the police cruiser was not rammed and the photos I received of the car Amber was in did not look like a major accident happened. However today Assistant Attorney General Kent Avery sent me the following black and white pictures that indicate the vehicles did collide. So I would like to correct myself based on this evidence”

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 25

On page 166 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“Also the trajectory of the bullets show they came from the right passenger side and not directly in front.”

At the time you made the assertion that “the trajectory of the bullets show they came from the right passenger side and not directly in front,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that “the trajectory of the

102a

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bullets show they came from the right passenger side and not directly in front”? Please also briefly explain how those facts became known to you.

ANSWER

This is my opinion and not a ‘fact’ as suggested in the question. This opinion was based on looking at some pictures that were sent to me. I also showed them to some other PI friends. I posted about this on April 5, 2017:

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**Joshua Gray, PI - NSI Surveillance & Investigation**...

April 5, 2017 · 🌐

Update on Amber Fagre Killing: The police story just collapsed completely. Here is irrefutable proof the police were NOT in front of the vehicle, could not possibly be in fear for their lives and nothing was rammed. The official police story is complete fiction. Share this with all your friends. We can't let them get away with it. (NOTE: there are more inconsistencies that I will get into in a later post)

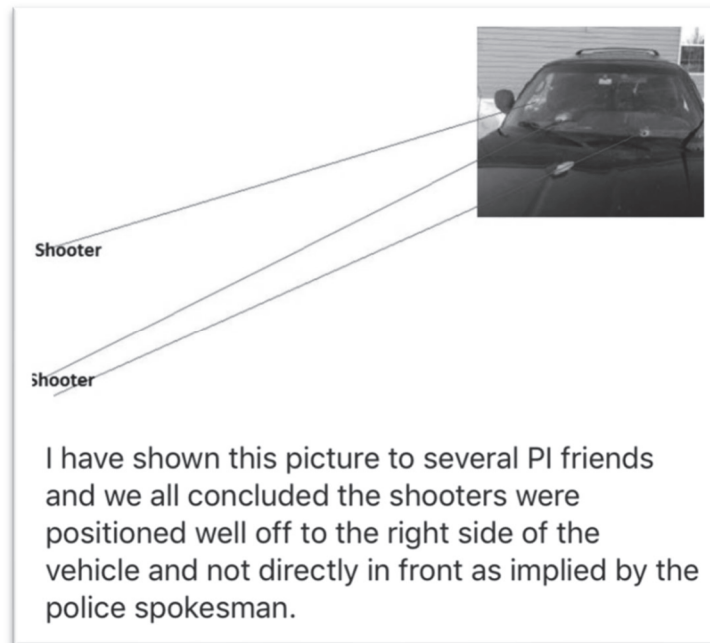


shooter



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Passenger Side



Driver Side

It appears additional shots entered through the passenger side window. These were believed to be the fatal shots that killed Amber Fagre. The police were clearly not in any danger when these shots were taken. This also does not line up with the statements given by the police spokesman.

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Front Bumper

Minor damage can be observed to the front bumper. This most likely happened after the driver deceased. It could also be damage from a previous impact. It is clearly not significant enough to be from a vehicle ramming a police cruiser as implied by the police spokesman.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

*Appendix C***QUESTION 26**

On page 166 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“Lt. Ireland has been the subject of multiple internal affairs investigations and now a suspension.”

At the time you made the assertion that LT Scott Ireland “has been the subject of multiple internal affairs investigations,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that LT Scott Ireland “has been the subject of multiple internal affairs investigations”? Please also briefly explain how those facts became known to you.

ANSWER

This is my opinion and not a ‘fact’ as suggested in the question.

I have made an internal affairs complaint about Lt Ireland. I have heard of others that made complaints about Lt Ireland. There is at least one YouTube video of a Maine citizen making a complaint against Lt Ireland. I informed Lt Anna Love during my internal affairs complaint there were others who shared my concerns. I sincerely believed then, and now, that Lt

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Ireland has a history of internal affairs complaints. I never said the complaints were sustained or not sustained. In fact I wrote in one post “He always manages to get cleared by internal affairs . . .”

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 27

On page 166 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“Lt. Ireland has been the subject of multiple internal affairs investigations and now a suspension.”

At the time you made the assertion that LT Scott Ireland “has been the subject of . . . a suspension,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that LT Scott Ireland “has been the subject of . . . a suspension”? Please also briefly explain how those facts became known to you

*Appendix C***ANSWER**

This is my opinion and not a ‘fact’ as suggested in the question. However specifically pertaining to suspensions. I have always been under the impression that when an officer is placed under an internal affairs investigation, they are suspended or placed on modified desk duty. This was my sincerely held belief at the time and now. I was also told that Lt Ireland had been placed on paid administrative leave until the conclusion of the AG’s investigation into the shooting. Again it is my understanding that as a police officer, if you fire your weapon and kill someone, you are placed on suspension with pay until the outcome of the investigation.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 28

On page 168 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“Also the bullet holes show trajectories inconsistent with the official police story.”

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At the time you made the assertion that “the bullet holes show trajectories inconsistent with the official police story,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that “the bullet holes show trajectories inconsistent with the official police story”? Please also briefly explain how those facts became known to you.

ANSWER

This is my opinion and not a ‘fact’ as suggested in the question. This opinion was based on looking at some pictures that were sent to me. I also showed them to some other PI friends. I posted about this on April 5, 2017:

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**Joshua Gray, PI - NSI Surveillance & Investigation**...

April 5, 2017 · 🌐

Update on Amber Fagre Killing: The police story just collapsed completely. Here is irrefutable proof the police were NOT in front of the vehicle, could not possibly be in fear for their lives and nothing was rammed. The official police story is complete fiction. Share this with all your friends. We can't let them get away with it. (NOTE: there are more inconsistencies that I will get into in a later post)

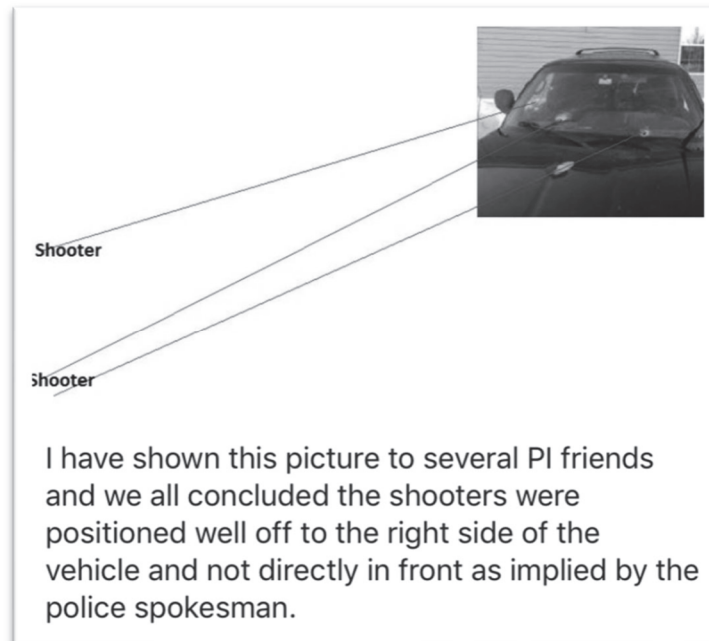


shooter



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Passenger Side



Driver Side

It appears additional shots entered through the passenger side window. These were believed to be the fatal shots that killed Amber Fagre. The police were clearly not in any danger when these shots were taken. This also does not line up with the statements given by the police spokesman.

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Front Bumper

Minor damage can be observed to the front bumper. This most likely happened after the driver deceased. It could also be damage from a previous impact. It is clearly not significant enough to be from a vehicle ramming a police cruiser as implied by the police spokesman.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

*Appendix C***QUESTION 29**

On page 173 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“Lt Ireland is currently on paid administrative leave for murdering an 18 year old girl Amber Fagre.”

At the time you made the assertion that LT Scott Ireland was on administrative leave for “murdering an 18 year old girl Amber Fagre,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that LT Scott Ireland was “on paid administrative leave for murdering an 18 year old girl Amber Fagre”? Please also briefly explain how those facts became known to you.

ANSWER

This is my opinion and not a ‘fact’ as suggested in the question. I have always been under the impression that when an officer is placed under an internal affairs investigation, they are suspended or placed on modified desk duty. This was my sincerely held belief at the time and now. I was also told that Lt Ireland had been placed on paid administrative leave until the conclusion of the AG’s investigation into the shooting. Again it is my understanding that as a police officer, if you fire

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your weapon and kill someone, you are placed on suspension with pay until the outcome of the investigation.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 30

On page 176 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“Lt Scott Ireland and Det. David Pelletier are dirty Maine State Police Troopers. I live in fear for my life because of them. If I end up dead, they did it. Please share.”

At the time you made the assertion that, “[i]f [you] end up dead, [LT Scott Ireland and DET David Pelletier] did it,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that “[i]f [you] end up dead, they did it”? Please also briefly explain how those facts became known to you.

*Appendix C***ANSWER**

I have been openly critical of both Lt Ireland & Det Pelleteir and just a few months before this posting, I was reminded of the death of Amber Fagre and that bothered me, especially with the knowledge of additional complaints about Lt Ireland & Det Pelletier. I actually do fear for my life based upon complaints and comments I have read about them.

I

QUESTION 31

On page 177 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

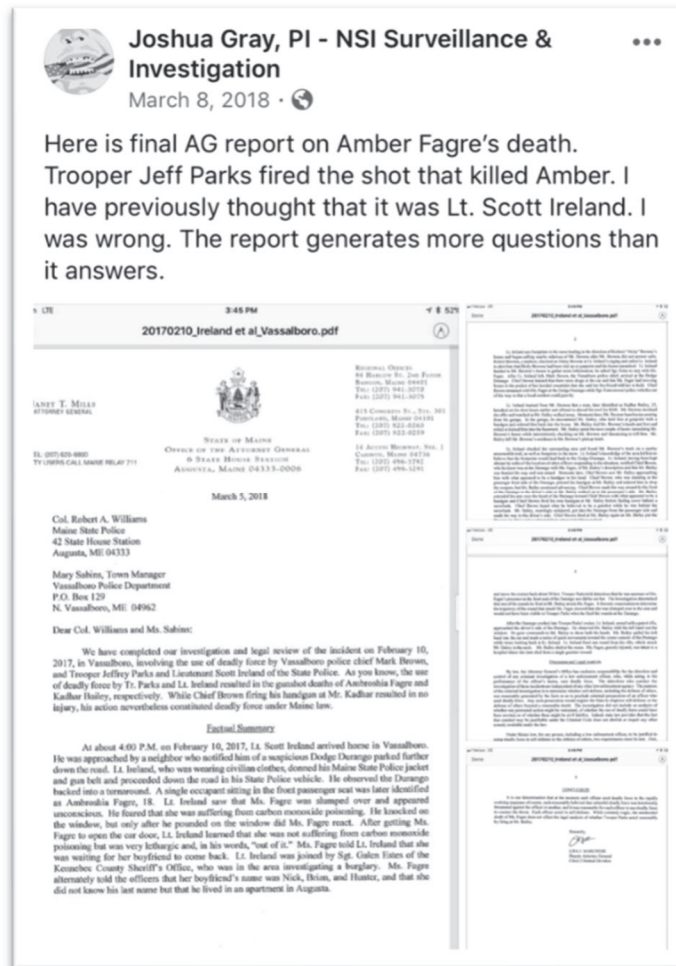
“Lt Ireland has intimidated suspects, retaliated against people that won in court and murdered Amber Fagre.”

At the time you made the assertion that LT Scott Ireland “murdered Amber Fagre,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 24 April 2017), on what facts known to you were you basing the assertion that LT Scott Ireland “murdered Amber Fagre”? Please also briefly explain how those facts became known to you.

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ANSWER

I did initially think that Lt Ireland Shot Amber Fagre. When I learned that Trooper Parks actually shot her, I immediately updated that information on social media with the following post. (see picture to right)



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I initially assumed Lt Ireland shot her based on the information I had available to me at the time. Notably the shooting happened near Lt Irelands personal residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles.

I believed at the time, and now, this social media post to be protected first amendment speech.

QUESTION 32

On page 180 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“But I will say that a known dirty cop, Lt Scott W Ireland, was the primary shooter AND just happened to live on the street where the shooting happened. I suspect he was off duty and drinking just before this happened.”

At the time you made the assertion that “you suspect[ed]” that LT Scott Ireland was “drinking just before this happened,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion “you suspect[ed]” that LT Scott Ireland

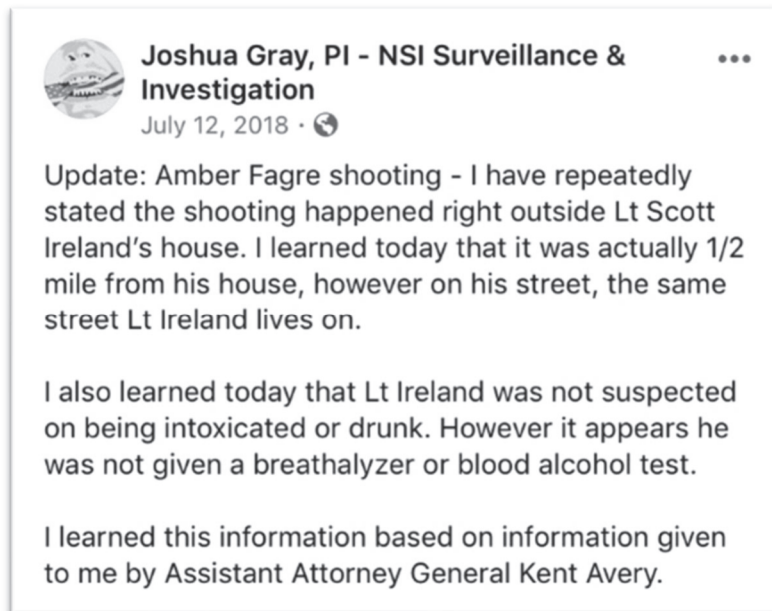
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“was “drinking just before this happened”? Please also briefly explain how those facts became known to you.

ANSWER

I expressed my opinion that Lt Ireland was ‘I suspect he was off duty and drinking’. This opinion was based on information that Lt Ireland was Off Duty at the time of the shooting and it happened close to his home / personal residence. I never stated that he was drunk. When I learned the State Police and AG office did not suspect him of being drunk, I immediately posted the following on social media: (see right)



While the State did not suspect the was drunk based on ‘detecting nothing that would indicate alcohol use’,

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it seems that no scientific tests were conducted to confirm that Lt Ireland was not drunk. Scientific test of all police involved in this shooting would have eliminated this opinion.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 33

On page 182 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“The police claimed he was in a stolen vehicle to help justify the killings. The official police story is 100% fiction.”

At the time you made the assertion that “[t]he official police story is 100% fiction,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that “[t]he official police story is 100% fiction”? Please also briefly explain how those facts became known to you.

*Appendix C***ANSWER**

I was informed by the owner of the Dodge Durango that the police report of it being stolen was false. The owner told me that Kadhar Bailey had permission to drive this vehicle. This was my information when I posted this opinion.

QUESTION 34

On page 183 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“I am a private investigator from Boston who warned in 2015 that Lt Scott Ireland would kill someone. Everyone ignored my warnings and unfortunately he did exactly what I warned he would do. So I have been looking into the shooting in my spare time. I have already uncovered evidence that proves the official police story is completely false.”

At the time you made the assertion that you were “looking into the shooting in [your] spare time,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you basing the assertion that you were “looking into the shooting in [your] spare time”?

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Please also briefly explain how those facts became known to you.

ANSWER

This quote is a comment and not a social media post. Because I did not look into the shooting while at work, but only in my spare time. I was not hired by anyone and never went into Maine to look into this. I pretty much relied on social media.

QUESTION 35

On page 183 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“I am a private investigator from Boston who warned in 2015 that Lt Scott Ireland would kill someone. Everyone ignored my warnings and unfortunately, he did exactly what I warned he would do. So I have been looking into the shooting in my spare time. I have already uncovered evidence that proves the official police story is completely false.”

At the time you made the assertion that you “have already uncovered evidence that proves the official police story is completely false,” what was the factual basis of the assertion? In other words, at the time you made that assertion, on what facts known to you were you

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basing the assertion that you “have already uncovered evidence that proves the official police story is completely false”? Please also briefly explain how those facts became known to you.

ANSWER

This quote is a comment and not a social media post. My comment or opinion was based on information from owner of the Dodge Durango, pictures of Dodge Durango, picture of a portion of the medical report for Kadhar Bailey and the fact there were no scientific tests to determine if there were drinking by police. Once you find holes in a report, you tend to disbelieve the entire report.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

QUESTION 36

On page 190 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“Lt Scott Ireland hates it when people get off on a technicality and so he makes himself the judge, jury and executioner. That’s why he executed Amber Fagre in the back of the head in cold blood.”

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At the time you made the assertion that LT Scott Ireland “executed Amber Fagre in the back of the head in cold blood,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 19 February 2017), on what facts known to you were you basing the assertion that LT Scott Ireland “executed Amber Fagre in the back of the head in cold blood”? Please also briefly explain how those facts became known to you.

ANSWER

I did initially think that Lt Ireland Shot Amber Fagre.

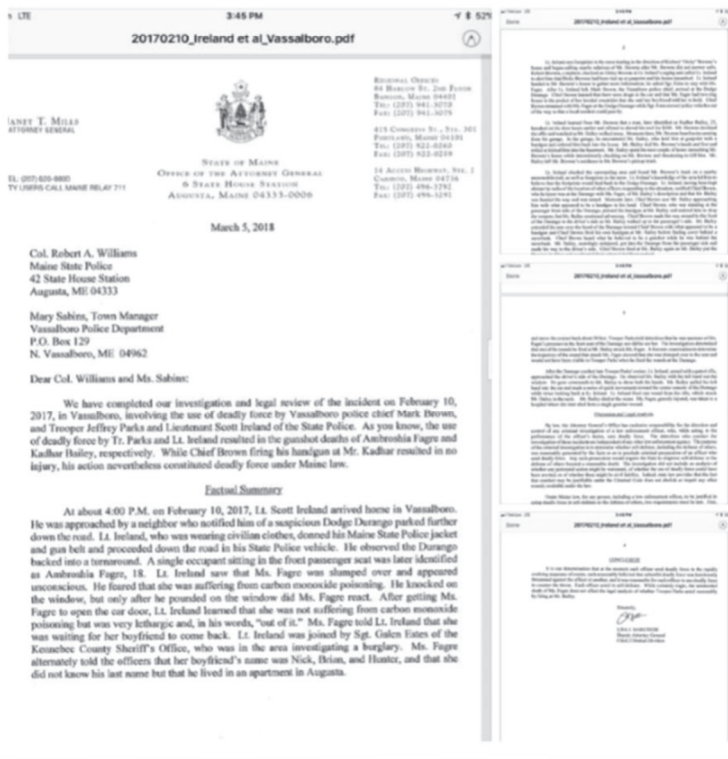
I assumed Lt Ireland shot her based on the information I had available to me at the time. Notably the shooting happened near Lt Irelands personal residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles

The basis of my opinion was from Newspaper reports indicataing that Lt. Ireland was a shooter in an incident that killed Kadhar and Amber; verbal reports from a close friend of Amber Fagre on her injuries, photo’s of the Dodge Durango as to show trajectory of bullets fired by police and medical records on injuries to Kadhar Bailey also Amber Fagre.was not in the possession weapon.

When I learned that Trooper Parks actually shot her, I immediately updated that information on social media with the following post. (see picture to right)



Here is final AG report on Amber Fagre's death. Trooper Jeff Parks fired the shot that killed Amber. I have previously thought that it was Lt. Scott Ireland. I was wrong. The report generates more questions than it answers.



*Appendix C***QUESTION 37**

On page 191 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“I have been warning for years that Lt Scott Ireland is a powder keg. Now he has murdered two people right outside his house.”

At the time you made the assertion that LT Scott Ireland “murdered two people,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 16 February 2017), on what facts known to you were you basing the assertion that LT Scott Ireland “murdered two people”? Please also briefly explain how those facts became known to you.

ANSWER

Actually, the entire post reads as follows. “I have been warning for years that Lt. Scott Ireland is a powder keg. Now he has murdered two people right outside his house. If we don't stand up and demand answers, he will get away with it.”

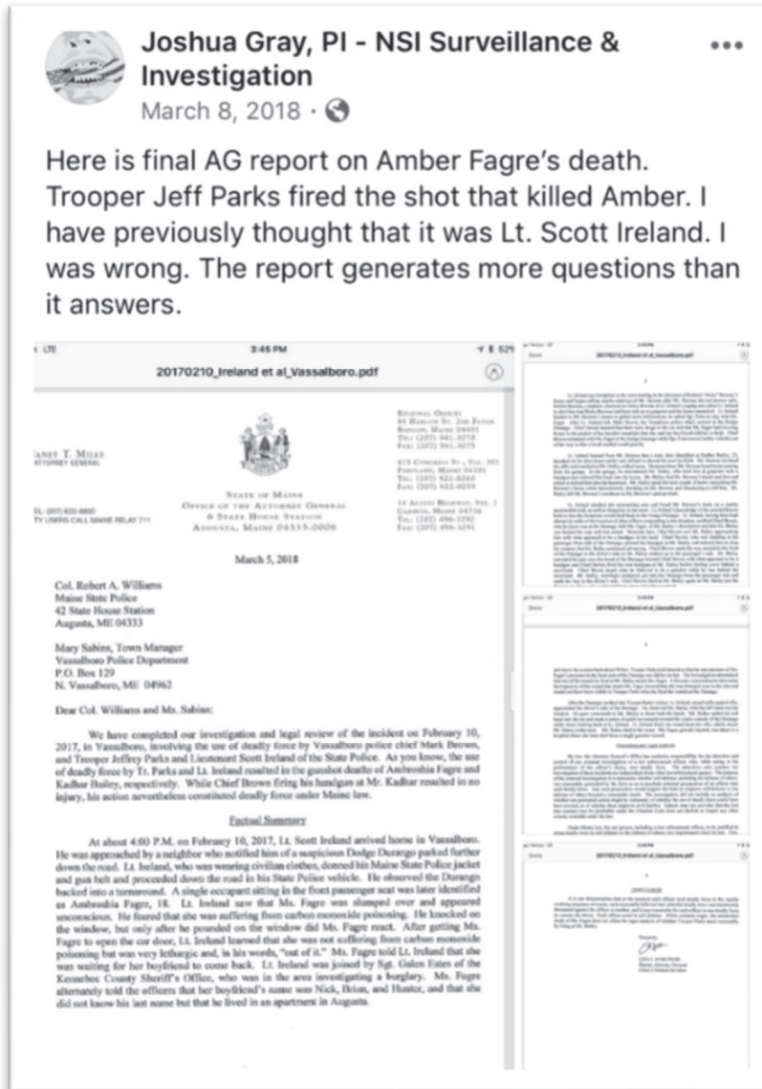
I did initially think that Lt Ireland Shot Amber Fagre. When I learned that Trooper Parks actually shot her, I immediately updated that information on social media with the following post. (see picture to right) I

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initially assumed Lt Ireland shot her based on the information I had available to me at the time. Notably the shooting happened near Lt Irelands personal residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles. The basis of my opinion was from Newspaper reports indicataing that Lt. Ireland was a shooter in an incident that killed Kadhar and Amber; verbal reports from a close friend of Amber Fagre on her injuries, photo's of the Dodge Durango as to show trajectory of bullets fired by police and medical records on injuries to Kadhar Bailey. Also Amber Fagre.was not in the possession weapon and it appeared that no scientific drug or alcohol test was conducted.

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I believed at the time, and now, this social media post to be protected first amendment speech.

*Appendix C***QUESTION 38**

On page 198 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

“I have been warning about this dirty cop for years . . . now Lt Scott Ireland has shot and killed a [sic] 25 and 18 year old kids.”

At the time you made the assertion that LT Scott Ireland “shot and killed a [sic] 25 and 18 year old kids,” what was the factual basis of the assertion? In other words, at the time you made that assertion (namely, on or about 16 February 2017), on what facts known to you were you basing the assertion that LT Scott Ireland “shot and killed a [sic] 25 and 18 year old kids”? Please also briefly explain how those facts became known to you.

ANSWER

The actual post is as follows: “

There is no question that Lt Ireland fired a weapon and killed Kadhar Bailey, the 25 year old. This fact was confirmed by Assistant Attorney General Kent Avery.

I did initially think that Lt Ireland Shot Amber Fagre. When I learned that Trooper Parks actually shot her, I

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immediately updated that information on social media.

I initially assumed Lt Ireland shot her based on the information I had available to me at the time. Notably the shooting happened near Lt Irelands personal residence, and he was the ranking officer on scene, prior complaints about Lt Ireland and he was named as a shooter in several newspaper articles.

The basis of my opinion was from Newspaper reports indicataing that Lt. Ireland was a shooter in an incident that killed Kadhar and Amber; verbal reports from a close friend of Amber Fagre on her injuries, photo's of the Dodge Durango as to show trajectory of bullets fired by police and medical records on injuries to Kadhar Bailey. Also Amber Fagre.was not in the possession weapon and it appeared that no scientific drug or alcohol test was conducted on the police.

I believed at the time, and now, this social media post to be protected first amendment speech.

QUESTION 39

On page 161 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business' Facebook page:

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“Also this happened right outside Lt Irelands personal residence! He was off duty at the time and possible [sic] drunk.”

Further, on page 162 of the record before the Maine Superior Court in the matter of Joshua Gray v. State of Maine, Department of Public Safety (Kennebec County Superior Court – Augusta Dkt. No. AP-18-65), you asserted the following on your NSI Investigation & Surveillance business’ Facebook page:

“The bullet trajectories clearly show the cops were not in front of the vehicle. They were well off to the side and out of danger. Not to mention Lt Ireland was most likely drunk!!!”

At the times you made the respective assertions that LT Scott Ireland was “possible [sic] drunk” and “was most likely drunk,” what was the factual basis of your having implied with those assertions that LT Scott Ireland drinks? In other words, at the times you made the respective assertions, on what facts known to you were you basing those assertions that both imply LT Scott Ireland drinks? Please also briefly explain how those facts became known to you.

ANSWER

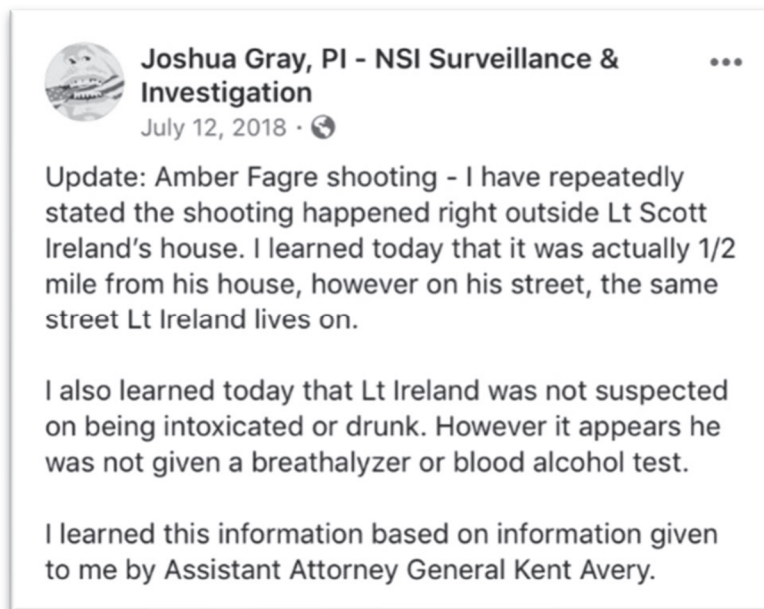
This is my opinion and not a ‘fact’ as suggested in the question.

I expressed my opinion that Lt Ireland was ‘Possible Drunk’ & ‘was most likely drunk’. This opinion was

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based on information that Lt Ireland was Off Duty at the time of the shooting and it happened close to his home / personal residence. When I learned the State Police and AG office did not suspect him of being drunk, I immediately posted the following on social media: (see right)



While the State did not think he was drunk based on 'detecting nothing that would indicate alcohol use', it seems that no scientific tests were conducted to confirm that. Scientific test of all police involved in this shooting would have eliminated this opinion.

I believed at the time, and now, this social media post to be protected first amendment speech. It was not written with malicious intent.

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Joshua Gray v. State of Maine, Department of Public
Safety (Kennebec County Superior Court – Augusta
Dkt. No. AP-18-65)

CERTIFICATION

I, Joshua A. Gray, hereby certify that, to the best of my
knowledge and belief, the responses I have provided to
the questions that have been posed to me above are
truthful.

9/18/19
DATE

Joshua A. Gray
SIGNATURE OF
JOSHUA A. GRAY

State of Maine

County of Knox

The foregoing instrument was acknowledged before
me this 18th day of
September, 2019 at Camden, Maine by Mr. Joshua A.
Gray.

Roger L. Hurley
Signature of Notary Public

Roger L. Hurley
Printed Name of Notary Public

My commission expires: Bar No. 004834

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Appendix D

2019 WL 4899250 (Me.Super.) (Trial Order)
Superior Court of Maine.
Kennebec County

Joshua GRAY, Petitioner,

v.

STATE of Maine, DEPARTMENT OF
PUBLIC SAFETY, Respondent.

No. AP-18-65.

July 18, 2019.

Order on Petitioner's 80C Appeal

Roger Hurley, Esq., 48 Washington Street, Camden,
ME 04843, plaintiff's.

Kent Avery, AAG, 6 State House Station, Augusta, ME
04333-0006, defendant's.

Before the Court is Petitioner Joshua Gray's 80C petition for review of the Department of Public Safety's (the "Department's") denial of his application for a Professional Investigator's License. For the following reasons, the petition is granted.

Background

Joshua Gray is licensed as a Professional Investigator in Tennessee, Vermont, Massachusetts and New Hampshire. On January 26, 2018, Gray applied for an investigator's license in Maine. As part of its review of Gray's application, the Department conducted a background investigation which included an investigation

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into Gray's use of social media. This investigation revealed that Gray has published numerous statements concerning a fatal police shooting which occurred in Vassalboro in 2017. The dominant theme of these statements is that an officer who was involved in the shooting, Lt. Scott Ireland, is a "dirty cop" whose career has been plagued by lying, internal affairs trouble and abuse of power issues and who committed first degree murder while he was "likely drunk." As a result of its investigation, the Department concluded that Gray had made statements which demonstrate that he "lack[s] the requisite competency and fitness of character to act as a PI in the State of Maine." Consequently, the Department denied Gray's application on August 31, 2018. Gray's attorney received a copy of the denial on September 14, 2018 and on October 11, 2018 Gray filed a petition for review of the denial of his application.

Standard of Review

The Court reviews an administrative agency's decision for an abuse of discretion, error of law, or findings not supported by the evidence. *Uliano v. Bd. of Envtl. Prot.*, 2009 ME 89, ¶ 12, 977 A.2d 400 (citation omitted). "An administrative decision will be sustained if, on the basis of the entire record before it, the agency could have fairly and reasonably found the facts as it did." *Id.* (quoting *CWCO, Inc. v. Superintendent of Ins.*, 1997 ME 226, ¶ 6, 703 A.2d 1258). The party seeking to vacate an agency decision bears the burden of

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persuasion. *Kelley v. Me. Pub. Emps. Ret. Sys.*, 2009 ME 27, ¶ 16, 967 A.2d 676. “When an agency concludes that the party with the burden of proof failed to meet that burden, [the court] will reverse that determination only if the record compels a contrary conclusion to the exclusion of any other inference.” *Kelley v. Me. Pub. Emples. Ret. Sys.*, 2009 ME 27, ¶ 16, 967 A.2d 676 (quotation omitted).

Discussion

The State of Maine requires that professional investigators obtain a professional investigator’s license from the Chief of the Maine State Police. 32 M.R.S. § 8104. In order to obtain an investigator’s license, an applicant must demonstrate that they possess good moral character. *Id.* § 8105(4). Further, the Chief may refuse to issue a license if the applicant has:

- A. Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or the general public; or
- B. Engaged in conduct that evidences a lack of knowledge or an inability to apply principles or skills to carry out the practice for which the person is licensed.

32 M.R.S. § 8113(6).

In this case, the Chief of the Maine State Police determined that “since early 2017, [Gray had] made

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postings on social media platforms (including on [his] business' official Facebook page) that include statements that are materially false." (R. 4.) The Chief further determined that "[b]y publishing such misleading statements publicly, [Gray has] demonstrated conduct that brings into question [his] ability to competently investigate and then report investigative findings with accuracy, objectivity, and without bias." *Id.* The Chief reasoned that "[f]rom a consumer protection perspective, these findings . . . are of great concern." *Id.* Consequently, the Chief denied Gray's license based on his findings that Gray "lack[s] the requisite competency and fitness of character to act as a PI in the State of Maine." (R. 4.)

Gray argues that denying his application on the basis of his social media articles and posts violates his right to free speech and thus constitutes an error of law. Gray asserts that his social media postings are statements of opinion which were not likely to incite violence and that they were made in his capacity as a private citizen. Because, in his view, "[a]ll speech, in any form and by any method, has always been ruled as protected except speech which incites imminent violence," Gray argues that his social media posts cannot be considered when determining whether he has good moral character.

The Department argues that many of Gray's statements are demonstratively false and that this supports a finding that Gray is dishonest, not able to accurately report facts, and is incompetent to act as a professional

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investigator. The Department also points out that defamatory speech is not protected by the First Amendment. See *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245-46 (2002) (“As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear. Freedom of speech of course has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity, and pornography produced with real children.”)

As a general matter, “[a] State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.” *In re Feingold*, 296 A.2d 492, 498-99 (Me. 1972) (quoting *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 238-239 (1957)). And as a matter of First Amendment principles, a Government may not regulate speech based upon the motivating ideology, opinion or perspective of the speaker. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

In this case, the Department’s Notice of Denial shows that Gray’s application was denied because of the statements that Gray made on social media. Further, the notice shows that the Department’s denial was based upon its disagreement with the viewpoints expressed in these statements. The Department reasons that Gray should not receive a private investigator’s license as the statements show that he is

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incompetent and lacks the necessary fitness of character. This finding is in turn based solely on what the Department characterizes as “materially false” statements that Gray has made publicly. In other words, it is based on the Department’s disagreement with Gray’s publicly stated opinion that the State Trooper is a dirty cop with a history of internal affairs problems who committed murder.

In its court filings the Department argues that the denial was not actually based upon Gray’s public opinions about police corruption and competency, but rather that it was based on conduct which shows that Gray is unable to investigate with accuracy, objectivity, and without bias. In support of its argument, the Department has provided a spreadsheet compiling Gray’s statements and the Department’s findings regarding the purported veracity of each statement. Additionally, the Department has also submitted the Attorney General’s investigative report on the use of deadly force by the State Police during the 2017 Vassalboro shooting; a memorandum from Lt. Anna Love of the State Police Office of Professional standards stating that Lt. Ireland does not have any history of being disciplined for misconduct; and over 300 pages of statements that Gray has made on social media.

Although the Department has offered evidence which supports its opinion that Lt. Ireland is not guilty of murder and has not been subject to internal affairs

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discipline¹, there is no record evidence of the investigative methods Gray employed or the specific information Gray either utilized or ignored in reaching his conclusions about Lt. Ireland and the Maine State Police. Moreover, there is nothing in the record to suggest that whatever Gray did in regards to the shooting was an “investigation” as opposed to him making statements that were understandably perceived by state actors to be false, outrageous and offensive. The Court concludes that the Department’s determination that Gray lacks the necessary competency to investigate is based primarily on the fact that Gray has reached opinions or conclusions about Lt. Ireland and the State Police which are completely at odds with the Department’s, and which do display a hostile bias toward Lt. Ireland.

Further, although Gray’s statements may arguably contain defamatory material,² the Department has overlooked two important considerations which the Court cannot. First, the Court in this Rule 80C appeal is not in any position to adjudicate whether the statements constitute defamation against a public figure. More fundamentally, however, the Maine Supreme

¹ It should be noted that there is no record evidence that Lt. Ireland has not been the subject of internal affairs investigations. The only evidence is that he has not been disciplined as a result of any investigation.

² The parties disagree over whether Gray’s statements should be fairly characterized as statements of opinion or statements of fact. *See Lester v. Powers*, 596 A.2d 65, 69 (Me. 1991) (an opinion which does not imply the existence of undisclosed defamatory facts cannot support a claim for defamation).

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Court has recognized that statements made about or against public officials, even ones which are “objectively false”, inflammatory, or outrageous, are protected by a limited First Amendment privilege. *See Plante v. Long*, 2017 ME 189, ¶ 10, 170 A.3d 24. Because the statements at issue here all concern and pertain to a matter of public importance and public figures – a police shooting, the resulting investigation, and the police officer involved in the shooting – this appeal cannot be resolved in the usual manner by determining if there is competent evidence in the record to support the administrative decision. The Petitioner is making a constitutional argument, which of course is something that can be done in an administrative appeal such as this one. The Court has concluded that the issue therefore becomes what standard the Department is required to apply to the statements in order to determine if Petitioner can be denied a license based on, as the Department frames the issue, his “competence” and “character.”

While the Court could not find any Maine case in which a professional license was denied solely based on statements made by the applicant in social media, the Law Court in *Plante* did not just reaffirm and reiterate the limited privilege that applies to allegedly defamatory statements made against public figures. It held that in order to overcome the privilege, a showing must be made by clear and convincing evidence that the statements were made with “actual malice”—i.e., with knowledge that the statements were false or with

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reckless disregard of their truth or falsity. *Id.* While the Department understandably believes, based on their investigations of Lt. Ireland, that the statements were “materially false,” the Law Court clarified in *Plante* that the objective falsity of a statement or statements cannot by itself support a finding of actual malice. *Id.* ¶ 12.

In its notice of denial, the Department does not make any finding whether Petitioner made these statements with knowledge that they were false, or with reckless disregard of their truth or falsity. This means that it has not provided any evidence showing that Gray acted with actual malice when he published his social media statements. Because the Department focused solely on the objective falsity of Gray’s statements, it applied the wrong legal standard to determine whether Gray lacks competence and good moral character because he made defamatory or false statements. Consequently, this matter must be remanded to the Department to allow it to determine whether Gray, at the time he published his allegedly defamatory social media posts, “in fact knew that his statements were false or . . . acted with a high degree of awareness of their probable falsity.” *Id.* ¶ 10 (quotation omitted).

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Conclusion

For the foregoing reasons, the entry will be:

The Petitioner's Rule 80 C petition is granted in part. The decision of the Department of Public Safety is reversed and remanded to the Department to conduct an appropriate process or proceeding which would enable it to determine if the Petitioner's statements were made with actual malice as defined by Maine law. The clerk is directed to incorporate this order into the docket by reference. M.R. Civ. P. 79(a).

Date: 7/18/19

<<signature>>

Justice, Superior Court

Date of Entry

10/11/18	Petition for Review of Final Agency Action, filed. s/Hurley, Esq.
10/25/18	Entry of Appearance for Respondent, State of Maine, by Assistant Attorney General Kent Avery, filed (10/25/18). s/Avery, AAG
10/25/18	Letter from Tandra Manzo, of the Office of the Attorney General requesting a copy of docket record, filed (10/25/18). s/Manzo, Paralegal

Clerk sent copy of docket record to AAG Kent Avery

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10/31/18	Supplemental Entry of Appearance to state that all three parties take the position that the decision of the State Police to deny the Plaintiff a license as a Professional Investigator should be affirmed, filed (10/29/18). s/ Avery, Esq.
10/31/18	Summons/Service Certificate of Service by Certified Mail, filed (10/29/18). s/Hurley, Esq. Service on 10/15/18
11/06/18	Certified Record, filed (11/05/18). s/Avery, AAG
11/06/18	Notice and Briefing Schedule Issued Copies to Parties/Counsel
11/14/18	Petitioner's Consented Motion for Waiver of Compliance to Title 5: administrative Procedures and Services Part 18, Chapter 374 Sub Chapter 7, Section 11003, filed (11/14/18). s/Hurley, Esq.
11/15/18	ORDER, Murphy, J. (11/19/18) Order on Petitioner's Motion for Waiver of Compliance Motion is GRANTED Copies to Parties/Counsel
12/18/18	Petitioner's Brief, filed (12/13/18). s/Hurley, Esq.

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Appendix E

[SEAL]

**STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE**

COL JOHN E. COTE CHIEF

LTC WILLIAM S. HARWOOD
DEPUTY CHIEF

By Certified Mail, Return Receipt #70153430000050949983

31 August 2018

Mr. Joshua Gray
25 Dorchester Avenue # 51187
Boston, MA 02205

RE: Notice of Denial of Application for Professional Investigator's License; Opportunity to Appeal

Dear Mr. Gray:

This letter concerns the application for a professional investigator ("PI") license you submitted to the Maine State Police on or about 26 January 2018.

After reviewing the information you provided to our agency in and with your application, as well as information ascertained during the administrative licensing background investigation that occurs when such applications are processed, I am denying your application for a PI license.

In the case of your application, our background investigation found that since early 2017, you have made postings on social media platforms (including on your

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business' official Facebook page) that include statements that are materially false. Those statements have been documented in our administrative licensing file and you previously were provided a copy of them.

By publishing such misleading statements publicly, you have demonstrated conduct that brings into question your ability to competently investigate and then report investigative findings with accuracy, objectivity, and without bias. From a consumer-protection perspective, these findings of the background investigation are of great concern.

Accordingly, pursuant to Chapter 89 of the Title 32 of the Maine Revised Statutes, for the reasons discussed above, your application for licensure as a PI is denied because you lack the requisite competency and fitness of character to act as a PI in the State of Maine. *See* 32 M.R.S. §§ 8105, 8107, 8113.

This decision is appealable as final agency action pursuant to the Maine Administrative Procedure Act, 5.M.R.S.A., Ch. 375, Subchapter VII, which provides that judicial review of final agency action may be had by filing a petition for review within 30-days of receipt of notice of final agency action in the Superior Court for the county where:

- (a) One or more of the petitioners reside or have their principal place of business;
- (b) The agency has its principal office; or

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- (c) The activity or property which is the subject of the proceeding is located.

/s/ John E. Cote
Colonel John E. Cote
Chief, Main State Police

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32 M.R.S.A. § 8105.

Private investigator's license qualifications

Effective: May 22, 2012

A person is qualified to be licensed as a professional investigator who:

1. **Age.** Is at least 21 years of age;
2. **Citizenship.** Is a citizen or resident alien of the United States;
3. **Graduation.** Is a graduate of an accredited high school or has been granted high school equivalency status by the State;
4. **Character.** Has demonstrated good moral character and has not been convicted of a crime that is punishable by a maximum term of imprisonment equal to or exceeding one year, or a crime enumerated in this chapter. The determination of good moral character must be made in writing, based upon evidence recorded by a governmental entity. The chief shall consider matters recorded within the previous 5 years including, but not limited to, the following:
 - A. Records of incidents of abuse by the applicant of family or household members provided pursuant to Title 19-A, section 4012, subsection 1;
 - B. Records provided by the Department of Health and Human Services regarding the failure of the applicant to meet child or family support obligations;

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- C.** Records of 3 or more convictions of the applicant for Class D or E crimes;
- D.** Records of 3 or more civil violations by the applicant; or
- E.** Records that the applicant has engaged in recklessness or negligence that endangered the safety of others, including the use of weapons or motor vehicles;

5. Application. Submits an application approved by the chief that, at a minimum, includes the following information:

- A.** The applicant's full name;
- B.** The applicant's full current residential address and the applicant's residential addresses during the previous 5 years;
- C.** The applicant's date and place of birth, height, weight and color of eyes;
- D.** A written statement signed by the applicant granting the chief authority to check the criminal records of any law enforcement agency that pertains to any matter involving the applicant. The applicant must agree to submit to having the applicant's fingerprints taken by the issuing authority if it becomes necessary to resolve any question as to the applicant's identity; and
- E.** The answers to the following questions:
 - (1)** Are you currently under indictment or information for a crime for which the possible

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penalty is imprisonment for a period equal to or exceeding one year?

(2) Have you ever been convicted of a crime for which the possible penalty was imprisonment for a period equal to or exceeding one year?

(3) Are you a fugitive from justice?

(4) Are you an unlawful user of or addicted to marijuana or any other drug?

(5) Have you been adjudged mentally defective or been committed to a mental institution within the past 5 years? or

(6) Are you an illegal alien?

By affixing the applicant's signature, the applicant certifies that the information in the application provided by the applicant is true and correct, that the applicant understands that an affirmative answer to any of the questions in paragraph E is cause for a license to be denied and that any false statement may result in prosecution as provided in section 8114.

6. Military discharge. Has not been dishonorably discharged from military service;

7. Repealed. Laws 1985, c. 141, § 1.

7-A. Experience. Meets at least one of the following criteria:

A. Has successfully completed an investigative assistant sponsorship program pursuant to section

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8110-B and has earned a minimum of 60 academic credits of postsecondary education in a related field of study or an equivalent certificate of study for private investigation;

B. Has been employed for a minimum of 3 years as a member of an investigative service of the United States as a sworn member of a branch of the United States Armed Forces or a federal investigative agency. For purposes of this paragraph, “a member of an investigative service of the United States” means a full-time federal investigator or detective of the United States Armed Forces;

B-1. Has held for a period of not less than 3 years a valid professional investigator’s license granted under the laws of another state or territory of the United States if

(1) The requirements of the state or territory for a professional investigator’s license were, at the date of the licensing, substantially equivalent to the requirements of this chapter; and

(2) The other state or territory grants similar reciprocity to license holders in this State;

C. Has been employed for a minimum of 3 years as a law enforcement officer of a state or political subdivision of a state and has met the training requirements set forth in Title 25, section 2804-C or is qualified to receive a waiver from those requirements; or

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D. Possesses a minimum of 6 years of preparation consisting of a combination of

(1) Work experience, including at least 2 years in a nonclerical occupation related to law or the criminal justice system; and

(2) Educational experience, including at least:

(a) Sixty academic credits of postsecondary education in a field of study listed in division (b) acquired at an accredited junior college, college or university;

(b) An associate degree acquired at an accredited junior college, college, university or technical college in police administration, security management, investigation, law, criminal justice or computer forensics or other similar course of study acceptable to the chief; or

(c) An associate degree in any field of study that is acceptable to the chief; and

8. Examination. Has passed an examination administered by the chief covering subjects pertaining to private investigation to be prescribed by the chief, except that a person currently licensed, as described in section 8106, may at no time be required to take any such examination.
