THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Ken-23-455

STATE OF MAINE
Appellee

v.

JARAE LIPSCOMBE
Appellant

ON APPEAL from the Kennebec County
Unified Criminal Docket

BRIEF OF APPELLANT

Rory A. McNamara # 5609
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
(207) 475-7810

ATTORNEY FOR DEFENDANT-APPELLANT

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INTRODUCTION

The trial court's reasoning in denying the motion for a new trial is demonstrably wrong. A defendant's knowledge of the principal's criminal conduct is certainly an element of the offense, as is plain from the statute itself, not to mention courts' consensus dating to common law. The lower court erred in concluding that such evidence was "not relevant" – the sole basis for its decision. Were this Court to affirm, it would erase a plain element from the 17-A M.R.S. § 753, erode the knowledge-requirement of its accessory-after-the-fact statute, and invite a perverse holding that will, if applied evenhandedly, deprive *the State* of evidence it routinely uses in future trials.

JURISDICTIONAL STATEMENT

This Court has jurisdiction by virtue of 15 M.R.S. § 2115. ("In any criminal proceeding in the Superior Court, any defendant aggrieved by a … ruling or order may appeal to the Supreme Judicial Court sitting as the Law Court."); *see also* M.R. App. P. 2B(b)(2)(c); *cf. State v. Williams*, 2022 ME 24, 272 A.3d 304 (direct appeal from denial of motion for a new trial).

STATEMENT OF THE CASE

This Court is acquainted with most of the salient details, having recently decided defendant's first direct appeal, *State v. Lipscombe*, 2023 ME 70, 304 A.3d 275 (Decided Nov. 9, 2023). Defendant therefore merely reminds the Court of the factual and procedural summary it authored in that recent opinion. *Id.* ¶¶ 2-9. He avoids rehashing details over which this Court has already passed, supplementing only with additional facts.

The State charged defendant by complaint, and later by indictment, with hindering the apprehension of his brother, Jashawn Lipscome, for an alleged murder. (A24-25); *see* 17-A M.R.S. § 753(1-B)(B)(1). At defendant's trial, the State elicited from its witnesses how defendant had informed them that an unknown black male had shot the decedent. (*See* Tr. 88-91, 182-83, 252). Indeed, the primary defense was that the State had failed to offer sufficient convincing evidence that, per the statute of conviction, defendant "knew of the conduct" which his brother had allegedly committed. Defense counsel argued, in closing:

> [W]e ask you to focus then on Jarae Lipscombe's knowledge that he knew of conduct that in fact resulted in the charge of murder…. The key part there is that he had knowledge of conduct that was murder…. They need to prove something about murder.

(Tr. 463). The State itself agreed, at the motion-for-judgment-of-acquittal stage, that it offered but threadbare evidence that Jashawn had committed conduct constituting murder. (Tr. 416: Prosecutor: "I agree, we did not meet that burden as to murder….").[1] The court (Stokes, A.R.J.) seemingly seriously considered granting the M.R.U.Crim. P. 29 motion before ultimately refraining from doing so. (*See* Tr. 417-18).

A few months after defendant was sentenced, Jashawn was tried for the murder underlying defendant's conviction in this case. Jashawn was

[1] The State argued to jurors that Jashawn's flight from the scene was proof that he was the killer. (Tr. 446). However, as defense counsel developed and argued, Jashawn's involvement with narcotics trafficking was just as plausible a motivation for his flight. (Tr. 462, 466).

acquitted after a bench-trial. *See* Judgment (Cashman, J.) of June 1, 2023 in *State of Maine v. Jashawn Lipscombe*, KENCD-CR-2020-1227.[2]

Within weeks of his brother's acquittal, defendant moved for a new trial, arguing that Jashawn's acquittal constituted newly discovered evidence that undermined the State's proof that defendant "knew of the conduct" – again, the words of the statute – that Jashawn had allegedly committed. (A26). The State seasonably responded, waiving by omission any argument other than "[t]he acquittal of Jashaun[3] is not 'new evidence' as it is not relevant to the charge of [h]indering … ." (A30).

After defendant filed a response to the State's opposition to the motion for a new trial, (A32), the court (Stokes, A.R.J.) denied relief. Justice Stokes reasoned that Jashawn's acquittal was "not relevant to what the jury in [defendant's] case had to decide." (A22). Defendant timely appealed.

ISSUE PRESENTED FOR REVIEW

I. Where the statute of conviction requires that the State prove that defendant "knew of the conduct" by the principal constituting a particular crime, is it relevant for the defendant to offer evidence that the principal was acquitted of that crime?

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[2] "Courts may take judicial notice of pleadings, dockets, and other court records where the existence or content of such records is germane to an issue in the same or separate proceedings." *Cabral v. L'Heureux*, 2017 ME 50, ¶ 10, 157 A.3d 795.

[3] Defendant's brother's name is alternately spelled Jashawn and Jashaun.

ARGUMENT

I. Where the statute of conviction requires that the State prove that defendant "knew of the conduct" by the principal constituting a particular crime, it is relevant for the defendant to offer evidence that the principal was acquitted of that crime.

A. Preservation and standard of review

Defendant's argument was raised on appeal and, therefore, is preserved. (*See* A26); *see* M.R.U.Crim. P. 51.

Several interrelated standards of review apply. First, this Court will discern the statutory elements of the offense de novo. *Cf. State v. Siracusa*, 2017 ME 84, ¶ 6, 160 A.3d 531. And, though a ruling regarding evidentiary relevance is reviewed for clear error, the "standard for relevance is a low one." *In re M.S.*, 2014 ME 54, ¶ 10, 90 A.3d 443. And, while the ultimate decision whether to grant a motion for a new trial is reviewed for abuse of discretion, *see Williams*, 2022 ME 24, ¶ 8, any "material error of law invariably constitutes an abuse of discretion." *United States v. Gates*, 709 F.3d 58, 64 (1st Cir. 2013).

B. Lower court's reasoning

The *Order on Motion for New Trial* is not long; this Court may peruse it in its entirety at Pages 20 through 23 of the Appendix. Here, defendant quotes the substantive portion of that order:

> In the court's view, Jashaun's acquittal at the subsequent trial is not newly discovered evidence within the meaning of Rule 33 because it is not relevant to what the jury in Jarae's trial had to determine beyond a reasonable doubt. To find Jarae guilty of violating section 753(1-B)(B)(1), the jury had to find beyond a reasonable doubt that he acted with the intent to hinder, prevent, or delay the discovery or apprehension of his brother; that he

> provided some means or aided in providing some means to Jashaun of avoiding discovery or apprehension, and; at the time, Jarae 'knew of the conduct of [Jashaun] that has in fact resulted in the charge of murder ... or that has in fact rendered [Jashaun] liable to such a charge.'
>
> It is not an element of the crime that Jashaun be convicted. Nor is it a defense to the charge of hindering that Jashaun was found not guilty by a different factfinder at a separate trial. The gravamen of the offense of hindering is that the jury must find beyond a reasonable doubt that at the time he aided his brother in avoiding discovery or apprehension, and while acting with the intent to hinder, prevent, or delay Jashaun's apprehension, Jarae knew of Jashaun's conduct that resulted in the charge of murder or that rendered Jashaun liable to such a charge.
>
> That another factfinder found Jashaun not guilty is not relevant to what the jury in Jarae's case had to decide. Two different factfinders, hearing the same or similar evidence, might reach different verdicts.

(A21-22) (emphasis and brackets in original).

C. Analysis

At trial, defendant tried to raise a reasonable doubt that he knew of the conduct – *i.e.*, the alleged murder – which his brother supposedly committed. The brother's subsequent acquittal on the charge of murder was relevant evidence, probative of the fact that defendant did not know of murderous conduct by his brother.

To demonstrate as much, defendant (1) identifies the State's burden to prove that defendant "knew of the conduct" which was a basis for Jashawn's murder charge; (2) explains how proof of the acquittal is probative of the fact that defendant did not know of such qualifying conduct; and (3) notes the awkward consequences of a holding that such evidence is not relevant.

1. Knowledge of "the conduct" is a statutory element.

With all due respect to the lower court, it erroneously got caught up in whether the State had to prove that Jashawn had been convicted or had merely committed conduct known to defendant. Defendant readily concedes that the State's burden was to prove, in the language of § 753(1-B)(B)(1), that defendant "knew of the conduct" constituting a basis for the charge of murder. Such is plainly an element of the offense:

> A person is guilty of hindering apprehension or prosecution if, with the intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of a crime, the person ... [p]rovides or aids in providing a dangerous weapon, transportation, disguise or other means of avoiding discovery or apprehension and ... [t]he actor **knew of** the conduct of the other person that has in fact resulted in the charge of murder or a Class A crime or that has in fact rendered the other person liable to such a charge. Violation of this subparagraph is a Class B crime ... .

(emphasis added). Pursuant to such a statute as this, "the person giving aid must have known of the perpetration of the felony by the one he aids. Mere suspicion is not enough." Wayne R. LaFave, *Substantive Criminal Law* § 13.6(a) (Oct. 2023). Apparently, this knowledge requirement dates back to Maine's pre-statehood days. *See Commonwealth v. Devlin*, 314 N.E. 897, 900 (Mass. 1974) ("Even should the statutory language be deemed ambiguous, it would be appropriate so to construe it. This is so not only because of the historical context of the statute, an earlier version of which was passed in 1784 and obviously has roots in the common law tradition, but because ordinary rules of statutory construction require us to construe any criminal statute strictly against the Commonwealth.").

2. Judgments are probative of conduct.

When the State charges the wrong person, what can a defendant accused of hindering a prosecution do to prove that his account of the supposed crime is correct?[4] Certainly, a defendant is unlikely to be able to investigate where trained, well-provisioned law enforcement officers have themselves failed. The reality is, out of necessity, both knowledge of "the conduct" and *the lack of* such knowledge "may be proved by circumstantial evidence." *United States v. Tucker*, 533 F.3d 711, 714 (8th Cir. 2008). Evidence of Jashawn's acquittal to prove that defendant did not know of conduct by Jashawn constituting murder is more probative because of the lack of viable evidentiary alternatives. *See Old Chief v. United States*, 519 U.S. 172, 185 (1997) ("The probative worth of any particular bit of evidence is obviously affected by the scarcity or abundance of other evidence on the same point.") (citation and quotation marks omitted).

The theory of relevance looks like this, which is best imagined coming from a skilled defense attorney in closing argument: *If a factfinder methodically deliberating over the State's evidence that Jashawn committed murder could not find him guilty of that crime, maybe you, too, should have doubts that defendant knew his brother had killed Joe Tracy*. While it is true that relevance is but a "low standard," *In re M.S.*, 2014 ME

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[4] The court's suggestion that "[t]wo different factfinders, hearing the same or similar evidence, might reach different verdicts," respectfully, goes more properly to weight rather than admissibility. Certainly, this notion would not have barred the State from introducing evidence of the principal's conviction, had one entered.

54, ¶ 11, 90 A.3d 443, given the State's sparse evidence of a murder by Jashaun, such evidence and argumentation would be impactful.

In 2019, this Court correctly ruled that evidence of an accused principal's/accomplice's conviction is admissible evidence in a defendant's criminal trial. *State v. Dobbins*, 2019 ME 116, ¶¶ 29-37, 215 A.3d 769. In *Dobbins*, the codefendant's conviction was held to be probative of the identity of the killer. *Id.* ¶¶ 31, 34. The inference in our case is much less attenuated: If a judge could not determine that Jashawn committed conduct constituting murder, perhaps defendant could not do so, either.

3. Affirming the ruling below would have significant consequences.

What if the roles were reversed? Imagine that Jashawn had been *convicted* of murder before defendant's trial; is there any doubt that the State would offer evidence of Jashawn's conviction? To be clear, if the decision below is upheld, that option must be foreclosed as a matter of law. The State will not be able offer evidence of the conviction of the principal in future prosecutions for hindering. What's good for the goose is good for the gander.

But the consequences of the ruling below cut deeper. With near-echolalic frequency over the years, the Law Court has held that "[e]vidence of a crime" may be admissible "if offered to prove identity, intent, **knowledge**, motive, opportunity, plan, preparation, or absence of mistake." *See*, *e.g.*, *State v. Anderson*, 2016 ME 183, ¶ 13, 152 A.3d 623 (emphasis added); M.R. Evid. 404(b); *cf. State v. Samson*, 388 A.2d 60, 65 (Me. 1978). More than just some tenuous theory of such alternative relevancy, here the

evidence of Jashawn's acquittal, and its gateway to an argument that defendant *did* lack knowledge that Jashawn killed the victim, was a matter of the statute of conviction. That is to say, if evidence of Jashawn's acquittal is not relevant to prove defendant's lack of knowledge, this Court's evidentiary rules and case-law will, without principle, favor the State's evidence over defendants' evidence. Respectfully, that is not an appearance this Court should welcome.

CONCLUSION

For the foregoing reasons, this Court should reverse the order denying defendant's motion for a new trial, and it should remand for further proceedings.

Respectfully submitted,

March 22, 2024

/s/ Rory A. McNamara

Rory A. McNamara, #5609
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
207-475-7810

ATTORNEY FOR APPELLANT-DEFENDANT

CERTIFICATE OF SERVICE

I sent a native PDF version of this brief to the Clerk of this Court and to opposing counsel at the email address provided in the Board of Bar Overseers' Attorney Directory. I mailed 10 paper copies of this brief to this Court's Clerk's office via U.S. Mail, and I sent 2 copies to opposing counsel

and counsel for other parties at the addresses provided on the briefing schedule.

/s/ Rory A. McNamara

STATE OF MAINE

SUPREME JUDICIAL COURT
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CERTIFICATE OF SIGNATURE

Jarae Lipscombe

I am filing the electronic copy of this brief with this certificate. I will file the paper copies as required by M.R.App.P. 7A(i). I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

Name of party on whose behalf the brief is filed: **Jarae Lipscombe**
Attorney's name: **Rory A. McNamara, *Esq*.**
Attorney's Maine Bar No.: **5609**
Attorney's email address: **rory@drakelawllc.com**
Attorney's street address: **P.O. Box 143, York, ME 03909**
Attorney's business telephone number: **207-475-7810**
Date: **3/22/2024**