MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. Kno-24-164

State of Maine
Appellee

v.

Hasahn Carter
Defendant/Appellant

On appeal from convictions in the Knox County Unified Criminal Court

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BRIEF FOR APPELLANT

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December 9, 2024

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PROCEDURAL HISTORY

The defendant, Hasahn Carter, was indicted on June 9, 2022, on the following charges:

- Count 1: Robbery pursuant to Title 17-A M.R.S. § 651(1)(E) [R. 29].
- Count 2: Robbery pursuant to Title 17-A M.R.S. § 651(1)(A) [R. 29].
- Count 3: Elevated Aggravated Assault pursuant to Title 17-A M.R.S. § 208-B(1)(A) [R. 29].
- Count 4: Kidnapping pursuant to Title 17-A M.R.S. § 301(1)(B)(1).
- Count 5: Burglary pursuant to Title 17-A M.R.S. § 401(1)(B)(1).
- Count 6: Theft by Unauthorized Taking pursuant to Title 17-A M.R.S. § 353(1)(B)(1).
- Count 7: Criminal Threatening with a Dangerous Weapon pursuant to Title 17-A M.R.S. § 209(1), 1604(5)(A).
- Count 8: Terrorizing with a Dangerous Weapon pursuant to Title 17-A M.R.S. § 209(1)(A), 1604(5)(A).
- Count 9: Aggravated Criminal Trespass pursuant to Title 17-A M.R.S. § 402-A(1)(A), 160(5)(A).
- Count 10: Cruelty to Animals pursuant to Title 17 M.R.S. § 1031(1)(D).
- Count 11: Criminal Mischief pursuant to Title 17-A M.R.S. § 806(1)(A)(1)(D).

[R. 31-34].

Several pre-trial motions were filed. Relevant to this appeal are Mr. Carter's Renewed Motion *in Limine* filed January 3, 2023, and denied May 1, 2023, and a Motion to Suppress filed on June 20, 2023, and denied on October 20, 2023. [R. 7-8].

A jury trial was held in the Knox County Unified Criminal Court beginning on December 13, 2023, and ending on December 18, 2023. Counts 1 & 8 were previously dismissed. [R. 10]. Mr. Carter was found guilty on all other counts. Mr. Carter was sentenced on April 5, 2024, as follows:

- Count 2: Robbery ten years Department of Corrections, concurrent with Count 4.
- Count 3: Elevated Aggravated Assault ten years Department of Corrections, concurrent with Count 4.
- Count 4: Kidnapping twenty years Department of Corrections, all but fourteen years suspended.
- Count 5: Burglary ten years Department of Corrections, concurrent with Count 4.
- Count 6: Theft by Unauthorized Taking, five years Department of Corrections, concurrent with Counts 4 & 2.

- Count 7: Criminal Threatening with a Dangerous Weapon five years Department of Corrections, concurrent with Counts 4 & 2.
- Count 9: Aggravated Criminal Trespass, five years Department of Corrections, concurrent with Counts 4 & 2.
- Count 10: Cruelty to Animals eleven months Department of Corrections, concurrent with Counts 4, 2 & 6.
- Count 11: Criminal Mischief, six months Knox County Jail, concurrent with Count 4.

[R. 12-16].

Mr. Carter filed a timely Notice of Appeal and an Application for Sentence Appeal on April 5, 2024. [R. 17]. His Application for Sentence Appeal was denied June 20, 2024.

STATEMENT OF FACTS

Renewed Motion *in Limine*:

Mr. Carter sought, by way of a subpoena, records from the alleged victim's marijuana business for a six-month period ending on the date of the alleged offense. [R. 23]. The documents sought were the names of people from outside Maine who purchased marijuana from the alleged victim, copies of their driver's licenses or other identification documents, the nature and dates of the transactions, the amount of money involved in the transactions, and the amount of any balance owed by the

alleged victim to those people. Mr. Carter sought the records to support an alternative-suspect defense, and to impeach the testimony of the alleged victim because of purportedly illegal drug activity. [R. 35-42].

On April 26, 2023, a hearing was held on Mr. Carter's Motion *in Limine*. [Mot. in Lim. Tr. 1]. Counsel for Mr. Carter proffered the following in support of the motion:

> But the -- the essence of it is, these guys came to this home prepared. Allegedly, they came from out of state. They targeted this home. And we believe they did because of the nature of the business that the homeowners were in. They're in the business of out-of-state -- in-state and out-of-state marijuana sales. We believe, and the police believe, that it was likely somebody who was familiar with the homeowners, familiar with the home, familiar with some of their habits, perhaps even somebody who knew some or -- or many of the occupants So there was business that was done with the marijuana operation, including some out-of-state sale.
>
> So it could've been -- and by the way, it's not necessarily true that these people were from out of state. That seems to be what the indication is. The suggestion seems to be, it was four black guys who I haven't seen around here. There's not a lot of black guys around here. We assume they must've been out of state. But -- but the idea is that these guys came prepared. They came with guns. They came with a mask. They came at an hour of the day that most people are going to be asleep. They -- they kicked open the door. They -- they tased the dogs. They had a taser for the dog. They knew Mr. Haskins, the homeowner, might give them some trouble, so they focused on him. They beat him up pretty bad. They tied him up with wrist -- wrist restraints while they held the son and the --and the wife sort of at bay.
>
> But these guys were prepared. They were knowledgeable. They knew what they were there for. They were demanding $80,000 in cash. There's evidence that would suggest that --that the Haskins, when they made marijuana sales, that, in approximately three-week cycles, they would come up with a large batch of marijuana that would yield in the

> 65 to 70,000- dollar range. So we believe that the business records could very -- could very well point to a potential alternative suspect.

[Mot. In Lim Tr. 7-8].

On May 1, 2023, the lower court denied the motion, finding that Mr. Carter had not met his burden to present alternative-suspect evidence. [R. 25-26].

Motion to Suppress:

Mr. Carter sought to have all evidence obtained from the warrantless search of a cell phone found at the location of the incident in question. [R.44]. In short, Detective Donald Murray of the Knox County Sheriff's Department took possession of a cell phone reportedly found in the stairway at 42 Hobbs Lane in Hope, Maine. [Mot. To Supp. Tr. 7, 12]. The day after the incident, Det. Murray dialed 9-1-1 through a button on the phone's password protected-home screen to reach dispatch so he could learn the number associated with the phone. [Mot. To Supp. Tr. 13]. Using the phone number obtained, Det. Murray then determined the carrier to be Verizon, and on October 13, 2020, served upon Verizon an evidence preservation request to the phone number he obtained. [Mot. To Supp. Tr. 14]. Detective Murray testified that he may have also done some general online searches with the cell phone. [Tr. Mot. To Supp. at 15]. The phone was then turned off and placed in a metal container (similar to a Faraday bag) that prevented it from making connectivity and essentially going online or being connected to a process that would prevent the phone from being "wiped." [Mot. To Supp. Tr. 15-16]. A search warrant was then

obtained for the phone on October 15, 2020, and the police conducted a further search of the cell phone and obtained a plethora of other information. [Mot. To Supp. Tr. 13, 16, 17-19, 23].

In denying the motion to suppress, the lower court found that the search occurred because Mr. Carter had no reasonable expectation of privacy in his phone number. [R. 28]. Although the lower court found that there was insufficient evidence to establish that the phone was abandoned, it was determined that Mr. Carter had no expectation of privacy in items or devices left behind at crime scenes. [R. 29].[1]

Trial:

In October of 2020, Mr. Haskins lived at 42 Hobbs Lane, Hope, Maine with his wife, Ashley, and together they operated a marijuana business. [Tr. Dec. 13 at 96-98]. In 2020, the marijuana business was fully state compliant for medical marijuana. [Tr. Dec. 13 at 101-102]. The Haskins grew the marijuana on-site and sent away for packaging. Upon its return to the site, it was in Rubbermaid totes. [Tr. Dec. 13 at 103]. Each tote had an approximate value of $1,200.00 to $1,800.00. [Tr. Dec. 13 at 103]. In 2020, the product sold by the Haskins was in high demand – individual patients could reach out via the company website and the Haskins also sold to commercial caregivers. [Tr. Dec. 13 at 104-105]. From commercial caregiver sales the Haskins averaged about $24,000.00 in sales, while individual sales could

[1] The lower court did not address the issue of inevitable discovery. [R. 28-30].

add another $7,000.00-$15,000.00 per month. [Tr. Dec. 13 at 105-106]. On average, the Haskins kept from $5,000.00 to $15,000.00 in cash at their residence. [Tr. Dec. 13 at 107].

On the night of October 12, 2020, residing at the Haskins' home was Mr. Haskins, Ashley, and their daughter, Guinevere, and son, Wilder. [Tr. Dec. 13 at 107]. Guinevere was at a sleepover on that night, but Wilder was at home. [Tr. Dec. 13 at 107]. The Haskins watched television together before bed and Wilder ended up in his parent's bedroom to sleep. [Tr. Dec. 13 at 108; Tr. Dec. 14 at 216]. Mr. Haskins could not get to sleep with Wilder in the bed and he was moved to another bedroom. [Tr. Dec. 13 at 108].

At some point during the night, two men wearing masks kicked open the bedroom door where Ashley and Wilder had been sleeping. [Tr. Dec. 14 at 216]. One of the men was short in stature and was wearing all black clothing and a black face mask. [Tr. Dec. 14 at 229]. The other man was dressed in a red puffer coat, blue jeans, and a shark mask, also known as a Bape. [Tr. Dec. 14 at 218, 230, 232].

Ashley and Wilder were told to get on the ground. [Tr. Dec. 14 at 218]. In the other room, Mr. Haskins was awoken by Ashley's screaming and yelling. [Tr. Dec. 13 at 109]. When Mr. Haskins opened the bedroom door, there was a gun in his face – there were two masked men at the bedroom door. [Tr. Dec. 13 at 109]. Later, Mr. Haskins saw two additional men, also in masks. [Tr. Dec. 13 at 109]. Mr. Haskins

was then hit in the head with the gun. [Tr. Dec. 13 at 110]. Mr. Haskins's hands were zip-tied, and he was put into a closet, naked, where he was beaten. [Tr. Dec. 13 at 112, 117-119]. The men left the room and when they returned, Ashley and Wilder were brought into the room where Mr. Haskins was kept. [Tr. Dec. 13 at 121]. The masked men demanded $80,000.00 from Mr. Haskins and tasered him multiple times. [Tr. Dec. 13 at 112; Tr. Dec. 14 at 256]. Ashley went downstairs and brought the men all the money they had, which was $5,000.00. [Tr. Dec. 14 at 257]. Wilder noted that all of the four men were wearing masks and three of the men were dressed in all black. [Tr. Dec. 14 at 218]. Mr. Haskins stated that all the men were dark-skinned, or black, and had Boston accents. [Tr. Dec. 13 at 123].

At some point three of the men left, leaving behind the one balding male. [Tr. Dec. 14 at 233]. While that man was moving the Haskins from one room to another, Mr. Haskins motioned to Wilder to get scissors from Ashley's sewing room – Wilder was able to do so, and Mr. Haskins cut the zip-ties off his legs. [Tr. Dec. 13 at 128; Tr. Dec. 14 at 224-235]. Once free, Mr. Haskins pushed the man down a staircase. [Tr. Dec. 13 at 128; Tr. Dec. 14 at 235]. As he was falling, the man grabbed onto Wilder, who tumbled down the stairs with him. [Tr. Dec. 13 at 128-129; Tr. Dec. 14 at 235]. Wilder stated that this man was the one wearing the red puffer coat and Bape mask, and that, as the man was falling, a cell phone fell out of his pocket. [Tr. Dec. 14 at 236, 248-249]. Mr. Haskins then jumped down the stairs onto the man to get

Wilder back, and the man was able to flee. [Tr. Dec. 13 at 129-130; Tr. Dec. 14 at 236].

Ashley called 9-1-1 and the family waited for the police to arrive. [Tr. Dec. 14 at 260]. During that time, an alarm on the cell phone that was left behind began to chime and Wilder located the phone, picked it up, and showed it to Mr. Haskins – both Wilder and Mr. Haskins touched the phone without wearing gloves. [Tr. Dec. 14 at 237]. Wilder later gave the phone to Sergeant Paul Spear of the Knox County Sheriff's Office. [Tr. Dec. 14 at 227, 304].

Sergeant Paul Spear took possession of the cell phone and eventually turned it over to Detective Dwight Burtis. [Tr. Dec. 14 at 304]. Sergeant Spears also found a black, surgical, COVID-style mask on the ground about 200 feet from the Haskins residence. [Tr. Dec. 14 at 305, 366-367]. Det. Burtis later gave the cell phone to Det. Murray, [Tr. Dec. 14 at 378], but he could not remember if he had placed it in an evidence bag. [Tr. Dec. 14 at 380]. Det. Murray stated that once he had the cell phone in his possession, he dialed 9-1-1 using the emergency function on the phone to get the cell phone number of that unit. [Tr. Dec. 14 at 407]. After several steps in investigative process, the cell phone number that was obtained was linked to Mr. Carter. [Tr. Dec. 14 at 417].

The black surgical mask found outside the Haskins residence was eventually tested for DNA by Catharine MacMillan of the Maine State Police Crime

Laboratory. [Dec. 15 Tr. at 580, 592-593]. The results indicated that there were two DNA profiles associated with the swab taken from the mask – one major contributor and one minor contributor. [Dec. 15 Tr. at 592-593]. The major DNA profile matched the profile from a sample taken from Mr. Carter. [Dec. 15 Tr. at 593]. DNA testing on the cell phone was inconclusive. [Dec. 15 Tr. at 607].

ISSUES FOR REVIEW

I. Whether the motion judge improperly denied Mr. Carter's Motion to Suppress evidence obtained from Mr. Carter's cell phone after Det. Murray obtained the cell phone number on the password protected phone without a warrant?

II. Whether the motion judge improperly denied Mr. Carter's Motion *in Limine* that sought documents from the alleged victim's marijuana business in order to introduce alternate suspect evidence?

ARGUMENT

I. THE MOTION JUDGE IMPROPERLY DENIED MR. CARTER'S MOTION TO SUPPRESS EVIDENCE OBTAINED FROM MR. CARTER'S CELL PHONE AFTER DET. MURRAY OBTAINED THE CELL PHONE NUMBER ON THE PASSWORD PROTECTED PHONE WITHOUT A WARRANT IN VIOLATION OF MR. CARTER'S FEDERAL AND STATE CONSTITUIONAL RIGHTS.

When reviewing the denial of a motion to suppress, this Court reviews the motion court's factual findings for clear error and its legal conclusions *de novo*. *State v. Nadeau*, 2010 ME 71, ¶ 15, 1 A.3d 445. A finding of fact is clearly erroneous only

if the record lacks any competent evidence to support the finding. *State v. Harriman*, 467 A.2d 745, 747 (Me. 1983). Upon a motion to suppress, the burden is on the State, by a preponderance of the evidence, to establish the existence of the exception justifying the failure to obtain a warrant. *State v. Rand*, 430 A.2d 808, 817 (Me. 1981).

A. Mr. Carter's Federal and State Constitutional Rights Were Violated When Detective Murray accessed the 9-1-1 Emergency Feature on the Password Protected Phone in Order to obtain its Cell phone number.

1. Mr. Carter's Fourth Amendment Rights Were Violated.

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. "The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). A Fourth Amendment search occurs "when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (II) (2001). *See also Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). Conversely, "a Fourth Amendment search does *not* occur ... unless the individual manifested a subjective expectation of privacy in the object of the challenged search, and society is willing to recognize that expectation as reasonable." *Kyllo*, 533 U.S. at 33 (internal citations omitted). A warrantless search is unreasonable unless it is conducted pursuant to a recognized

exception to the warrant requirement. *State v. Melvin*, 2008 ME 118, ¶ 6, 955 A.2d 245.

In *Riley v. California*, the United States Supreme Court analyzed, at length, the unique characteristics of cell phones in our growing age of technology in holding that police may not search, without a warrant, a cell phone from an individual who had been arrested. 573 U.S. 373, 373 (2014). The Court began its analysis with the well-established rule that "where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant." *Id.* at 382. In finding that cell phones are afforded heightened privacy interests, the Court explained:

> Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person. The term "cell phone" is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. . . . One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy.

Id. at 393.

Although the Supreme Court did not address the specific issue at hand here, whether calling 9-1-1 using the emergency access procedure on a password protected phone to obtain the phone number is a search, there is ample analogous reasoning in the Court's decision in *Riley* to suggest that such intrusion is in fact a search. In holding that a search of a cell phone, even incident to arrest, requires a

warrant, the Court rejected a number of arguments put forth by the Government. In discussing the glaring difference between "search[ing] a man's pockets [to] use against him what they contain," and searching a cell phone, the Court noted that the search of a cell phone would uncover far more than even a search of a home would uncover. *Id.* at 396-397. Even more complicated, the Court noted, is that a cell phone can be used, as it was here, to access information and data located elsewhere with the tap of a screen. *Id.* at 397 ("The possibility that a search might extend well beyond papers and effects in the physical proximity of an arrestee is yet another reason that the privacy interests here dwarf those in *Robinson*.").

The Court also rejected the Government's argument that the police should be able to search, without a warrant, areas of a phone where an officer reasonably believes he/she will find information about the arrestee's identity or information relevant to the crime, or information that would aid officer safety, because even allowing this limited intrusion would not sweep too broadly. *Id.* at 399.

Finally, the Court rejected the Government's argument that in the cell phone era, the police should be able to search a cell phone, without a warrant, in order to obtain the same information that they could glean from a search of an arrestee's pockets. *Id.* at 400 (*Citing* United *States v. Flores-Lopez*, 670 F.3d 803, 807 (7th Cir. 2012)) (turning on a non-password protected phone to obtain phone number analogous to looking into a pocket diary for the owner's address).

Here, the day after the incident at the Haskins' residence and prior to obtaining a search warrant, Detective Murray initiated the cell phone's 9-1-1 emergency system by pushing a button on the phone's home screen in order to obtain its phone number that he was not able to ascertain from looking at the password protected phone. [Mot. To Supp. Tr. at 13]. The 9-1-1 call, which went to the police dispatch, accessed remote information, namely the cell phone number, that was not available in person, on the password protected phone. [Mot. To Supp. Tr. at 13]. Detective Murray's justification for doing so was so he could serve a preservation notice on Verizon so the phone could not be wiped remotely. [Mot. To Supp. Tr. at 13]. Nevertheless, Detective Murray also testified that, after doing so, he placed the phone in a metal container, similar to a "Faraday Bag" that would prevent the phone from being wiped remotely. [Mot. To Supp. Tr. at 15-16]. *See Riley*, 573 U.S. at 389-391 (rejecting the Government's justification for a warrantless search based on destruction of evidence via remote wiping because remote wiping can easily be prevented by employing a "Faraday Bag").

At the heart of the Supreme Court's decision in *Riley* is the acknowledgement that individuals who own cell phones have a heightened expectation of privacy in the vast information stored on those phones, as well as information stored remotely. *Id.* at 397. This is particularly true, as here, when the phone is protected by a password:

> While we acknowledge that the physical cell phone in this case was left in the stolen vehicle by the individual, and it was not claimed by anyone at the police station, its contents were still protected by a password, clearly indicating an intention to protect the privacy of all of the digital material on the cell phone or able to be accessed by it. Indeed, the password protection that most cell phone users place on their devices is designed specifically to prevent unauthorized access to the vast store of personal information which a cell phone can hold when the phone is out of the owner's possession.

State v. K.C., 207 So.3d 951, 955 (Fla. Dist. Ct. App. 2016).

The issue of whether placing a 9-1-1 dispatch call is a search pursuant to the Fourth Amendment has not been widely addressed since *Riley*. In *People v. Harris*, 2019 WL 4893553, at *3 (Cal. Ct. App. 2019 (unreported), similar to here, the police initiated a 9-1-1 call with the suspect's phone to obtain its number. *Id.* The defendant contended that this step constituted a search under the Fourt Amendment and the Government conceded the point. *Id*. Because the parties were in agreement that a search had occurred, the appellate court did not address the issue. *But see State v. Hill*, 789 S.E.2d 317, 319 (Ga. App. Ct. 2016) (holding that under the Fourth Amendment the defendant did not have a reasonable expectation of privacy in his cell phone number obtained when the police called 9-1-1 to obtain the number).

In comparison, some federal courts have determined that answering a suspect's cell phone without a warrant is a search under the Fourth Amendment. *See, e.g., United States v. Lopez-Cruz*, 730 F.3d 803, 810 (9th

Cir. 2013) (finding that an agent answering incoming calls intended for the defendant was essentially impersonating the suspect by answering the phone which constituted a Fourth Amendment search because the defendant had a reasonable expectation of privacy in his phone). This same theory can be applied to placing outgoing calls. *United States v. Gomez*, 807 F. Supp. 2d 1134, 1150–52 (S.D. Fla. 2011) ("As the weight of authority agrees that accessing a cell phone's call log or text message folder is considered a 'search' for Fourth Amendment purposes, it would logically follow that an individual also has a reasonable expectation of privacy with respect to operational functions, such as making calls or exchanging text messages."). Here, Detective Murray's act of placing the 9-1-1 call with the cell phone in his custody constituted a search under the Fourth Amendment because Mr. Carter had a reasonable expectation of privacy in his password protected phone, similar to the defendants in *Riley*, *Lopez-Cruz*, and *Gomez*.

Ultimately, the Supreme Court in *Riley* rationalized its holding by stating, "We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. . . . Privacy comes at a cost. Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest." *Riley*, 573 U.S. at 401.

The answer to the question of what law enforcement must do before searching a cell phone is simple – "**get a warrant.**" *Id.* at 403 (emphasis added).

Because the lower court erred by determining the 9-1-1 call placed to dispatch by Detective Murray was not a search under the Fourth Amendment, this Court must reverse that decision.

2. Mr. Carter's State Constitutional Rights Were Violated.

Even if Federal jurisprudence does not support Mr. Carter's theory that Detective Murray's 9-1-1 call to dispatch to obtain the cell phone number was a search, this Court may still find that it violated Mr. Carter's State Constitutional rights. Article 1, section 5 of the Maine Constitution and the corresponding provision of the Fourth Amendment generally offer identical protection. *State v. Glover*, 2014 ME 49, ¶ 10, 89 A.3d 1077, 1081-82. Maine's Constitution, like its Federal counterpart, provides that, "The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures." Me. Const. art. I, § 5. While the State standards in testing the legality of a search and seizure can be no lower than the constitutional standards mandated by the Constitution of the United States as interpreted by the United States Supreme Court, *State v. Barlow Jr.*, 320 A.2d 895, 899 (Me. 1974), this Court has also recognized that the Maine Constitution may offer additional protections. *Glover,* 2014 ME at ¶ 10 (*citing State v. Hutchinson,* 2009 ME 44, ¶ 18 n. 9, 969 A.2d 923). *See also State v. Farley*, 2024

ME 52, 319 A.3d 1080, 1089 (noting that the review of State Constitutional claims under right to remain silent is more expansive than the review given under the federal constitutional counterparts); *State v. Caouette*, 446 A.2d 1120, 1122 (Me. 1982) (*citing State v. Collins*, Me., 297 A.2d 620 (1972) & *Lego v. Twomey*, 404 U.S. 477 (1972)) ("[T]his Court noted that federal decisions do not serve to establish the complete statement of controlling law but rather to delineate a constitutional minimum or universal mandate for the federal control of every State. … Of course, the States are free, pursuant to their own law, to adopt a higher standard. They may indeed differ as to the appropriate resolution of the values they find at stake.").

In considering whether Detective Murray's 9-1-1 call on the cell phone to dispatch to obtain the phone number violated Mr. Carter's State Constitutional rights, this Court must "keep in mind the well-recognized basic constitutional rule that searches or seizures conducted without a warrant are per se unreasonable, except for a few carefully drawn and much guarded exceptions." *State v. Rand*, 430 A.2d 808, 817 (Me. 1981). "The key inquiry under these provisions is whether the search or seizure is reasonable, and '[t]he reasonableness of a search is generally assured through an officer's procurement of a warrant issued upon the demonstration of probable cause, or through the individual's consent to the search.'" *Hutchinson*, 2009 ME at ¶ 18 (*quoting State v. Cormier*, 2007 ME 112, ¶ 14, 928 A.2d 753, 758).

In addressing search warrants for cell phones, this Court has acknowledged the unique characteristics of cell phones and data stored on them as set forth in *Riley*. *See e.g.*, *State v. Jandreau*, 2022 ME 59, ¶ 19, 288 A.3d 371, 380; *State v. Warner*, 2019 ME 140, ¶¶ 27-28, 216 A.3d 22. In doing so, the Court seemingly shares the concern over the "extraordinary breadth and sensitivity of information that people may store on their cell phones" and will limit searches, even those conducted with a warrant, to prevent overreaching. *Id*.

In Maine, citizens value and have an expectation of privacy in the data and personal information in their lives – in short, "Mainers value privacy." Rep. O'Neil, Maine House Chamber, Floor Debate of L.D. 1977, on April 16, 2024. 10:07:49 PM EST to 10:08:14 PM EST. Via https://legislature.maine.gov/audio/#house_chamber?event=91231&startDate=2024-04-16T10:00:00-04:00. *See also Maine Passes Nation's Strictest Internet Privacy Protection Law*, U.S. News June 7, 2019, https://www.usnews.com/news/best-states/articles/2019-06-07/maine-passes-nations-strictest-internet-privacy-protection-law, (last visited Dec. 2, 2024) (quoting Governor Mills as saying "Maine people value their privacy, online and off"). This is particularly so with password protected devices. This expectation that no one will access your password protected cell phone is both subjectively and objectively reasonable. When Detective Murray engaged the 9-1-1 emergency feature on Mr. Carter's cell phone to obtain its number

from dispatch, he violated Mr. Carter's Article 1, section 5 state Constitutional right to be free from unreasonable searches and this Court must recognize it as such and reverse the order on the motion to suppress.

B. The lower court erred by determining the cell phone could be searched pursuant to a crime scene exception to the Fourth Amendment.

The lower court determined that although "the facts presented at the hearing are insufficient to establish the phone was abandoned, . . . a defendant has no expectation of privacy in items or devices left behind at crime scenes." [R. 29]. In coming to this legal conclusion, the lower did not cite any federal or state case law. [R. 29-30]. It is well established that a warrantless search by the police is invalid unless it falls within one of the narrow and well-delineated exceptions to the warrant requirement. *Katz v. United States*, 389 U.S. 347, 357 (1967). As the United States Supreme Court and other Federal courts have held, there is no crime scene exception to the Fourth Amendment. *Flippo v. W. Virginia*, 528 U.S. 11, 13–14 (1999) (briefcase found at crime scene improperly searched without a warrant; *United States v. Elmore*, 101 F.4th 1210, 1218 (10th Cir. 2024); *United States v. Song Ja Cha*, 597 F.3d 995, 1002 (9th Cir. 2010); *United States v. Brooks*, 2008 WL 4877764, at *6 (W.D. Mo. Nov. 12, 2008)) ("It is clear…that there is no crime-scene exception to the search warrant requirement.").

Thus, items found at the scene of any crime, unless subject to some other warrant exception, must be held until a search warrant can be obtained. *Flippo*, 528

U.S. at 14-15. Here, the cell phone found at the Haskins' residence was secured by the police on the day of the incident. Nevertheless, the next day, without a warrant, Detective Murray searched the cell phone by engaging the emergency 9-1-1 function and calling dispatch to obtain the cell phone number. This was not a permissible search subject to a Fourth Amendment "crime scene" exception as the lower court held, [R. 29-30], rather it was a violation of Mr. Carter's Fourth Amendment rights. As such, this Court must reverse the denied Motion to Suppress.

II. THE MOTION JUDGE IMPROPERLY DENIED MR. CARTER'S MOTION IN LIMINE THAT SOUGHT DOCUMENTS FROM HASKINS' MARIJUANA BUSINESS IN ORDER TO INTRODUCE ALTERNATE SUSPECT EVIDENCE.

Because the lower court abused its discretion in denying Mr. Carter's motion *in limine* to obtain financial documents from the Haskins' marijuana business, this Court must reverse the convictions. This Court reviews a denied motion *in limine* for an abuse of discretion. *State v. Allen*, 2006 ME 21, ¶ 9, 892 A.2d 456, 458–459.

This Court has recently reiterated the test for procurement and admission of alternative-suspect evidence. *See State v. Daly*, 2021 ME 37, 254 A.3d 426 (2021). In doing so, this Court noted that "A criminal defendant is entitled to present evidence in support of the contention that another is responsible for the crime with which he is charged." *Daly*, 2021 ME at ¶ 16 (citations omitted). Pursuant to *Daly*, the lower court is first required to address the preliminary admissibility of the evidence. *Id*. at ¶ 20.

When a party seeks confidential documents, the moving party must first file a motion setting forth:

(1) the particular documents sought by the subpoena with a reasonable degree of specificity of the information contained therein;

(2) the efforts made by the moving party in procuring the information contained in the requested documents by other means[2];

(3) that the moving party cannot properly prepare for trial without such production of the documents; and

(4) that the requested information is likely to be admissible at trial.

M.R. Uni. Cr. P. Rule 17A(f). The lower court is then required to make "a preliminary determination that the moving party has sufficiently set forth the relevancy, admissibility, and specificity of the requested documents." *Id*.

Mr. Carter set forth sufficient proffer below to meet this test, and the lower court abused its discretion by denying the motion.

[2] Mr. Carter sought the business records from the Haskins' marijuana business and an attorney for the business objected to production of those documents. [Mot. In Lim. Tr. at 11].

A. The requested documents were set forth with a reasonable degree of specificity and could be procured otherwise.

Mr. Carter sought to subpoena the alleged victim's business records with out-of-state purchasers from March 2020, through October 12, 2020. This request was specifically tailored to the time period Mr. Haskins gave police when asked the dates of recent out-of-state transactions. The records were relevant because Mr. Haskins stated that the people who allegedly invaded his home "knew" about his business and had '"inside knowledge." These records were further relevant because Mr. Haskins admitted that he charged out-of-state purchasers more for his product, that he had "good product," and that he believed his product could be, in turn, sold for more money out of state. These records were relevant to the defense as they could have not only led to the discovery of other critical evidence, but they directly bared on the credibility of Mr. Haskins' "home invasion" report.

B. Mr. Carter was unable to properly prepare for trial without production of these documents.

Under the United States and Maine Constitutions, the accused have the rights of a fair and impartial trial, to present evidence, to confront witnesses presented against him, and to have effective assistance of counsel. U.S. Const. Art. VI, XIV; Me. Const. Art. I, § 6, 6-A. “The court should consider the effect of the proffered alternative-suspect evidence as a whole because, as we have held, “[t]he court should allow the defendant wide latitude to present all the evidence relevant to his defense,

unhampered by piecemeal rulings on admissibility." *Daly*, 2021 ME at ¶ 16. When seeking evidence to confront such witnesses, however, the defendant is not required to reveal information about his defense. *State v. Nichols*, 325 A.2d 28, 32 (Me. 1974).

Nevertheless, here, Mr. Carter did set forth sufficient evidence to support receiving information by way of the subpoena. Mr. Carter should have been able to access these records so that he could have confronted Mr. Haskins' claims and statements made in his police reports that he does not do much out-of-state business while he also claimed that almost 75% of Maine marijuana sales are done illegally to out-of-state buyers. Business records could support the fact that Mr. Haskins, while claiming to do his business "above board," was actually engaging in illegal business activity. This directly implicates his credibility and the trustworthiness of his testimony in describing the events that took place, as well as the identification of his assailants. Mr. Carter should have access to these records so as to be able to cross examine Mr. Haskins on his claim that he now does a majority of sales to local retailers and that he has no idea of the identify of his alleged attackers. Access to Mr. Haskins' business records would have enabled Mr. Carter to explore the credibility of Mr. Haskins' statements that he had "no idea" what the alleged assailants meant by demanding $80,000 and, who, in particular, may have been owed that amount. Given the specifics of the alleged assailants seeking $80,000, it is

relevant, probative and reasonably connected to the facts of this case to allow Mr. Carter to discover Mr. Haskins' business records of out-of-state sales within the pertinent time frame. These business records were probative of establishing a reasonable connection between other out-of-state buyers who may have been owed money by Mr. Haskins and, therefore, had motive for the alleged invasion in October of 2020. Mr. Haskins himself believes his alleged assailants had "inside knowledge," and, thus, Mr. Carter was entitled to those business records to determine who had this inside knowledge and who may have done a so-called "vengeance" attack against him.

C. The requested information was likely to be admissible at trial.

The business records sought would be admissible under M.R. Evid. 803(6), as Mr. Haskins stated in his police interview that he and his wife made and kept records at or near the time of contact with out-of-state buyers and that was part of his regular practice of doing business with individuals buying from out of state. Further, Mr. Haskins' business records are probative of establishing a reasonable connection between an alternative suspect.

Under *Daly*, alternative-suspect evidence is admissible if "(1) the proffered evidence is otherwise admissible, and (2) the admissible evidence is of sufficient probative value to raise a reasonable doubt as to the defendant's culpability by

establishing a reasonable connection between the alternative suspect and the crime." 2021 ME at ¶ 19.

"The first part of the test calls for a court to determine the 'preliminary admissibility of the evidence' before assessing relevance and the balancing required by [the rules of evidence.]" *Daly*, 2021 ME at ¶ 20. As set forth above, Mr. Carter met that test. "The second part of the test amounts to a 'specific application' of 'well-established rules of evidence [that] permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury.'" *Daly*, 2021 ME at ¶ 21 (citation omitted). Here, the probative value of the information sought – business records that could have shed light on another possible suspect – far outweighed any unfair prejudice to the State, confusion of the issues or potential to mislead the jury.

As such, the lower court should have granted Mr. Carter's motion *in limine* for the business records related to the Haskins' marijuana business.

CONCLUSION

For the reasons set forth herein, this Court should reverse the orders on the Motion to Suppress and Motion *in Limine,* and order a new trial.

Date: December 9, 2024

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CERTIFICATE OF SERVICE

I, Michelle R. King, attorney for Hasahn Carter, hereby certify that on this date I made service of the foregoing Appellant's Brief and Appendix, by email and U.S. mail, to the following counsel:

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