

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

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**REPLY BRIEF OF APPELLANT**

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## ARGUMENT

### **I. Jashawn’s acquittal is relevant to what Jashawn knew in 2020.**

A fact-finder determined that Jashawn Lipscombe is not guilty of murder, finding reasonable doubt that Jashawn was Joe Tracy’s killer. That judgment makes it more likely that the unknown black male who defendant saw at the scene is the true killer. (See Tr. 88-91, 182-83, 252) (defendant reported seeing unknown black male). In other words, the acquittal makes it more likely that defendant never knew that Jashawn committed conduct constituting murder, an element of the offense. To the contrary, defendant knew of conduct by an unknown black male, and the acquittal supports that theory.

The State seemingly agrees, writing: “[Jashawn’s] conduct, as known by the Appellant (in 2020) is relevant.” Red Br. 4. This is correct, and that is what defendant has been trying to get the State and the lower court to understand throughout. What defendant knew at the time of Tracy’s death is *the* defense. Defendant argued at trial that he simply did not know of conduct by Jashawn (*i.e.*, “the principal”)<sup>1</sup> constituting murder; he readily admitted that he knew of murder *by an unknown black male*.

The fact of an acquittal supports such knowledge (*i.e.*, murder by an unknown black male). Indeed, it would have been a powerful argument for

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<sup>1</sup> Defendant has not “conflat[ed]” principles of accomplice-liability and liability for hindering apprehension or prosecution. *But see* Red Br. 5 n. 2. Both theories of liability involve commission of an offense by a “principal,” (*i.e.*, Jashawn, in our case) and that is how defendant uses the term.

a lawyer to make to the jury: *If a judge presiding over a trial had reasonable doubts that Jashawn committed murder, why shouldn't you have reasonable doubts that defendant knew Jashawn committed murder?* That is probably why the State and lower court have never contested the materiality of the evidence.

## **II. Jashawn's acquittal is newly discovered.**

The State mentions, *see* Red Br. 2, but does not develop an argument that the acquittal is “not newly discovered.” Perhaps related to this thread, a couple times, the State's brief makes mention to the passage of time between Joe Tracy's murder and Jashawn's acquittal:

- “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.’” Red Br. 3.
- “[Jashawn's] conduct, as known by the Appellant (in 2020) is relevant.” Red Br. 4.

Respectfully, defendant is not sure what to make of these references to the passage of three years' time. Certainly, defendant does not contend that he knew of the acquittal at the time of Mr. Tracy's death. Rather, he is using the subsequent acquittal to buttress his assertion that he *never* knew that Jashawn shot Mr. Tracy because, in fact, someone else did so. Regardless, due to the lack of development, this contention is waived. *State v.*

*Cummings*, 2023 ME 35, ¶ 15 n. 6, 295 A.3d 1227 (State’s undeveloped argument is waived).

### **III. Awkward consequences of affirmance**

Echoing the decision below, the State has argued that a criminal judgment is not probative of whether an individual committed the criminal conduct underlying that judgment. That, respectfully, is a non-starter. Judgments are introduced on a near daily basis in Maine courts, at least when they are deployed by the prosecution, and despite M.R. Evid. 404(b). *See* Field & Murray, *Maine Evidence* § 404.4 at 143 (6th ed.) (noting “numerous” Law Court cases “involving the admissibility of evidence of other crimes”). When the judgment is an acquittal rather than a conviction, defendants (and anyone else, for that matter) ought to be able to do the same.

### **CONCLUSION**

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

Respectfully submitted,

May 23, 2024

/s/ Rory A. McNamara

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## **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 at the address provided on the briefing schedule.

/s/ Rory A. McNamara

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STATE OF MAINE

SUPREME JUDICIAL COURT  
Sitting as the Law Court  
Docket No. Ken-23-455

State of Maine

v.

**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).

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