

THE SUPREME JUDICIAL COURT OF THE S.TATE OF MAINE SITTING AS
THE LAW COURT

LAW COURT DOCKET NO. KEN-23-455

STATE OF MAINE
Appellee

v.

JARE LIPSCOMBE
Appellant

ON APPEAL from the Kennebec County Unified Criminal Docket

BRIEF OF APPELLEE

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STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Appellant, Jarae Lipscombe, was found guilty of the charge of Hindering Apprehension or Prosecution, 17-A M.R.S. §753(1-B)(B)(1) on November 1, 2022 following a jury trial.

Appellant subsequently filed an appeal stemming from that trial, KEN-23-21, which was denied on November 9, 2023.

The alleged conduct underlying the charges in the present case was the murder of Waterville man on June 6, 2020, by an individual ultimately identified as Mr. Lipscombe's brother, Jashawn. Mr. Jashawn Lipscombe was charged with murder.

Following a bench trial, Jashawn Lipscombe was acquitted on June 1, 2023. On June 22, 2023, the Appellant filed a motion for a new trial based on newly discovered evidence, namely the acquittal of his brother. That motion was denied by Justice Stokes on October 19, 2023. A Notice of Appeal regarding Justice Stokes' denial was timely filed on November 7, 2023.

ISSUE PRESENTED

Whether a verdict of not guilty, in a separate trial, based on the same incident, delivered seven months after the Appellant's trial, is newly discovered, relevant evidence, (relevant only to the Appellant's knowledge at the time of the alleged crime) that would warrant a new trial.

ARGUMENT

Justice Stokes was correct in denying the Motion for New Trial on the basis that, a subsequent acquittal of the Appellant's brother was not newly discovered nor relevant evidence as applied to this case. The verdict in Jashawn Lispcombe's case is simply not relevant under any test of relevancy and as such, can not justify a new trial.

The definition of relevant evidence as provided in M.R.Evid. 401 is simple and straightforward:

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

This Court will review a trial court's determination of relevancy for clear error. *State v. Williams*, 653 A.2d 902, 906 (ME 1995).

“The concept of relevance “rests upon rules of logic or common sense, not of law.” Field and Murray, *Maine Evidence* 401.1 at 53 (1976). Common sense suggests that one measures relevance in a continuum, and that at some stage evidence becomes so remote that its probative impact upon “the existence of any fact that is of consequence” is reduced to zero.” *State v. Kotsimulos*, 411 A.2d 79, 81 (Me 1980).

An acquittal, conviction, or guilty plea of either a defendant, witness, co-defendant or accomplice may be relevant evidence. *State v. Dobbins*, 2019 ME 116 ¶ 29. (specifically focusing on an accomplice’s guilty plea as evidence supporting the accomplice defendant’s defense theory), see also, M.R.Evid. 404, 405 (prior act evidence which may include conviction or other evidence deemed relevant to some other issue or as an element of the charged offense). Simply because such evidence may be admissible, does not automatically make it relevant. The verdict in Jashawn Lipscombe’s case, information that was not known to the Appellant until three years after the fact, cannot “make the existence of any fact that is of consequence to the determination of the action more probable or less probable.” Jashawn Lipscombe’s guilt or innocence, as determined in 2023 has no bearing on what the Appellant knew in 2020.

Under Maine’s Hinderling statute, 17-A M.R.S. §753(1-B)(B)(1), there is neither a co-defendant or accomplice, whose guilt or innocence affects or is relevant to any element or defense.

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: Provides or aids in providing a dangerous weapon, transportation, disguise, or other means of avoiding discovery or apprehension and: The 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.

Whether Jashawn Lipscombe (the ‘other’ person) was, will be, or wasn’t convicted, is not an element of the crime.¹ His presence was relevant, his conduct, as known by the Appellant (in 2020) is relevant.

The relevant element of the charge is whether the Appellant “knew of the conduct of the other person.” An acquittal of Jashawn, three years after the alleged conduct, would not, could not, make it more or less probable that the Appellant “knew of the conduct of the other person (Jashawn Lipscombe) that either in fact

¹ Interestingly enough, the reference to *Substantive Criminal Law*, while discussing accessory after the fact laws and history, specifically goes on to note that “One significant aspect of the common intent-to-hinder formulation is that it can usually be construed to “have dispensed with the necessity that it be shown that the putative offender actually committed a crime and that the person rendering assistance was aware of that fact.”” Wayne LaFave, *Substantive Criminal Law* §13.6(a) (October 2023 Update) citing Model Penal Code §242.3 Comment at 229 (1980)

resulted in the charge of murder or has in fact rendered Jashawn liable to such a charge.”

There is simply no element of 17-A M.R.S. §753 to which the “other” individual’s conviction or acquittal would be relevant. Further, because the Appellant’s indictment and trial were exclusive to his conduct and his knowledge, a factfinder’s determination as to his brother’s guilt for his own conduct, cannot, per the second part of the rule, be “of any consequence in determining the action.”² Justice Stokes denial of the Motion for New Trial, based on the determination that Jashawn Lipscombe’s acquittal was not relevant, was clearly, not in error.

**AFFIRMING THE RULING BELOW IS CONSISTANT WITH ALL PRIOR
LAW ON RELEVANCY**

Contrary to Appellant’s statement of dire consequences, affirming the decision below will change nothing. The Appellant consistently references future actions as being relevant to past knowledge. It is irrelevant whether Jashawn was convicted before or after the Appellant’s trial; The Appellant’s knowledge of that

² Notwithstanding Appellant’s conflation of accomplice liability and accessory after the fact issues, Maine does in fact have a statute addressing such circumstances . 17-A M.R.S. §57(6) states “An accomplice may be convicted on proof of the commission of the crime and of the accomplice’s complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or is not subject to criminal prosecution pursuant to section 10-A, subsection 1, or has an immunity to prosecution or conviction, or has been acquitted.”

outcome came to him after the conduct alleged in the indictment and the trial on that conduct.

The Appellant's argument would require this court to determine that information obtained three years after the fact, is now admissible to show what the defendant knew three years earlier. It simply cannot track when one applies the most simple continuum of common sense.

CONCLUSION

For the foregoing reasons, the Court should deny the appeal.

Respectfully Submitted,

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Date:

CERTIFICATE OF SERVICE

I, Michael H. Madigan, Assistant District Attorney, hereby certify that one (1) paper copy and an electronic version of the within Brief for Appellant was mailed/sent to Appellant's Attorney, addressed as follows:

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The State has sent a native.pdf file for submission to the court (at lawcourt.clerk@courts.maine.gov) and ten (10) paper copies have been mailed.

Dated: _____

Michael H. Madigan, Esq.
Attorney for the State
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