

**STATE OF MAINE**

**SUPREME JUDICIAL COURT  
Sitting as the Law Court**

No. PEN-24-36

STATE OF MAINE,  
Appellee,

v.

RICHARD KELLEY,  
Appellant.

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On Appeal from the Unified Criminal Docket, Bangor

**REPLY BRIEF OF APPELLANT,  
RICHARD KELLEY**

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## TABLE OF CONTENTS

1. The Lower Court Erred in Denying Standing When the Parties Stipulated Standing Existed.	1
2. The Court Should Remand to the Trial Court to Decide the Motion on its Merits.	2
3. If the Court is to Decide the Motion on its Merits, it Should Grant the Motion to Suppress.	3
a. The November 24, 2020 search warrant lacked probable cause the Dodge Challenger was used for drug activity.	3
b. The January 21, 2021 warrant is the fruit of the illegal November 2020 warrant and should be suppressed.	4
c. Law enforcement conducted a search beyond the scope of the authorized warrants.	5
d. The warrants are defective because they exceeded the timeframe for electronic warrants authorized by statute.	7
CERTIFICATION OF SERVICE	10

## TABLE OF AUTHORITY

Blanchard v. Bar Harbor, 221 A. 3d 554 (Me. 2019)	1
Collins v. State, 750 A. 2d 1257 (Me. 2000)	1
Horton v. California, 496 U.S. 128 (1990)	5
Illinois v. Gates, 462 U.S. 213 (1983)	3
Maryland v. Garrison, 480 US 79 (1987)	6
State v. Johndro, 2013 ME 106	4
State v. Samson, 916 A. 2d 977 (Me. 2007)	3
State v. Watson, 152 A. 3d 152 (Me. 2016)	2
Weeks v. United States, 232 U.S. 383 (1914)	4
Wong Sun v. United States, 371 U.S. 471 (1963)	4
16 MRSA § 639	2, 5, 7

## **1. The Lower Court Erred in Denying Standing When the Parties Stipulated Standing Existed.**

The State offered no authority that the motion court can disregard the parties stipulation on standing in deciding a motion to suppress.

The case of *Collins v. State*, 750 A. 2d 1257 (Me. 2000), cited by the State, is inapplicable to this matter because the parties did not stipulate to standing in that case

The State's reliance on *Blanchard v. Bar Harbor*, 221 A. 3d 554 (Me. 2019), is not controlling, because in that case there was no explicit stipulation to standing. Rather, this Court reviewed the trial court's finding that "the Town '*implicitly concede[d]*' that the Bar Harbor property owners have standing." *Id.* at 557 (emphasis added). Here, the State explicitly conceded standing existed.

Moreover, judicial economy supports accepting a parties' stipulation on standing. In order to conserve judicial resources and time, the courts should not look beyond the parties' stipulation on standing. It is only when standing is unresolved should the court make an independent determination on its existence.

For all these reasons, and those set forth in the Appellant's principal brief, the Court should find the stipulation to standing was binding on the trial court and the motion should have been heard on the matters.

**2. The Court Should Remand to the Trial Court to Decide the Motion on its Merits.**

The State asks this Court to make factual findings and conclusions of law on the issues raised in the motion to suppress. The Court should decline that invitation and remand the matter to the trial court to make the factual findings and legal conclusions.

The case of *State v. Watson*, 152 A. 3d 152 (Me. 2016), does not support this Court deciding the merits of the motion to suppress at this time. In *Watson*, the lower court had made factual findings and legal conclusions on the motion's merits before this Court reviewed the decision.

The trial court made no factual findings or legal conclusions on the motion beyond standing. The trial court should make the factual findings and legal conclusion before this Court makes any review.

Furthermore the record is not complete in this matter. The Appellant moved on January 3, 2023 to re-open the evidence to take testimony, and hear argument, on whether the electronic monitoring warrants comply with 16 MRSA § 639. The lower court never decided the request to re-open the testimony on this issue and instead denied the motion on standing.

Therefore, the matter should be remanded to the trial court.

3. **If the Court is to Decide the Motion on its Merits, it Should Grant the Motion to Suppress.**

a, **The November 24, 2020 search warrant lacked probable cause the Dodge Challenger was used for drug activity.**

The November 24, 2020 warrant application sets forth no nexus between the alleged illegal drug activity and the Dodge Challenger.

In determining whether probable cause exists, the Court looks to the totality of the circumstances set forth in the affidavit. *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983). "To meet the standard for probable cause, the warrant affidavit must set forth some nexus between the evidence to be seized and the locations to be searched." *State v. Samson*, 916 A. 2d 977, 981 (Me. 2007).

While the affidavit establishes, at best, probable cause Keith Wedge was involved in illegal drug activity, it provides no nexus to that illegal activity and the Dodge Challenger. The affidavit provides no information the Dodge Challenger is used to transport illegal drugs or that any illegal activity occurred within the Challenger.

There is no information in the affidavit Keith used the Challenger to facilitate drug activity. The information is Keith would receive rides from others. The source of information in Paragraph Three indicates: "he [Keith] will ask for rides when he's out [of heroin]."

The affidavit fails to provide any nexus between Keith and his alleged drug activity and the Dodge Challenger. Absent this nexus,

there is no probable cause to attach a GPS tracker to the car and the search warrant should be suppressed.

**b. The January 21, 2021 warrant is the fruit of the illegal November 2020 warrant and should be suppressed.**

The subsequent warrant obtained on January 21, 2021 should be suppressed because its probable cause is based on the tracking data obtained as a result of the previous illegal warrant.

Under Supreme Court, and Law Court, precedent, the exclusionary rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, *Weeks v. United States*, 232 U.S. 383 (1914), but also evidence later discovered and found to be derivative of an illegality or "fruit of the poisonous tree." *Nardone v. United States*, 308 U.S. 338, 341 (1939). It "extends as well to the indirect as the direct products" of unconstitutional conduct. *Wong Sun v. United States*, 371 U.S. 471, 484 (1963); see also *State v. Johndro*, 2013 ME 106, 82 A.3d 820 ("[A]ny evidence obtained through the exploitation of police illegality must be excluded as fruit of the poisonous tree.").

Removing the tracking information obtained as a result from the November 2020 warrant, this subsequent warrant lacks probable cause the Dodge Challenger was used in illegal drug activity, and therefore the warrant should be suppressed.

**c. Law enforcement conducted a search beyond the scope of the authorized warrants.**

Law enforcement searched the Dodge Challenger outside-the-state of Maine. The warrant did not authorize a search outside of Maine, and the Court lacked authority to grant such a search.

"If the scope of the search exceeds that permitted by the terms of a validly issued warrant ... [the search and any] subsequent seizure [are] unconstitutional." *Horton v. California*, 496 U.S. 128, 140 (1990).

The court did not authorize a search of the Dodge Challenger's location tracking outside the State of Maine and therefore such a search exceeded the scope of the warrant.

Title 16 MRSA § 639(3) provides:

A court empowered to issue a search warrant or other order for the installation of a tracking device may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction if the device is installed within the jurisdiction of the court.

Neither the November 24, 2020 or the January 21, 2021 warrants make any reference to authorizing a search outside the State of Maine. The warrant makes no reference to Title 16 MRSA § 639.

"The Warrant Clause of the Fourth Amendment categorically prohibits the issuance of any warrant except one particularly describing the place to be searched and the persons or things to be seized. The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the



specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Maryland v. Garrison*, 480 US 79, 84 (1987); see *State v. Samson*, 916 A. 2d 977, 981 (Me. 2007) (quoting Garrison's particularity requirement). Because the warrant does not authorize tracking outside of Maine, such tracking exceeds the scope of the warrant.

Therefore, the out-of-state tracking exceeded the scope of the authorized search. "If the scope of the search exceeds that permitted by the terms of a validly issued warrant ... [the search and subsequent seizure (are) unconstitutional." *Horton v. California*, 496 U.S. 128,140 (1990).

Moreover, neither warrant application provides any information the Dodge Challenger was traveling out-of-state. The Court would have no probable cause to issue a search warrant outside of Maine based on the facts alleged, and the good faith exception could not apply.

- d. **The warrants are defective because they exceeded the timeframe for electronic warrants authorized by statute.**

The November 24, 2020 warrant is defective because it issued an electronic search for 60 days when the statute only provides for a search of 30 days. The January 21, 2021 warrant should be suppressed because it was not obtained within the 30 day timeframe required under the statute for a renewal warrant.

Title 16 MRSA 639(4) provides:

A justice, judge or justice of the peace may issue a search warrant authorizing the installation and monitoring of a tracking device pursuant to this section. The warrant must require the installation of the tracking device within 14 days of the issuance of the warrant and **allow the tracking device to be monitored for a period of 30 days following installation**. A justice, judge or justice of the peace may grant an extension of the monitoring period **for an additional 30 days** upon a finding of continuing probable cause.

(Emphasis added).

The November 24, 2021 warrant requested, and was granted, a monitoring period of 60 days. The statute does not allow for 60 days of after 30 days.

The tracking device granted on November 24, 2021 was installed on December 2, 2020. The statutory period of authorization of 30 days would have expired on January 1, 2021. Therefore, the Court should suppress all electronic searches obtained after January 1, 2021 because no timely extension was filed.

The Court should suppress the January 21, 2021 warrant because the extension was not granted within the statutory timeframe. As set forth above, the 30-day statutory period for monitoring on the first warrant expired January 1, 2021. The State did not apply for an extension until 20 days later on January 21, 2021. During this 20 day period the State continued to track and search the location of the Dodge Challenger.

Even adjusting the January 21, 2021 application to backdate its approval to January 1, 2021, the statutory maximum period of 60 days of electronic monitoring would expire on January 31, 2021. The State continued to track the Dodge Challenger until February 22, 2021. The State tracked the Dodge Challenger to Methuen, Massachusetts on February 22, 2021 and previous dates beyond January 31, 2022.

Therefore, the Court should find that all searches of the Dodge Challenger's location after January 31, 2021 are unlawful and suppress the results of the searches and the fruits of such, including the February 22, 2021 stop and search of the Dodge Challenger because that stop and search was the fruit of the illegal search.

Dated: June 24, 2024

Respectfully submitted,

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## **CERTIFICATION OF SERVICE**

I hereby certify that on June 24, 2024, I sent a copy of the above Reply Brief to AAG Jason Horn, 97 Hammond Street, Bangor, ME 04401 by mail and email.

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Hunter J. Tzovarras