

**SUPREME JUDICIAL COURT**

**Sitting as Law Court  
PEN-24-253**

STATE OF MAINE

v.

JEFF BELONY

On appeal from Unified Criminal Docket Bangor

BRIEF OF APPELLANT,  
JEFF BELONY

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## **I. PROCEDURAL HISTORY**

On March 17, 2021, Jeff Belony is charged with aggravated trafficking in cocaine base. A motion to suppress hearing is held challenging, under the state and federal constitutions, the legality of the stop, detention and search of Mr. Belony. The court denies the motion. Mr. Belony enters a conditional guilty plea to appeal the court's denial of the motion to suppress.<sup>1</sup>

## **II. STATEMENT OF FACTS**

### **1. Information Before the Car Stop.**

On January 4, 2021, MDEA meets with two cooperating informants. Both informants have pending criminal charges and hope to gain a benefit from their cooperation. (Transcript Motion to Suppress Hearing at p. 33-36). The informants provided information about drug trafficking relating to Brandy Grover. The informants claim Grover is associated with two black males from New York named "Heft" and "Mel". No further description of "Heft" and "Mel" is provided. (Tr. at p. 33-35, 39).

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<sup>1</sup> Mr. Belony is sentenced to 8 years all but 4 years suspended.

MDEA checks its data base and one possible name for "Heff" is Jeff Belony. Other names are associated with "Heff" as well. (Tr. at p. 36-37).

One of the informants claims Heff drives a white Monte Carlo with Maine plates. (Tr. at p. 38). The informant claims Heff is making a 200 gram delivery to Brandy Grover on January 4, 2021. (Tr. at p. 38).

MDEA set up surveillance in the area of Brandy Grover's home. They never corroborate the information about the white Monte Carlo or the delivery of drugs. (Tr. at p. 38).

On March 13, 2021, a Milo Police Officer informs MDEA that a confidential source claims Heff is traveling from New York to Maine on the Concord Trailways Bus line on March 15, 2021. (Tr. at p. 39). Nothing is known about the reliability of this confidential source. (Order Motion to Suppress at p. 1).

Based on the above claim, MDEA agents set up surveillance at the Concord Trailway bus station in Bangor on March 15, 2021. (Tr. at p. 25-28). The agents see a Gray Ford Focus waiting in the parking lot for the bus to arrive. (*Id.*). The license plate for the Ford Focus is registered to Anthony Chambrello out of Milo, Maine. MDEA has no information that Anthony Chambrello, or the Ford Focus, is associated with Heff or drug related activity. (Tr. 26, 43-44).

The agents see a black male getting off the bus carrying a red bag. (Tr. at p. 27, 59). He sits in the passenger seat of the Ford Focus. (Tr. at p. 27, 59). The Ford Focus leaves the parking lot.

MDEA contact Bangor Police Officer Libby to stop the Ford Focus for an alleged seatbelt violation.<sup>2</sup> (Tr. at p. 28-29). Officer Libby is a K-9 officer.

## **2. The Stop and Roadside Detention.**

Officer Libby stops the Ford Focus because the rear license plate is obstructed by dirt and debris and is only readable once he was on the bumper of the Ford Focus.<sup>3</sup> (Tr. at p. 133).

Officer Libby is talking to MDEA Agent Ireland on the cellphone when he makes the stop. (Tr. at p.159) (State Ex. 1: Libby Cruiser Video at 2:45)<sup>4</sup>. After about 30 seconds, Officer Libby ends the call with MDEA and goes to the driver side window. (Video 2:45-3:20).

Officer Libby asks the driver for his license, registration, and insurance. (Tr. at p. 133, 160). Officer Libby notices the passenger is

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<sup>2</sup> The lower court did not find the claimed seatbelt violation to be credible or the basis for the stop. (Order p. 3).

<sup>3</sup> The State argued at the motion to suppress hearing that another basis for the stop was Mr. Belony was not seat-belted. The court considered the testimony on this issue and determined Mr. Belony was seat-belted. (Order p. 3).

<sup>4</sup> The times cited for the Cruiser video is the run time starting from 0:00.

seat-belted and does not ask for his identification. (Tr. at p. 133-34). After about two minutes of interaction with the driver, Officer Libby returns to his cruiser. (Video 3:20-5:30).

Once inside his cruiser, Officer Libby calls MDEA Agent Ireland to discuss the stop and what he should do. (Tr. at p.135,161) (Video 6:00-11:10). Officer Libby does not routinely call MDEA as part of a stop for an obstructed plate. (Tr. at p. 159). Officer Libby calls for a second officer to come to the scene so he can run his K-9 around the Ford Focus. (Tr. at p. 162-63). While waiting for the backup officer to arrive, Officer Libby talks with Agent Ireland.

Over the course of 5 minutes, the following exchange occurs between Officer Libby and Agent Ireland.

LIBBY: Hey, you got another guy coming over here?

IRELAND: What's that?

LIBBY: You got another guy coming over here?

IRELAND: If you got another one closer, I'd call him because [inaudible] at Shaw's.

LIBBY: Jeez.

IRELAND: Who's closer?

LIBBY: I have no idea, I'll see.

IRELAND: [inaudible]

[Officer Libby calls dispatch for a backup unit.]

LIBBY: Do you [to dispatch] have a unit close by?

IRELAND: I would say you already have reasonable suspicion to sniff him so [inaudible].

[Dispatch informs the closest unit is at Harlow Street.]

IRELAND: Harlow! What the fuck. Well I guess just let him sit there [inaudible].

LIBBY: I'm trying to get his information [inaudible] passenger wouldn't give me anything.

IRELAND: What's his name?

LIBBY: Anthony Chambrello is the driver.

IRELAND: That's the driver?

LIBBY: Yeah.

IRELAND: What's the passenger [inaudible] did he give you his name?

LIBBY: No.

IRELAND: No, but he wasn't wearing a seatbelt though.

LIBBY: I don't have that now.

IRELAND: Yeah, you do, you have that. I saw it. If I can see the violation, you can [inaudible].

LIBBY: Oh, yeah?



IRELAND: Yeah, that's how you stopped the car. That's good all day.

LIBBY: Okay.

[Dispatch updated received.]

LIBBY: Dude, I ain't gonna have crap here in a minute, man.

IRELAND: We have information this guy is bringing drugs up off the bus, and he got in a car heading to Milo and this guy is registered out of Milo isn't he?

LIBBY: Yep.

IRELAND: Okay you got reasonable suspicion to hold him as long as you fuckin' want.

LIBBY: Okay, where are you guys?

IRELAND: [inaudible response].

LIBBY: I'll go out and talk to him in a second.

IRELAND: So what's the passenger's name again-I mean the driver?

LIBBY: The driver's name is Anthony Chambrello. He's almost here?

IRELAND: Yeah, he's on Kenduskeag using his pretty blue lights like you did.

LIBBY: Okay, I'll go out and see if I can get that passenger stuff now.

IRELAND: You have to show ID for a traffic violation.  
(Cruiser Video 5:30-11:10).

After talking to Agent Ireland for five and half minutes, Officer Libby goes back to the Ford Focus to obtain the passenger's identification. (Tr. at p. 136) (Video 11:10). During this interaction, he asks the occupants questions unrelated to the stop for the obstructed plate, such as where they are coming from and going. (Tr. at p. 167).

A minute and a half later, a second officer arrives. Officer Libby gives the officer the passenger's identification to run.<sup>5</sup> (Tr. at p. 137-38) (Video 13:30). Officer Libby runs his K-9 around the car. (Video 15:00).

Twelve minutes have passed since the stop began before Officer Libby runs the K-9 around the car. Officer Libby's last stop for an obstructed plate took approximately 7-10 minutes to complete<sup>6</sup>, which is the typical time for such a stop. (Tr. 157-58).

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<sup>5</sup> The officers do not identify the passenger as Jeff Belony until 14 minutes into the stop when one of the officer's tells MDEA the name of the driver is Jeff Belony. (Video 17:10) (Tr. at p. 150).

<sup>6</sup> Officer Libby testified he started to write a warning ticket for the obstructed plate, but never completed it because he became distracted talking with MDEA. (Tr. at p. 164-65).

### **3. The search of Mr. Belony.**

The K-9 indicates on the front driver side door. Mr. Belony is seated in the front passenger side. (Stipulations). After the K-9 indicates on the front driver door, the occupants are taken out of the car. (Video 20:30).

The officer searches Mr. Belony and finds drugs concealed on his person. (Video 21:00). No drugs or contraband are located in the Ford Focus before Mr. Belony's person was searched. (Stipulation).

### **III. ISSUES ON APPEAL**

1. Did the court err in finding the stop of the car was supported for an obstructed plate violation when the officer could read the plate once on the bumper of the car?

2. Did the K-9 Officer extend the obstructed plate stop beyond the mission of issuing a warning ticket by calling and talking with MDEA, calling and waiting 7 minutes for a backup officer to arrive before running his K-9 around the car while never completing the warning ticket?

3. Did the court err in finding probable cause to search the passenger, Mr. Belony, after the K-9 indicated on the driver-side window?

#### **IV. SUMMARY OF ARGUMENT**

1. The legislature has said license plates must be plainly visible and legible. The legislature set no distance from which plates must be visible and legible. The officer could read the car's plate in this case once he was on the bumper. Once the officer was able to read the plate, he had no basis for a traffic stop, because the plate was visible and legible. Therefore, the Court should suppress the stop.

2. The typical traffic stop for an obstructed plate takes 7-10 minutes to complete. Officer Libby held Mr. Belony and the car for 12 minutes while talking with MDEA and waiting for a back-up officer to arrive so he could run his K-9 officer around the car. Officer Libby's actions extended the stop beyond the mission of writing the warning ticket thereby making it an unconstitutional detention.

3. Law enforcement lacked probable cause to search Mr. Belony's person because the dog indicated on the driver-side of the car (not the passenger) and no drugs or contraband were located before the search.

## V. **LAW & ARGUMENT**

"When an appellant challenges a court's order on a motion to suppress, we review the factual findings of the motion court for clear error and the application of those facts to constitutional protections ... de novo." *State v. Blier*, 162 A.3d 829, 831 (Me. 2017) (internal citations omitted).

### 1. **The officer lacked reasonable suspicion to stop the car because the plate was readable.**

The lower court erred in finding the stop was justified based on the dirty plate because the officer could read the plate when on the car's bumper.

"A stop is justified when an officer's assessment of the existence of specific and articulable facts indicating a possible violation of law or a public safety risk is objectively reasonable considering the totality of the circumstances." *State v. Connor*, 2009 ME 91 ¶ 10.

"Registration plates, including the numbers, letters and words, must always be plainly visible and legible." 29-A MRSA § 452(4). The statute does not indicate from what distance the plate must be plainly visible and legible. Officer Libby testified he could read the plate once he was "on the bumper" of the car. (Tr. at p. 133, 156).

Because the plate was visible and legible (albeit from a close distance), the officer lacked a basis to stop the car. Therefore, the Court should suppress the stop.

**2. Law enforcement delayed and extended the stop beyond the scope of the dirty plate infraction.**

The traffic stop for the dirty plate was delayed and extended by several minutes for a back-up officer to arrive so the K-9 officer, who made the stop, could run his K-9 around the car.

"It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." *Florida v. Royer*, 460 U.S. 491, 500 (1983).

"A seizure for a traffic violation justifies a police investigation of that violation. A relatively brief encounter, a routine traffic stop is more analogous to a so-called 'Terry stop' ... than to a formal arrest." *Rodriguez v. U.S.*, 135 S.Ct. 1609, 1614 (2015). (internal citations and quotations omitted)

"Like a Terry stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, and attend to related safety concerns," *Id.* (internal citations omitted)

"The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket ... but whether conducting the sniff 'prolongs'-i.e., adds time to-'the stop.'" *Id.* at 1616.

The dog sniff added over 6 minutes to the stop in this case because Officer Libby waited that long for the back-up officer to arrive before running his dog around the car.

The typical total duration for an obstructed plate stop is 7-10 minutes. (Tr. at p. 157-58). Officer Libby kept the car on the side of the road for over 12 minutes before running the dog around, and never completed issuing the warning ticket. (Tr. p. at 164).

"A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete the mission." *Illinois v. Caballes*, 543 U.S. 405, 407-8 (2005).

Officer Libby unnecessarily prolongs the mission of issuing the warning ticket in several ways:

- He talks with MDEA for approximately 30 seconds when he first makes the stop before exiting his cruiser. (Tr. 159) (Video 2:45-3:20).
- After obtaining the driver's license, he calls MDEA to discuss the stop and what he should do. (Tr.1 35, 161) (Video 6:00-11:10).



- Officer Libby does not routinely call MDEA as part of a stop for an obstructed plate. (Tr. 159).
- Officer Libby calls for a second officer to come to the scene so he can run his K-9 around the Ford Focus. (Tr. 162-63).
- Officer Libby spends over 5 minutes talking with Officer Ireland about holding the car while he waits for another officer to arrive from across town so he can run the dog around the cruiser. (Video 5:30-11:10).
- After talking to Agent Ireland for 5 1/2 minutes, Officer Libby goes back to the Ford Focus to obtain the passenger's identification. (Tr. 136) (Video 11:10).
- Officer Libby asks the occupants questions unrelated to the obstructed plate, such as where they are coming from and going. (Tr. 167).
- Once the back-up officer finally arrives, Officer Libby gives the back-up officer the passenger's identification to run. (Tr. 137-38) (Video 13:30).
- Officer Libby runs his K-9 around the car. (Video 15:00).
- 12 minutes pass from the stop before Officer Libby runs the K-9 around the car. (Video 2:45-15:00).

The traffic stop is extended by *at least* 2 minutes in waiting for the back-up officer to arrive. The Court can easily find the traffic stop was extended several minutes longer in listening to the 5 minute conversation between Officer Libby and MDEA, when it appears no action was being taken to issue the warning ticket.

The Court in *Rodriguez* rejected an exception for a de minimus addition of time holding that adding *any* time by unrelated inquiries, or detours, unconstitutionally prolongs the stop. *Id.* at 1615-16. "If an officer can complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete [the stop's] mission." *Id.* at 1616.

Officer Libby's actions exceeded what was necessary for an obstructed plate stop. "When an investigating officer's actions during the stop exceed what is necessary to dispel the suspicion that justified the stop, the detention may amount to an arrest and is lawful only if it is supported by probable cause." *State v. Blier*, 2017 ME 103, ¶ 8; see further *State v. White*, 70 A.3d 1226, 1230-31 (Me. 2013).

Officer Libby conducted several tasks unrelated to the obstructed plate:

1. Calling MDEA.
2. Talking to MDEA for over 5 minutes.

3. Waiting for the back up officer to arrive.
4. Asking the occupants questions unrelated to the purpose of the stop.

All of the above was unrelated to the purpose of the stop and extended the mission of issuing the warning.

As this Court has stated: "[A] traffic stop or other investigatory stop must not last longer than reasonably necessary to investigate the suspected violation of law. *Rodriguez v. United States*, 575 U.S. 348, 354-55, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015); *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) ("The scope of the detention must be carefully tailored to its underlying justification."); 4 Wayne R. LaFare, *Search & Seizure: A Treatise on the Fourth Amendment*, § 9.2(f) at 451 (6th ed. 2020)." *State v. Abdullahi*, 298 A.3d 815, 824 (Me. 2023).

For all of the reasons set forth above, the State cannot establish Officer Libby sufficiently limited the scope and duration of the detention to the obstructed plate warning. Therefore, the Court must find the detention unconstitutional.

3. **Law enforcement lacked reasonable suspicion or probable cause to hold Mr. Belony beyond the scope of the dirty plate violation.**

The lower court erred as a matter of fact and law in finding the officer had reasonable suspicion to hold Mr. Belony roadside for the dog sniff.

a. **Factual error in lower court's decision.**

The lower court made a factual error in finding: "Mr. Belony was identified within 5 or 6 minutes of the stop. With his identification, law enforcement collectively had enough information to connect Mr. Belony to the reports of drug transactions on which they were working. This provided a valid basis for prolonging the stop." (Order p. 4.)

Mr. Belony is never identified 5-6 minutes into the stop. He is identified almost 15 minutes into the stop. (Tr. at p. 150) (Video 17:10). The lower court appears to confuse the identification of the driver with Mr. Belony. The driver is identified in approximately 5-6 minutes.<sup>7</sup>

The lower court had the timeline correct when it previously stated: "After the dog indicated on the car, both occupants were removed, Mr. Belony was identified, then he was searched." (Order p. 2). However, the court did not use the correct timeline in finding the detention was

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<sup>7</sup> The driver had no known affiliation with drug activity.

justified, but rather relied upon the incorrect factual conclusion Mr. Belony was identified after 5-6 minutes into the stop.

By the time Mr. Belony was identified, the traffic stop already been unnecessary prolonged for the reasons previously listed.

**b. Mr. Belony's identification did not provide a legal basis to detain him.**

Mr. Belony's identification did not establish a reasonable suspicion or probable to detain and hold him. Law enforcement had no reliable information Mr. Belony was engaged in illegal activity at the time.

"Corroboration plays a significant role in determining whether, given the totality of the circumstances, there is probable cause." *State v. Lepenn*, 295 A.3d 139, 145 (Me. 2023).

At the time of the stop, law enforcement had the following information:

- On January 4, 2021, two cooperating informants provided information about drug trafficking relating to Brandy Grover. The informants claim Grover is associated with two black males from New York named "Heft" and "Mel". No further description of "Heft" and "Mel" is provided. (Tr. 33-35, 39).

- MDEA checks its data base and *one possible name* for "Heff" is Jeff Belony. Other names are associated with "Heff" as well. (Tr. 36-37).
- One of the informants claims Heff drives a white Monte Carlo with Maine plates. (Tr. 38).
- Neither information provides information that is corroborated.
- One informant provides information that is uncorroborated by claiming Heff is making a 200 gram delivery to Brandy Grover on January 4, 2021; MDEA set up surveillance in the area of Brandy Grover's home and find nothing of value. (Tr. 38).
- On March 13, 2021, a Milo Police Officer informs MDEA that a confidential source claims Heff is traveling from New York to Maine on the Concord Trailways Bus line on March 15, 2021. (Tr.3 9). Nothing is known about the reliability of this confidential source. (Order p. 3).

The above information is not enough to hold Mr. Belony on suspicion of drug trafficking. Mr. Belony is only one name associated with "Heff." The March 13, 2021 informant, "whose reliability was not established on the record", does not provide a basis to hold Mr. Belony. The circumstances also cut against Mr. Belony being "Heff" as

he is not traveling in a White Monte Carlo as the informants claim Heff does.

Comparing the facts in this case to *State v. Lepenn* shows the contrast in level of information.

Here, the lead agent had probable cause to stop Lepenn because he received information from a cooperating defendant whose identity was known to law enforcement; the cooperating defendant agreed to set up, and participated in, a controlled buy with Lepenn; and law enforcement agents observed Lepenn travel from his residence to the location of the controlled buy. Additionally, the information that the cooperating defendant supplied to law enforcement suggested that she had knowledge of Lepenn's activities. On the day of the stop, law enforcement (1) corroborated the cooperating defendant's identification of the vehicle being used by Lepenn by determining that the vehicle was registered to Lepenn's wife and was at Lepenn's residence; (2) saw, at Lepenn's residence, a man fitting Lepenn's description and a black SUV registered to a family member of a known drug-dealer, corroborating the cooperating defendant's information that she had seen V in a black SUV; (3) had the cooperating defendant set up a controlled buy at 10 Lombard Street, corroborating the information that she supplied to law enforcement that V sold drugs at that address; (4) took the cooperating defendant to 10 Lombard Street and searched her before she entered the building; (5) followed Lepenn from his residence to 10 Lombard Street, where the controlled buy was occurring; (6) saw Lepenn go into 10 Lombard Street; and (7) saw Lepenn leave 10 Lombard Street shortly after arriving, consistent with the lead agent's knowledge of how drug deals occur. This is sufficient information to support a prudent and cautious person's belief that Lepenn had committed or was presently committing a crime, satisfying the low threshold for probable cause. In sum, even if a de facto arrest occurred, as Lepenn argues on appeal, the stop and seizure were legal because they were supported by probable cause.

*Id.* at 145-46.

The facts here establish none of the reliability or corroboration factors found in *Lepenn* and fail to establish reasonable suspicion or probable cause to detain Mr. Belony once his identity is known.

4. **Law enforcement lacked probable cause to arrest and search Mr. Belony after the dog indicated on the driver-side window.**

The search is only lawful if the officers had probable cause to arrest Mr. Belony at the time. "Probable cause exists where facts and circumstances within the knowledge of the officers and of which they have reasonably trustworthy information would warrant a prudent and cautious person to believe that the arrestee did commit or is committing the felonious offense." *State v. Journet*, 191 A. 3d 1181 (Me. 2018).

"While police officers may conduct a warrantless search of an individual's personal property if the search is incident to a lawful custodial arrest, officers lacking probable cause to arrest a suspect necessarily lack probable cause to conduct a search incident to that arrest." *United States v. Valentine*, 539 F.3d 88, 96 (2nd Cir. 2008).

At the time of the search, the information known to the officers was two informants provided information to MDEA two months prior about



"Heff" bringing drugs to Maine. Mr. Belony was one possible match to "Heff" according to MDEA. The January source of information provided intelligence that was never corroborated by MDEA, i.e. the white Monte Carlo and January 4th delivery. A source, whose reliability was unknown to MDEA, indicated Heff would be coming to Maine on the bus on March 15th. After being pulled over, the K-9 indicated on the drive side window. Mr. Belony was sitting in the passenger seat. The K-9 did not indicate on Mr. Belony or his side of the car.

Based on the above facts, the officers' lacked probable cause Mr. Belony was committing a drug crime at the time they searched his person. *Cf. State v. Donatelli*, 2010 ME 43 (probable cause found where the officers had information from a reliable source that the car was on a drug run and the dog indicated on the defendant).

Assuming law enforcement had probable cause to believe that the car contained contraband after the dog indicates on the driver window that did not alone provide a sufficient basis for the police to arrest Mr. Belony and search his person. *See United States v. Khounsavanh*, 113 F.3d 279, 287–88 (1st Cir. 1997) (holding that probable cause existed to search the defendant's premises, but not the defendant's person).

"Probable cause to search a person must be supported by probable cause particularized with respect to that person. A person's

mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person.” *Id.* (Internal citations and quotations omitted).

The facts of this case are in contrast to *Maryland v. Pringle*, 540 US 366, 367-68 (2003), where the police officer stopped a car occupied by three men, found a large amount of rolled-up cash in the glovebox and five bags of cocaine, and none of the vehicle's occupants offered any information about the drugs or the money and all three were arrested. In this case, the officers found no drugs in the car before searching Mr. Belony.

Therefore, law enforcement lacked probable cause to arrest and search Mr. Belony's person.

## **VI. CONCLUSION**

For all of the reasons set forth above it is respectfully requested the Court vacate the judgment and conviction and grant the motion to suppress.

Dated: September 3, 2024

Respectfully Submitted,

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### **CERTIFICATION OF SERVICE**

I hereby certify a copy of the above brief was emailed to AAG Jason Horn on September 3, 2024 and mailed on September \_\_\_\_, 2024 to AAG Jason Horn, 97 Hammond Street, Bangor, Maine 04401

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