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 OF APPELLEE STATE OF MAINE

Christpher R. Fernald, ADA
Maine Bar No. 9082
Knox County District Attorney's Office
62 Union Street
Rockland, ME 04841
(207) 594-0424

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION

RULES

ISSUES PRESENTED FOR REVIEW

First Issue: Whether the lower court erred in denying the Appellant's Motion to Suppress?

Second Issue: Whether the lower court erred in denying the Appellant's Motion in Limine?

STATEMENT OF FACTS

Seth Haskins and his family lived at 42 Hobbs Lane, Hope, Maine in October of 2020. (Trial Transcript, hereinafter "T", at page 96.) Seth Haskins is married to Ashley Haskins and has five children. (T at 97-98.) Ashley and Seth own a business where they cultivate and sell marijuana. (Id.) In October of 2020, the business sold marijuana to individuals in private sales as well as commercial establishments. (T at 105.) Most transactions were paid for by check, but smaller private sale transactions were paid for by cash. (T at 106.)

Seth was living with Ashley, his daughter Guinevere, his son, Wilder and some pets on the date of the incident, October 12, 2020. (T at 107.) Guinevere was not at home the night of the incident. (Id.) Seth, Ashley and Wilder fell asleep together in Seth and Ashley's bedroom. (T at 108.) At ten or eleven o'clock, Seth went into his daughter's bedroom to sleep. (Id.) Wilder and Ashley were woken up by individuals screaming it was the cops; it is a drug bust, and males wearing masks came running up the stairs. (T at 217-218 and 254.) Ashley was with Wilder and tried to close the door, but the males just kicked it right open. (Id.) The males had a gun in Wilder's face and told him and his mother to get on the ground, put your hands up and

don't move. (T at 218.) Wilder complied because he was scared for his life. (Id.)

Seth was awoken by Ashley who was yelling and screaming. (T at 109.) Seth went to open the door and what appeared to be a male wearing a mask was pointing a gun in his face and the male said something to him about killing him. (T at 109 and 121.) In total four males wearing masks had entered Seth's home after they knocked Seth's front door down. (T at 109-110 and 137-138.) One of the males hit him in the head with a gun and while swearing at him told him to shut up. (T at 110.)

While Seth was naked, his hands and feet were bound with zip ties and the males hit and kicked him multiple times. (T at 110-111 and 119.) Seth was afraid his wife would be raped, and his wife and child would be killed. (T at 111.) The four males demanded money. (T at 112.) The males brought Ashley and Wilder into the same room Seth was located and tortured him asking for $80,000. (Id.) Specifically, the males tasered Seth repeatedly while Ashley and Wilder were present, and Ashley was screaming over and over for them to stop. (T at 112-113.) Seth suffered a serious head injury, there was a lot of blood coming from his head and he was in fear for his and his family's life thinking they were all going to die. (T at 118 and 126.) The males left the room with Ashley and Wilder

looking for money and then brought both back to the room where Seth was located. (T at 122.) The males stated if they didn't find the rest of the money, it was going to get really bad. (T at 120 and 257.) Five thousand dollars, jewelry, computers, musical instruments, other personal property and marijuana valued at over $10,000 were stollen from the residence. (T at 142-143 and 262.) The family's pet dog was tasered as well resulting in the dog having lasting behavioral issues and ultimately the family having to give up the dog. (T at 139-141.)

Seth had so much blood everywhere from his head injury, he was able to free his hands from the zip ties. (T at 126.) Seth was able to cut the zip ties around his leg with the assistance of Wilder who was able to obtain and hand him a pair of scissors. (T at 127-128.) Seth pushed one of the males who still had a gun down the stairs. (T at 128.) The male grabbed onto Wilder causing him to fall down the stairs as well. (Id.) Seth jumped down the stairs breaking his foot, grabbed Wilder throwing him out of the way and tried to grab onto the male in an effort to save his family. (T at 129.) Despite Seth's efforts to try to grab onto and hold the male, due to all the blood on Seth's hands, the male got away and ran outside the house. (T at 129-130.)

Seth yelled for Ashley to call 911 and get his handgun. (T at 130.) Seth locked him and his family in a back stairwell and stayed there until the police arrived. (T at 131.) The male Seth had tried to grab left a cell phone on the landing which was given to the police when they arrived. (T at 132-133 and 224-225.) Seth was brought to Pen Bay Hospital to be treated for his multiple injuries and then had to be brought by ambulance to the trauma center at Maine Medical Center because Seth's treating physician was concerned about a brain infection and the possibility Seth could die. (T at 135, 139 and 205-206.) Seth suffered a skull fracture and a traumatic brain injury, orbital fractures around his eye and a fractured foot as result of the incident. (T at 141, 205, 207 and 212.)

Wilder was not physically hurt, but suffered emotionally including bad Post Traumatic Stress Disorder and ongoing nightmares. (T at 226-227.) Ashley did not suffer any physical injuries, but suffered emotionally and mentally, specifically major trauma which included continuing to be scared and going through rituals every day to try to feel safe. (T at 263.) The incident caused Ashey to go into shock. (T at 264.)

Deputy Paul Spear of the Knox County Sherriff's Department was the first officer to arrive on scene after the police were called at approximately 2:30 a.m. (T at 298.) When Deputy Spear arrived on scene, he conducted a

cursory search of the premises to ensure no one was still present and entered the residence contacting Seth, Ashley and Wilder. (T at 299-300.) While inside the residence he observed the scene and evidence including zip ties. (T at 300-301.) Deputy Spear spoke with his supervisor and the on-call Detective on the phone who decided Detective Dwight Burtis would respond to the scene. (T at 302-303.) Deputy Spear took possession of the cell phone left at the scene that was found by and given to him by the Haskins family. (T at 303-304.) The cell phone was given to Detective Burtis when he arrived on scene. (T at 304 and 363,) Deputy Spear also located a surgical mask outside the residence while canvasing outside to look for any additional evidence. (T at 305.) The mask was taken into evidence by Detective Burtis. (T at 309 and 366.) Deputy Spear also collected a taser cartridge, a taser probe, and zip ties while at the scene. (T. at 310.) Detective Burtis also collected a taser that was found at the scene. (T at 369.)

The day after the incident, Detective Donald Murray of the Knox County Sheriff's Department took the cell phone that was taken into evidence by Detective Burtis and called 911. (T at 407.) Detective Murray was able to obtain the telephone number associated with the cell phone from dispatch. (Id.) Detective Murray learned the number was associated with

Verizon and filed a preservation letter with Verizon. (T at 408.) Detective Murray applied and was granted a search warrant to examine the cell phone and obtain cell phone records from Verizon. (T at 412 and 415.) Detective Murray was able to get Detective Maurice Drouin of the Androscoggin County Sherrif's Department to examine the cell phone to learn who the cell phone belonged to. (T at 413.) The examination of the cell phone led to the Appellant, Hasahn Carter being a suspect. (T at 414-415.) Detective Drouin examined the phone and found two applications on the phone – a police scanner application and an application for police lights. (T at 543.) Detective Murray applied for and was granted an arrest warrant for the Apellant who was located in Massachusetts. (T at 417.) Detective Murray used a DNA swab to obtain the Appellant's DNA after he got a warrant approved by the court. (T at 465-466.) The DNA swab and the mask found at the scene were brought to the crime lab to be analyzed. (T at 467-471.) Maine State Crime Lab Forensic DNA Analyst Catharine Macmillan compared the DNA from the Appellant to the DNA found on the mask and determined it was a match. (T at 592-593.)

ARGUMENT

1. The lower court did not err when it denied the Appellant's Motion to Suppress.

The Appellant asserts that the lower court erred in denying his Motion to Suppress. Because the Appellant had no expectation of privacy in his phone number associated with a cell phone left at a crime scene, there was no violation of the Appellant's state or federal constitutional rights.

The Fourth Amendment to the United States Constitution provides the right of individuals to be free from unreasonable searches and seizures. U.S. Const. Amend. IV. "[T]he ultimate touchstone of the Fourth Amendment is reasonableness." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). A Fourth Amendment search occurs when a government official physically intrudes or trespasses on a person's property. *United States v. Jones*, 132 S.Ct. 945 (2012). A Fourth Amendment search also occurs "when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*,121 S.Ct. 2038, (2001) (citation omitted). 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*, supra (citation and punctuation omitted). "In applying the subjective expectation of privacy analysis to determine whether a Fourth

Amendment search occurred, 'it is important to begin by specifying precisely the nature of the state activity that is challenged.' *State v. Hill*, 789 S.E. 3d 317 (2016) *citing Smith v Maryland*, 442 U. S. 735, 741 (II) (B) (1979). "The challenged activity in this case is the law enforcement officer's act of calling 911 from a cellular phone that was lawfully in the officer's possession." (*Hill* at 318.) "This activity enabled a dispatcher to determine the number assigned to the phone…" (*Id*.)

"[T]he cellphone in question was located on a stairway in the home that was [the] location of the alleged crime." (See Order on Motion to Suppress. Appendix, hereinafter "A" at 28.) "The cell phone was password protected." *Id*. "Detective Murray pushed the emergency button on the phone's lock screen to dial 911 and, as a result, was able to obtain the phone number on the phone." (*Id.*) "[T]he phone in question was not found at the Defendant's home, on his person, or even in a vehicle where he had been lawfully present." (*Id.*, A at 29.) "There is no allegation of a physical intrusion or trespass." (*Id*.) "The phone was found in the home of apparent crime victims where the Defendant had no right to be." (*Id*.)

> While the application of Fourth Amendment law to this precise set of facts appears to be an issue of first impression in [Maine], there are many cases … in other jurisdictions supporting the conclusion that a person lacks

> a legitimate expectation of privacy in identifying information such as name, address, or telephone number that is used to facilitate the routing of communications by methods such as physical mail, e-mail, landline telephone, or cellular telephone.

Hill at 319.

> "[T]he majority of courts to consider the question have agreed that a person's name and address is not information about which a person can have a reasonable expectation of privacy." *Commonwealth v. Duncan*, 572 Pa. 438, 817 A.2d 455, 466 (2003). Examples of cases in which courts have found no legitimate expectation of privacy and thus no Fourth Amendment protection include: *Smith,* supra, 442 U.S. at 743-747 (II) (B), 99 S.Ct. 2577 (government used "pen register" to record telephone numbers of calls made from defendant's landline phone); *United States v. Forrester,* 512 F.3d 500, 509-511 (III) (B) (1) (9th Cir. 2008) (government used "mirror port" technology to learn, among other things, the "to/from" addresses of defendant's e-mail messages); *United States v. Choate*, 576 F.2d 165, 174-177 (9th Cir. 131978) (government arranged for "mail cover," under which postal service provided government agency with information appearing on the face of envelopes or packages addressed to defendant); *People v. Elder,* 63 Cal.App.3d 731 (I), 134 Cal.Rptr. 212, 215 (1976) (government obtained name and address of subscriber to particular telephone number); *Ensley v. State,* 330 Ga.App. 258, 259, 765 S.E.2d 374 (2014) (government obtained subscriber information associated with defendant's Internet service account); *Stephenson v. State,* 171 Ga.App. 938, 321 S.E.2d 433 (1984) (government obtained defendant's address and telephone number by arranging for telephone company to trace and "trap" a harassing call madeby defendant to victim); *State v. Neely*, 2012 WL 175340, *4 (III), 2012 Ohio App. LEXIS 165, *11 (Ohio App. 2012) (cellular phone subscriber has no reasonable expectation of privacy in his own phone number and "the police can trace from a phone number

> dialed to the identity of the subscriber of the phone from which that number was dialed"); *Duncan*, supra, 817 A.2d at 465-469 (government first obtained from shopkeeper the account number associated with defendant's bank card, and then obtained from defendant's bank his name and address). Cf. *State v. DeFranco*, 426 N.J.Super. 240 (II), 43 A.3d 1253, 1259 (App.Div.2012) (finding that New Jersey Constitution, which defendant argued afforded more privacy protections than Fourth Amendment, was not violated when government obtained his cellular phone number from his employer, because defendant's "professed subjective expectation of privacy" in his phone number was not one "that society would be willing to recognize as reasonable") (citations omitted).

Id.

> "[A] person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Smith*, supra, 442 U.S. at 743-744 (II) (B), 99 S.Ct. 2577 (citations omitted). This rule applies even where the person revealing information intended its use by the third party to be limited. *United States v. Graham*, 824 F.3d 421, 425 (4th Cir. 2016) (en banc). By using a phone, a person exposes identifying information to third parties, such as telephone companies, and assumes the risk that the telephone company may reveal that information to the government. *Smith*, supra at 744 (II) (B), 99 S.Ct. 2577. See also *Ensley*, supra, 330 Ga.App. at 259, 765 S.E.2d 374. Applying this principle to the act of law enforcement officers in obtaining from a cellular phone the number associated with that phone, the United States District Court for the Eastern District of Michigan held that "a cell[ular] phone number fits into the category of information that is not considered private and does not implicate the Fourth Amendment." *United States v. Sanford*, 2013 U.S. Dist. LEXIS 73624, *3 (E.D. Mich. 2013).

Hill at 319-320.

In arguing that the Motion to Suppress should have been granted, the Appellant incorrectly relies on *Riley v. California*, 134 S. Ct. 2473 (2014). In *Riley*, the Supreme Court held that before searching a cell phone seized incident to an arrest, law enforcement officers must generally obtain a warrant. Id. at 2495. *Riley* involved two separate cases, both of which concerned law enforcement officers affirmatively accessing the content of the defendants' cell phones. *Id*. "The searches in *Riley* and its progeny have a common thread – they involve law enforcement officers affirmatively accessing the content within cell phones to gather evidence against arrestees." *United States v Brixen*, 908 F. 3d 276, 281 (Court of Appeals, 7th Circuit 2018).

Riley is not a comparable case given the facts present in this case. *Riley* addressed whether law enforcement could search the contents/data of a cellphone pursuant to the search incident to arrest exception. Here, neither the phone was seized incident to arrest, nor did the detective search the contents or data on the phone. The Detective didn't "search" the phone at all. Beyond that, every single phone call anyone places, be it cellular or landline, transmits the number calling and the number called to a third party. It is no different than exposing one's name and physical address to USPS,

FedEx, or UPS. A person has no reasonable expectation of privacy in information voluntarily turned over to third parties. The Appellant has an expectation of privacy in the contents/data of his password protected cellphone – not in the number itself, or the numbers it calls as those are exposed to third parties.

The Appellant also relies on *Flippo v W. Virginia*, 528 U.S. 11, 13-14 (1999) to support his argument. While there may be no "crime scene" exception for a warrantless search, *Flippo* is factually distinguishable. In *Flippo,* the petitioner called police to report he and his wife had been attacked, his wife was found dead inside their cabin, and police searched a closed briefcase and seized photos, etc. The Petitioner was later charged with murdering his wife. In this case, the police seized the phone from a place, as correctly noted by the lower court, in which the defendant has zero expectation of privacy. Further the lower court didn't conclude that the phone was searched pursuant to a crime scene exception – the lower court concluded the phone wasn't searched at all because there is no expectation of privacy in a just a phone number. (Order on Motion to Suppress, A at 2.)

The lower court's analogy to blood found at a crime scene is one that is on point and particularly persuasive. (*Id*.) "In our modern, technologically advanced society, information that may be obtained from a

person's blood incudes some of the most private and sensitive information obtainable." (*Id*.) "However, if a defendant's blood is left behind at a crime scene, society does not recognize a defendant's privacy interest in information that can be obtained from that blood." (*Id*.) "The same is true of a cell phone left at the scene of a crime." (*Id*.)

The Appellant also argues that his state constitutional rights have been violated under article 1, section 5 of the Maine Constitution which provides that "[t]he people shall be secure from all unreasonable searches and seizures". (*Id*.) "Although this provision and the corresponding provision in the Fourth Amendment of the United States Constitution generally offer identical protection, *State v. Patterson,* 2005 ME 26, ¶ 10, 868 A.2d 188, 191, we have also recognized that the Maine Constitution may offer additional protections. *See also State v. Melvin,* 2008 ME 118, ¶ 13, 955 A.2d 245, 249-50." (*State v. Hutchinson*, 2009 ME 44 at FN 9.)

There is some question as to whether arguments based on the state constitution were properly developed or preserved at the Motion to Suppress. Even if that were the case, the provisions of both are still interpreted coextensively. Where there was no search that occurred here, there was no violation of the Appellant's state or federal constitutional

rights. As a result, the lower court's decision to deny the Motion to Suppress should be upheld.

Lastly, even if this honorable court were to determine that a search took place and/or the Appellant had an expectation of privacy in property left at a crime scene, the Appellee would argue that the same evidence discovered should not be suppressed as the property was abandoned and/or the same evidence should not be suppressed pursuant to the inevitable discovery doctrine, both argued before the motion Justice.

2. The lower court did not err in denying the Appellant's Motion in Limine

The Appellant filed a Renewed Motion in Limine seeking Seth Haskins "business records with out of state purchasers from March of 2020 through October 12, 2020". (See Renewed Motion in Limine, A at 39.) Pursuant to Maine Rule of Criminal Procedure 17A(f), a party seeking the production of documentary evidence from a nonparty that may be protected from disclosure by a privilege, confidentiality protection, or privacy protection must file a motion in limine before serving a subpoena for that documentary evidence. The motion in limine "shall contain a statement setting forth":

> (1) the particular documents sought by the subpoena with a reasonable degree of specificity of the information contained in therein; (2) the efforts made by the moving

> party in procuring the information contained in the requested documents by other means; (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.U. Crim. P. 17A(f).

"The court must, upon receipt of the motion, 'make a preliminary determination that the moving party has sufficiently set forth the relevancy, admissibility, and specificity of the requested documents'." *State v. Olah*, 184 A. 3d 360, 368 (2018) citing M.R.U. Crim. P. 17A(f). "If the motion fails to meet the minimum threshold of information required, the court may summarily deny the motion.". M.R.U. Crim. P. 17A(f). "Rule 17A(f) is not a discovery device." *State v. Olah*, 184 A. 3d 360, 368. "A party seeking a subpoena must show … that the application is made in good faith and is not intended as a fishing expedition." *State v. Dube,* 87 A. 3d 1219, 1222 (2014). See *State v. Watson,* 726 A. 2d 214 (1999).

The Appellant met the specificity threshold in its Renewed Motion in Limine requesting "business records without out of state purchasers from March of 2020 through October 12, 2020" (At at 39), but did not meet the relevancy and admissibility threshold set forth by M.R.U. Crim. P. 17A(f). The Appellant's primary argument on appeal is that the records sought were needed for trial, relevant and would be admissible at trial to support an

alternative suspect defense. "[A]lternative-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'." *State v Daly*, 254 A.3d 426 (2021) citing *State v. Jamie*, 111 A.3d 1050 (2015). "A trial court may … exclude evidence that another person had the motive, intent, and opportunity to commit a crime when the proffered evidence 'is to speculative or conjectural or too disconnected from the facts of the case against the defendant' to be reasonably connected to the crime." *Id* citing *State v. Le Clair*, 425 A.2d 182, 187 (1981).

The business records sought do not meet the requirement of admissibility set forth by Rule 17A. Any evidence of out-of-state purchases between the victim and the buyers are too disconnected from the facts of the case against the defendant to be reasonably connected to the crime. The evidence sought does not rise above speculation or conjecture. As a result, the lower court did not err in denying the Apellant's Renewed Motion in Limine.

CONCLUSION

The Appellant's arguments on appeal are without merit. Wherefore, the State of Maine, Appellee, respectfully requests that this Honorable Court uphold the lower court's decision to deny the Appellant's Motion to Suppress and Motion in Limine.

Respectfully Submitted,

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Christopher R. Fernald
Assistant District Attorney
Maine Bar No. 9082
Christopher.fernald@maineprosecutors.com
Knox County District Attorney's Office
Knox County Courthouse
62 Union Street
Rockland, ME 04841
(207) 594-0424

CERTIFICATE OF SERVICE

I hereby certify that I have on this date made service of the foregoing Brief of Appellee, by email and U.S. mail to the following counsel:

Michelle R. King, Esq.
183 Middle Street, 4th Floor
P.O. Box 7030
Portland, ME 04112-7030

Dated:_____

_____

Christopher R. Fernald
Assistant District Attorney
Maine Bar No. 9082
Christopher.fernald@maineprosecutors.com
Knox County District Attorney's Office
Knox County Courthouse
62 Union Street
Rockland, ME 04841
(207) 594-0424