

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Aro-26-29

STATE OF MAINE
Appellee

v.

LEE McMOARN
Appellant

ON APPEAL from the Aroostook County
Unified Criminal Docket

BRIEF OF APPELLANT

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INTRODUCTION

This drug-prosecution stemmed from law enforcement officers' search of conjoining properties in Molunkus pursuant to two separate search warrants, executed the same day. The first warrant was obtained by a detective investigating a "statewide theft ring" that police suspected had transported a stolen dump-truck to some of the properties in Molunkus. Execution of that warrant turned up evidence of drug possession: some "white powdery substance." The suspected fentanyl caused an MDEA agent to hastily prepare a second, three-paragraph application for a search warrant for the same properties. During the search pursuant to that second warrant, police found the drugs for which defendant is being prosecuted.

On appeal, defendant presses three arguments preserved by his conditional pleas: (I) The court erred in denying his motion for a *Franks* hearing, as defendant made the requisite showing that the first warrant was predicated on both a false implication that items stolen by the "statewide theft ring" had been recovered on the subject property, and information obtained by the affiant in violation of statute and the Fourth Amendment; (II) the court similarly erred by denying defendant a *Franks* hearing as to the MDEA agent who recklessly omitted from his affidavit the fact that the house had *just* been searched by *fifteen* officers who "*exhausted*" their search for property as small as a *house-key*; and that (III) the barebones, three-paragraph (seven-sentence) affidavit supporting the second warrant was bereft of allegations constituting probable cause. Defendant also raises (IV) a sentencing argument authorized by the Sentence Review Panel.

STATEMENT OF THE CASE

Defendant entered conditional pleas to aggravated drug-trafficking, 17-A M.R.S. § 1105-A(1)(M) (2021)¹ (Class A) (Count I); unlawful drug-trafficking, 17-A M.R.S. § 1103(1-A)(A) (2021) (Class B) (Count II); and three counts of unlawful drug-possession – one each for cocaine, methamphetamine and fentanyl, 17-A M.R.S. § 1107-A(1)(B)(2), (7)-(8) (2021) (Class C) (Counts III-V). Thereafter, the Aroostook County Unified Docket (Nelson, J.) imposed ten years’ prison, suspending all but four years of that term for the duration of four years’ probation. This appeal, consolidated with an M.R. App. P. 20-appeal, follows.

I. The parties litigated the lawfulness of the searches yielding the bulk of the State’s evidence.

Two separate suppression motions and hearings, and two separate *Franks*² motions, predated defendant’s pleas. Defendant identifies them by the names of the two affiants who sought and obtained the warrants. By occasionally using only the officers’ last names, he intends no disrespect.

A. Det. Mitkus’ affidavit and warrant

Det. Jared Mitkus of the Lincoln County Sheriff’s Office wrote a 27-paragraph affidavit in support of a search warrant for adjacent properties in

¹ Each of the three statutes of conviction was amended following the dates of the charged offenses. See P.L. 2025 ch. 173 § 6; ch. 173 § 4; ch. 326 §§ 1-2 (effective Sept. 24, 2025). None of the amendments affect this appeal.

² *Franks v. Delaware*, 438 U.S. 154 (1978).

Molunkus. JX 1-A³ at 9-12; A161-A164. Defendant challenged the affidavit (and resulting warrant) with two contentions: (1) it failed to establish probable cause; and (2) Det. Mitkus’ intentionally or recklessly omitted material information.

1. The Mitkus affidavit

The Mitkus affidavit stemmed from a Lincoln County investigation into the theft of a GMC dump-truck. Defendant attacked the averments as insufficient to support the warrant, arguing that the fruits of the resulting searches should be suppressed. A118-A119; A122.

Det. Mitkus’ narrative is twofold. On one track, Mitkus details that he spoke with an officer with a different agency who was investigating other searches in the area. Mitkus Afdvt. ¶ 5; A161. That officer directed Det. Mitkus to two suspects, and the officer shared those suspects’ “Verizon cellular records,” which the officer had received via search warrant in a different case. *Id.* Using this data, Mitkus “mapped” one of the suspect’s whereabouts, tracking him to the scene of the theft, then to a Dysart’s in Newburgh. Mitkus Afdvt. ¶¶ 10-11; A162. Det. Mitkus then obtained video-footage from the Dysart’s, which depicted the stolen dump-truck and the suspects. Mitkus Afdvt. ¶¶ 12-13; A162-A163. The cellular data indicated that the thieves next travelled “to the area of 531/537 Medway Road in Molunkus,” where they remained for an hour. Mitkus Afdvt. ¶ 16; A163.

³ Two distinct Joint Exhibits 1 are in our record – one each from the two separate proceedings concerning the two separate warrants. To differentiate them, defendant refers to the first as “JX 1-A” and the second as “JX 1-B.”

Det. Mitkus further avers that two informants, seeking preferential treatment in their drug-related prosecutions, claimed that the suspects were involved in “a statewide theft ring” that often sent stolen items to Medway Road or, in the alternative, to a location in Lee. Mitkus Afdvt. ¶¶ 6-7; A162. According to the informants, stolen automobiles were placed into shipping containers and transported to Canada. Mitkus Afdvt. ¶ 8; A162. One of the informants recounted having heard that the ring had stolen a “[w]hite Chevrolet⁴ dump body diesel truck”, which had reportedly been “‘parted out’ and sold for \$1,700.” Mitkus Afdvt. ¶ 9; A162.

The informants described the property in Molunkus “as having a camper, a house being built and three different residences on the property.” *Id.* Det. Mitkus reported that “531/537 Medway Road in Molunkus is on the same property connected by a wraparound driveway.” Mitkus Afdvt. ¶ 19; A163. That is, “531/535/537 Medway Road are all connected by driveways....” Mitkus Afdvt. ¶ 23; A163.

Defendant’s brother, a former police officer, told Det. Mitkus that defendant lived at 531 Medway. Mitkus Afdvt. ¶ 24; A164. The brother reported “that it’s possible” that Travis McMoarn, who lived at 537 Medway, “would be involved.” *Id.* He added that Matthew Vandine lived in a “camper on the property,” *id.*, and Mitkus knew Vandine was on bail conditions. Mitkus Afdvt. ¶ 22; A164.

⁴ As a reminder: The target of the search warrant was a GMC dump-truck, not a Chevrolet.

Judge John Martin authorized the search warrant for both 531 and 537 Medway Road, including “[a]ny outbuildings including sheds, garage, shipping containers and campers etc.”; “[v]ehicles present at the residence during the search”; and “[i]ndividuals present at the residence....” A155-A156. Per Det. Mitkus’ request, the warrant permitted a search for the truck as well as small items such as a post-office-box key and septic-system plans that had been in the truck when it was stolen. A157.

2. Defendant unsuccessfully sought a *Franks* hearing relative to Det. Mitkus’ affidavit.

For purposes of our appeal, just a couple alleged improprieties require discussion.

Det. Mitkus’ affidavit implies that a police officer in Rockland had “recover[ed] a stolen camper, gun and snowmobiles” that had been stolen by the “statewide theft ring” at the properties on Medway Road. *See* Mitkus Afdvt. ¶¶ 7-8; A161-A162. Defendant, however, offered proof – that very officer’s own report – that, in fact, Waldoboro police had found the camper and guns in Waldoboro, not Molunkus. A200, ¶¶ 7, 9.

The court was displeased with Det. Mitkus, concluding “that the information related to the location from which the stolen items were recovered was misleading and made in reckless disregard of whether it would mislead the magistrate.” A108. But it nonetheless determined that, in isolation, this misimpression was not significant. A108-A109. In the court’s view, “the omitted information has very little impact on the overall probable cause determination.” A108.

Defendant also alleged that the Verizon cellular records which led Det. Mitkus to considerable information had been unlawfully obtained and searched: such records should not have been disclosed by the officer in the other jurisdiction investigating a different case absent “a further warrant specifically authorizing that disclosure.” A75. The court summarily denied such a hearing, writing “Request for *Franks* hearing is denied as Δ has failed to make the required substantial preliminary showing.” A77 (handwritten order).

B. S/A McGuire’s affidavit and warrant

1. The McGuire warrant

About 2:00 p.m. the day the warrants were executed, a justice of the peace (Carpenter, Michael) granted the second warrant, this one restricted to 535 Medway Road and its outbuildings. Tr. of 7/15/25 hearing at 9-10; A81; JX-B at 1. This one was based on the application of S/A Gary McGuire. His affidavit in support of probable cause proffers three paragraphs, a total of seven sentences (143 words):

1. On 10/110/2023 Lincoln County Det. Jared Mitkus applied for and obtained a search warrant for the addresses described above. That search warrant was for the purpose of recovering stolen property. As a result of that search [d]eputies located a white powdery substance. Based on the deputies['] training and experience he believes the unknown substance was fentanyl. For officer safety reasons Detective Mitkus contacted the Maine Drug Enforcement Agency (MDEA) to assist with the recovery and processing of the suspected illegal drugs.

2. Lee S. McMoarn DOB 05/25/1969, Matthew J. Vandine DOB 08/14/1978, and Travis McMoarn 06/26/1984 are known to MDEA as drug users and drug traffickers.
3. I believe that at this time, probable cause that some or all of the aforementioned items are located at 531, 535 and 537 Medway Road, Town of Molunkus County of Aroostook, and State of Maine.

A80-A81; McGuire Afdvt. ¶¶ 1-3; JX 1-B at 3-4.

As he did with Det. Mitkus' application, defendant moved to suppress, arguing that the "four corners" of S/A McQuire's affidavit failed to demonstrate probable cause. A120-A121, A137-A138. The court (Nelson, J.) set the matter for hearing, sua sponte directing the State to mount a certain defense:

Hearing to be scheduled on this motion to suppress related to the MDEA search warrant and any issues of good faith reliance.

A77. The State had not previously filed anything indicating a desire to raise such a defense, and, in fact, as to the Mitkus warrant, it explicitly waived application of the good-faith exception – again, after the court took the self-initiative to raise the possibility of such a defense. Tr. of 3/27/25 at 56.

The State stipulated that, by the time the MDEA began to search pursuant to the McGuire warrant, the Lincoln County Deputies had already *completed* their search of the same property. Tr. of 7/15/25 at 9-12; *see* Tr. of 3/27/25 at 70-71 (Det. Mitkus: "We exhausted our efforts. We searched for the evidence of the truck. We searched for items that were on the search warrant related to it, and we did not locate it. And after that phone call,

enough time had gone by, enough searching had gone by, that I was satisfied that we could move on and close out our search warrant. And we remained on scene awaiting the – the supplemental warrant.”); Tr. of 3/27/25 at 78-79. That is, they had “exhausted [their] efforts” to find, *inter alia*, the stolen post-office-box key and the septic-system plans. To put a finer point on it, *fifteen* law enforcement officers had exhausted their efforts to find a key and papers. Tr. of 3/27/25 at 73-74.

Also at the hearing, after the parties had completed their presentations, defense counsel noted that the State had “waived” reliance on the good-faith exception by omitting to develop such a case or otherwise put defendant on notice it would rely on “good faith.” Tr. of 7/15/25 at 78. The court directed the State to respond to defendant’s contention, and the State argued, “I don’t believe that good faith really comes into play here.” Tr. of 7/15/25 at 78. However, the prosecutor offered, “the Court could find that, even without direct argument from the [S]tate, that there has been sufficient testimony for there to have been good faith....” Tr. of 7/15/25. at 78. Defendant again contended that the issue of good-faith reliance had been waived for lack of development and argument. Tr. of 7/15/25 at 80-81. However, the court gave the State another chance “to make sure it’s clear” – “are you arguing that the ... officers did exercise good-faith reliance?” Tr. of 7/15/25 at 81. This time, the State heeded the court’s signals, claiming, “[I]t would be good-faith reliance....” Tr. of 7/15/25 at 81-82. Arguendo, defendant retorted that certain “exceptions” to the good-faith exception were applicable in the circumstances. Tr. of 7/15/25 at 83-86.

In its eventual order, the court ripped McGuire's affidavit apart:

Two of the three substantive paragraphs set forth in the affidavit presented to the magistrate provided little if any support for the finding of probable cause. The officer's subjective belief is simply not helpful. The assertion that the named individuals are 'known to MDEA as drug users and drug traffickers,' without a recital of the basis of that knowledge, is a conclusory statement. Here, the affiant did not provide any basis for the assertion or how the assertion related to the investigation.

A53 (internal citations and captions omitted). The "affidavit is exceptionally brief..." A56.

As for the sole "remaining substantive paragraph," the court found it important that "the magistrate [sic] was provided with evidence that fentanyl was actually observed on the premises." A54. Thus, in the court's view, it was "a certainty that the observed suspected fentanyl would be found and there was probable cause to believe that other drugs might be found based on the totality of the circumstances." A54.

Regardless, the court reasoned, the defense it had raised on behalf of the State was availing: The MDEA agents had acted in good-faith reliance. A55-A156.

2. Defendant unsuccessfully sought a *Franks* hearing relative to S/A McGuire's affidavit.

Defendant's motion, in pertinent part, noted how S/A McGuire omitted to aver to "the fact that the same premises had just been fully searched for items as small as a postal box key...." A75. Such information, defendant contended, would have caused a judicial officer "to believe that a second

search was unwarranted...” – no pun intended. A75. At the bottom of defendant’s motion, the court denied the request for a *Franks* hearing, concluding that defendant had “failed to make the required substantial preliminary showing.” A77.

Defendant requested the court reconsider and make further findings and conclusions. A41. The court summarily denied those requests. A45.

II. The court sentenced defendant.

For ease of the Court’s consideration, defendant incorporates his statement of the case relative to sentencing within his sentencing argument below.

ISSUES PRESENTED FOR REVIEW

I. Did the motion court err by denying defendant's motions for a *Franks* hearing related to Det. Mitkus' affidavit?

II. Did the motion court err by denying defendant's motion for a *Franks* hearing related to S/A McGuire's affidavit?

III. Did the motion court err by denying defendant's motion to suppress the fruits of the second search of defendant's home, because the warrant authorizing that search did not present a substantial basis to determine there was probable cause that the second search would yield evidence of a crime?

IV. Did the sentencing court improperly and unlawfully aggravate defendant's sentence based on unsupported findings or misapplication of principle?

ARGUMENT

First Assignment of Error

V. The motion court erred by denying defendant's motions for a *Franks* hearing related to Det. Mitkus' affidavit.

A. Summary of the argument

The court properly concluded that Det. Mitkus recklessly implied that investigators had recovered certain stolen items on the properties in Molunkus. Indeed, they had not done so; those items were recovered elsewhere.

But the court erroneously, summarily denied defendant leave for a *Franks* hearing. A significant portion of Det. Mitkus' application was based on cell-phone records that he unlawfully obtained in violation of Title 16, Chapter 3, Subchapters 10 and 11 and the Fourth Amendment. Specifically, his tracking of the stolen dump-truck to Molunkus was unlawful.

Defendant made a substantial preliminary showing that, but for these two misstatements, the search warrant would not have been issued. This court has plenary review of the court's contrary, erroneous conclusion.

B. Preservation and standard of review

Defendant's arguments herein are preserved by the filings and proceedings, detailed at pages 12 through 13 above, and excerpted at pages A57 through A63, A75 through A77, and A135 through A205 of the appendix. Further, they are expressly preserved by defendant's conditional plea. A24; see M.R. U. Crim P. 11(a)(2) (conditional plea certifies, *inter alia*, that issues identified are "preserved for appellate review").

This Court has not previously identified the standard by which it reviews the denial of a motion for a *Franks* hearing. *State v. Boutilier*, 2011 ME 17, ¶ 1 n. 1, 12 A.3d 44. Defendant proposes that the Court apply a bifurcated standard, reviewing findings made after an assessment of a witness' credibility for clear error, but undertaking de-novo review of legal conclusions. This is not only the standard applied in the Fourth-Amendment context, generally, but it is something like the standard preferred by the federal courts of appeal. *E.g.*, *United States v. McKenzie*, 13 F.4th 223, 236-37 (2d Cir. 2021) (whether affiant made deliberate or reckless misstatement or omission reviewed for clear error whereas materiality reviewed de novo); *United States v. Desu*, 23 F.4th 224, 234-35 (3d Cir. 2022) (same); *United States v. Seigler*, 990 F.3d 331, 344 (4th Cir. 2021) (same); *United States v. Mastromatteo*, 535, 545 (6th Cir. 2008) (same); *United States v. Spears*, 673 F.3d 598, 604-05 (7th Cir. 2012) (same); *but see United States v. Cortez*, 108 F.4th 1, 7-8 (1st Cir. 2024) (noting Circuit's conflicting case-law: either bifurcated or clear error); *United States v. Martin*, 332 F.3d 827, 833 (5th Cir. 2003) (everything de novo); *United States v. Kleinman*, 880 F.3d 1020, 1038 (9th Cir. 2017) (everything de novo); *United States v. De Aza*, 825 Fed. Appx. 709, 711 (11th Cir. 2020) ("While we have not explicitly adopted a standard of review with respect to a *Franks* hearing, abuse of discretion review is appropriate.") (quotation marks and citation omitted).

In this context, by bifurcated review, defendant means that this Court should review whatever the trial court concluded de novo, whenever those conclusions came without the benefit of an evidentiary hearing. A court's in-

person assessment of a witness' credibility, in contrast, deserves deference. That is for two reasons. One: This Court is in just as good a position as the trial court to interpret documentary "evidence" where no firsthand appraisal of a witness' credibility has been made. Seven judges' determination about whether legal standards are satisfied is more exacting than a single judge's reading of the evidence. That hints at the second reason for de-novo review of a court's determination made sans live testimony: It is appropriate to unify the state's jurisprudence, giving litigants, officers and judges the best possible guidance from Maine's ultimate arbiter of legal matters. *Cf. Ornelas v. United States*, 517 U.S. 690, 697 (1996) (de-novo review serves "unitary system of law"). Respect for the rule of law requires consistency, and it is this Court's prerogative to deliver it.

C. Analysis

In essence, defendant continues to press two bases for his contention that he was entitled to a *Franks* hearing regarding Det. Mitkus' application: (1) though the court correctly determined that Mitkus recklessly omitted information about where stolen property had been located on the "subject property," it omitted to gauge the materiality of that misrepresentation in combination with Det. Mitkus' other recklessness, specifically (2) the court erred by summarily denying defendant's *Franks* motion as to the cellular records that Det. Mitkus unlawfully obtained. Finally, (3), defendant discusses why he has made a sufficient showing that, but for these deficiencies, the judicial officer would not have authorized a warrant.

Before turning to the details, defendant briefly discusses the *Franks* standard. To obtain an evidentiary hearing, a defendant must make a two-prong “substantial preliminary showing”: first, that the affiant either recklessly or deliberately made a false statement or misleading omission, and second, that the resulting misimpression caused the judicial officer to grant the search warrant. *State v. Thompson*, 2017 ME 13, ¶ 20, 154 A.3d 614; *State v. Dickinson*, 2005 ME 100, ¶ 17, 881 A.2d 651. It is informative to remember that a “substantial preliminary showing” does *not* mean even a preponderance of the evidence; defendant need *not* clear that standard until the full-fledged *Franks* hearing itself. *State v. Hamel*, 634 A.2d 1272, 1274-75 (Me. 1993).

1. Det. Mitkus’ recklessly omitted information about where stolen property was recovered.

Read holistically, Det. Mitkus’ affidavit implies that one “Sgt. King” had “recover[ed] a stolen camper, gun and snowmobiles” that had been stolen by the “statewide theft ring” at the properties on Medway Road. *See* Mitkus Afdvt. ¶¶ 7-8. Defendant, however, offered proof – Sgt. King’s own report – that, in fact, Waldoboro police had found the camper and guns in Waldoboro, not Molunkus. A202-A203.

The court rightly determined “that the information related to the location from which the stolen items were recovered was misleading and made in reckless disregard of whether it would mislead the magistrate.” A110. However, the court concluded that such, had it been included in the affidavit as it should have been, would not have negated probable cause.

Defendant will address that error – with all respect – after identifying the court’s other prong-one (*i.e.*, recklessness) error.

2. Det. Mitkus’ recklessly included unlawfully obtained information.

Det. Mitkus, of the Lincoln County Sheriff’s Office, was “emailed” cell-phone data gathered in a different investigation conducted by Sgt. King of the Rockland Police Department (Knox County). The cell-phone records were obtained via search warrants authorized pursuant to the investigation of thefts in Rockland. *See* A192-A193; King Afdvt. ¶¶ 1-8. Defendant contends that sharing search-warrant-obtained information with a different agency in a different investigation is unlawful, and Det. Mitkus’ inclusion in his affidavit of information so gathered, along with his research dependent on that data, is therefore reckless.

By statute, the data Verizon turned over to Sgt. King of the Rockland Police Department could go only to the “governmental entity” that sought it. 16 M.R.S. § 642(1). And the production of such data was lawfully restricted to “only [that] in accordance with a valid search warrant issued by a duly authorized justice, judge or justice of the peace using procedures [established by law.]” *Id.*; 16 M.R.S. § 648 (“Except as provided in this subchapter, a government entity may not obtain location information without a valid warrant issued by a duly authorized justice, judge or justice of the peace using procedures established [by law].”). Notably, “in any case the warrant is not valid for more than 14 days after the issuance.” 16 M.R.S. § 648. 16

M.R.S. § 645 provides that unlawfully obtained records are not admissible “in a criminal, civil, administrative or other proceeding.”

Here – where the affidavit was filed on September 18 and Det. Mitkus’ mining of the data appears to have occurred days after that 14-day window, *see* Mitkus Afdvt. ¶¶ 5-11 – defendant has made a preliminary showing of two illegalities. One is the fact that Det. Mitkus’ search/use of the data was unlawful because it was not within the 14-day limit established by § 648. Second and more fundamentally, Sgt. King had no lawful authority to disclose, and Det. Mitkus had none to receive, the cellular records at all. Section 645 bars its usage in *any* proceeding, including the “proceeding” to obtain the first warrant in our case. *Cf. State v. McKee*, 747 P.2d 395, 398-99 (Or. App. 1987) (statute barring use of unlawfully obtained records in any “proceeding” thereby prohibits use of records in proceedings to obtain warrants).

This Court has “plainly endorsed the principle that a warrant authorizing a search of cell phone information, even in the form of provider records, should be defined by the showing of probable cause made in the affidavit supporting the warrant request.” *State v. Jandreau*, 2022 ME 59, ¶ 20, 288 A.3d 371. Allowing law-enforcement access to *all* data, for *any* purpose, by *anyone* and in *perpetuity* would raise obvious Fourth-Amendment problems with overbreadth and particularity. *Id.* ¶ 21. That is, to be clear, above and beyond the statutory unlawfulness of the detectives’ actions.

Suffice it to say, the inclusion of illegally obtained – twice-over – records in an application for a warrant is at least reckless. Det. Mitkus not only received the data; he *searched* it and *manipulated*⁵ it. A law enforcement officer who acts in contravention of both statutory law and the Fourth Amendment has surely engaged in “lawless or reckless misconduct” – the linchpin of the *Franks* inquiry. *Franks*, 438 U.S. at 169. Such evinces far less than the sort of “good faith” conduct upon which judicial officers, acting in ex parte warrant-proceedings, depend. *See id.* At the very least, King’s and Mitkus’ illegal sharing and searching ought to shade the officers’ trustworthiness in the eyes of a judicial officer deciding whether to credit their averments. If courts reviewing warrants are to be deferential to magistrates’ views of those appearing before them (and their informants), those same reviewing courts cannot assume-away significant credibility-eroding deficiencies.

Indeed, the Supreme Court has repeatedly held that unlawfully obtained information must be culled from search warrants. In *Karo*, for example, the Court cited *Franks* for the proposition that, were a warrant to be dependent upon unlawfully obtained information, the fruits of the attendant search must be suppressed. *United States v. Karo*, 468 U.S. 705, 719 (1984), citing *Franks*, 438 U.S. at 172. Ultimately, *Franks* must encompass unlawfully obtained information, as it is imperative that the warrant-process is protected from illegalities. *Cf. State v. McKee*, 747 P.2d

⁵ “I uploaded [the] cellular records into Trax and mapped the records.” Mitkus Afdvt. ¶ 10.

395, 398-99 (Or. App. 1987) (holding that unlawfully obtained bank records used by officer-affiant in “proceeding” to obtain search warrant “must be disregarded” in probable-cause determination); *State v. Selander*, 827 P.2d 1090, 1093-94 (Wash. Ct. App. 1992) (contemplating *Franks* motion based on information unlawfully obtained). Lawfulness is a basic necessity for good faith in judicial dealings.

3. Taken together, Det. Mitkus’ misstatements negated probable cause.

Just above, defendant alluded to judicial officers’, apparently constitutionally derived, *see Illinois v. Gates*, 462 U.S. 213, 240-41 (1983), prerogative to “extract such assurances as they deem necessary” about the veracity, honesty and credibility of an affiant and his information. To put a finer point on it: No court should assume that a warrant-issuing judicial officer would continue to credit an affiant who has unlawfully procured some, much or all of the information upon which his affidavit is based.

Putting aside the judicial officer’s license to make a determination to which reviewing courts shall defer, Det. Mitkus’ recklessness was objectively critical to the issuance of the warrant. The illegally obtained information he details throughout the affidavit includes:

- The prime suspect in the dump-truck theft traveled to the location of the theft at the time of the theft. Mitkus Afdvt. ¶ 10; A164.

- A few days later, the suspect travelled to Dysart's in Newburgh, where he was seen with the stolen dump-truck. Mitkus Afdvt. ¶¶ 11-14, 17; A164-A165.
- After leaving Dysart's, the suspect's phone tracked "to the area of 531/537 Medway Road in Molunkus," where it remained for about an hour. Mitkus Afdvt. ¶ 16; A165.

It is difficult to dispute that these three data-points – the suspect was at the scene of the theft when it occurred; he was thereafter seen with the stolen truck; and he immediately travelled to the very property Det. Mitkus sought to search – are central to the assertion of probable cause. Without them, it is true, there remains the statements attributed to a pair of cooperating witnesses who, in hopes of preferential treatment with their own pending criminal matters, claimed to know that the "statewide theft ring" sometimes dropped off stolen items "on Medway Road" as well as a location in Lee; and to have heard the prime suspect in the theft of the dump-truck "bragging" about having sold a different (Chevrolet rather than GMC), "parted out" truck for \$1,700. Mitkus Afdvt. ¶¶ 6-9; A164. Notably absent from these averments, however, is any likelihood that evidence of the truck ever went to Molunkus (rather than Lee) let alone, more than a month later, remained in Molunkus after having been "parted out." Granting a warrant-application based on that would be kind of like granting a search warrant for *both* the courthouses in Houlton *and* Caribou based on hypothetical information that the "Aroostook County Superior Court," in toto, might contain a post-office-box key or septic-system plans stolen a month prior.

Det. Mitkus' narrative is further misleading because of the misimpression he recklessly created that items stolen by the "statewide theft ring" had been located in Molunkus. Here, Mitkus' disregard had a rather discrete effect on the case. Defendant contended, in his motion to suppress, that the month-old information about the GMC was stale. The court overruled that objection, but only because it felt that such information had been "refreshed" by the additional information regarding how **the GMC** was to be disposed of..." A101 (emphasis added). In fact, the cooperating witness had heard about a different truck – the Chevrolet; nothing in the affidavit connected the activity of "parting out" that truck to the Molunkus property. *See* Mitkus Afdvt. ¶ 9; A164. In other words, because of Mitkus' recklessness about locations, the court below was *itself* under the misimpression that stolen items were found in Molunkus.

The trial court's conclusion that such could have had but "very little impact on the overall probable cause determination," A110, erroneously evaluated Det. Mikus' misimpression only in isolation, without also excising the averments procured by Mitkus' unlawful receipt and search of the cellphone data. It turns out, there was no corroboration properly before the warrant-issuing judge to the effect that *anything* from the "statewide theft ring" ever made it to Molunkus.

All defendant needs to show is less than a preponderance of the evidence suggesting that the judicial officer would not have granted the warrant in these circumstances. *Hamel*, 634 A.2d at 1274-75. He has easily cleared that bar.

Second Assignment of Error

II. The motion court erred by denying defendant's motion for a *Franks* hearing related to S/A McGuire's affidavit.

A. Summary of the argument

Fifteen agents had just scoured 535 Medway Road, looking for a tiny key. The State has stipulated that they had “exhausted” that search. They “closed out” their warrant, unable to locate their evidence. Yet, S/A McGuire deliberately or recklessly failed to tell the court that the same property had just been *fully* searched by the tiny-key-seeking team of trained and experienced law enforcement officials. Surely, judicial officers are not in the habit of knowingly issuing successive, redundant search warrants for the same property in such circumstances.

B. Preservation and standard of review

In addition to Rule 11(a)(2), this argument was preserved by the process and filings contained at pages A75 through A76 of the appendix, and detailed starting at page 16 of the statement of the case, above. Defendant therefore contends that the proper standard of review is as discussed above. *See* ARGUMENT I.B *supra*.

C. Analysis

Defendant trusts that the argument here is so intuitive as to necessitate only minimal discussion. If fifteen trained evidence-gatherers have just exhaustively searched a home to find a key, there is no “probable cause” that a second search immediately thereafter – while the residence has been secured all the while – will yield anything more. Indeed, that is how search

warrants work: Law enforcement officials “exhaust” and “close out” their searches only when they believe that there’s *no* basis to find anything more.

Imagine: Fifteen highly trained and enterprising officers assist you search your house for your lost wallet. If, after they have “exhausted” and “closed out” their search, would you have “probable cause” that the wallet remains in the home, notwithstanding the just-completed search? Chances are substantial that you would scoff at that notion; you must have lost the wallet elsewhere. So, in similar circumstances, might a judicial officer deciding whether to authorize the breach of a citizen’s house have comparable doubts and concerns.

Defendant understands that ¶ 1, at A80, of S/A McGuire’s affidavit references a prior search and a search warrant. McGuire’s omissions, rather, are the highly important details of that search, *e.g.*: *fifteen* agents participated; they looked for evidence as *small* as a key; they had *just completed* it; the house had been *secured* ever since, etc. Those are the necessary details, which no reasonable affiant would omit. As in the can’t-find-your-wallet hypothetical, it’s one thing to have conducted a fleeting, one-person, frustrated and haphazard search. It’s an entirely different to have fifteen officers engaged in the “often competitive enterprise of ferreting out crime” “exhaust” their search of your residence. *Johnson v. United States*, 333 U.S. 10, 14 (1948).

The extant mention of “white powdery substance,” A80, is a bit of a red-herring. *Of course*, no reasonable judicial officer would require police to leave that behind. However, as the affidavit conveys, the powder had been

secured. A80; McGuire Afdvt. ¶ 1. A reasonable judicial officer, based on the affidavit as written, would rightly have authorized a seizure of that substance. But a second search? And a second search knowing full well that fifteen officers had just torn the place apart looking for a key? The inference to be drawn from that omitted information, rather, is that there is nothing more to be found – no need for a second search. *Cf.* Lafave, *Search and Seizure: A Treatise on the Fourth Amendment* § 3.7(d) (6th ed., Nov. 2025 update) (“Even if an object-place nexus existed at a certain time, it may have dissipated in light of intervening events, especially a prior search of the place for the very same objects now sought.”).

Because no reasonable officer would have omitted the details of the exhaustive search that had just occurred, and a judicial officer would have had significant doubts about the need for a second search, the court erred in summarily denying the motion for a *Franks* hearing. The remedy is remand with a mandate to hold one.

Third Assignment of Error

III. The motion court erred by denying defendant's motion to suppress the fruits of the second search of defendant's home, because the warrant authorizing that search did not present a substantial basis to determine there was probable cause that the second search would yield evidence of a crime.

A. Summary of the argument

As is, S/A McGuire's affidavit does not allege sufficient evidence to support the warrant. In substance, it avers merely that some *unspecified* amount of suspected fentanyl was found in an *unspecified* location on the property of three men. Were this Court to uphold a search warrant of a home based on these facts, it would be authorizing searches of entire homes and their curtilages of anyone police find with any amount of suspected drugs, regardless of the presence of other residents.

B. Preservation and standard of review

By virtue of M.R. U. Crim. P. 11(a)(2) alone, this argument is "preserved for appellate review." Of course, defendant fully litigated the issue, as documented at pages 13 through 17 above, and A67 through A74. This court will therefore undertake to determine whether Justice of the Peace Carpenter "had a 'substantial basis' to issue the warrant." *State v. Warner*, 2019 ME 140, ¶ 21, 216 A.3d 22 (quotation marks relative to *State v. Nunez*, 2016 ME 185, ¶ 30, 153 A.3d 84 omitted).

As to the court's ruling that the good-faith exception is anyway availing, this Court's review is de novo. *United States v. Jarman*, 847 F.3d 259, 264 (5th Cir. 2017) (applicability of the good-faith exception is a question of law

subject to de-novo review); *see State v. Croteau*, 2022 ME 22, ¶ 19, 272 A.3d 286 (review of issues of law related to motion to suppress is de novo).

C. Analysis

Defendant splits his analysis into two halves: First, he demonstrates why the warrant is lacking in probable cause. Second, he identifies the numerous errors in the court’s application of the good-faith exception.

1. S/A McGuire’s affidavit does not provide a substantial basis for issuance of a warrant.

Other than ¶ 1, at A80-A81, which details how some unspecified amount of suspected fentanyl was located somewhere on the property owned by three people, the 143-word affidavit contains next to nothing. There’s the bald assertion that the three property-owners “are known to MDEA as drug users and drug traffickers.” A80; JX 1-B; McGuire Afdvt. ¶ 2. Justice Nelson rightly discounted this “conclusory statement” because “the affiant did not provide any basis for the assertion or how the assertion related to the investigation.” A53.

That leaves only the unknown quantity of white powder found somewhere on acres of property featuring “vehicles,” “a two-level wooden structure,” “a detached garage” and a “wood structure.”⁶ A78; JX 1-B at 1; McGuire Afdvt. at p. 1. S/A McGuire added that he anticipated that

⁶ S/A McGuire’s affidavit conveys that the unspecified amount of suspected fentanyl was found somewhere at “the addresses described above.” McGuire Afdvt. ¶ 1. There is only one address “described above”: 535 Medway Road, which is defined as comprising these buildings and vehicles.

contraband would be found “at 531, 535 and 537 Medway Road” – a tract of three separate properties. A81.

What this case boils down to, then, is whether there is a “substantial basis” to issue a search warrant for the entirety of a large residence and property such as this, in which reside three different individuals, just because somewhere on that property – perhaps in one of the vehicles – police have located an unknown amount of white powder. In practical terms: If this is enough to authorize a warrant for the entirety of those three persons’ homes, bedrooms, garages, bathrooms, curtilage, vehicles and *bodies*, police can search every inch of a multi-resident property whenever even the tiniest amount of white powder is located. Without a basis to suspect anything other than mere possession of a single-serving of drugs – *i.e.*, without even a whiff of trafficking – police may rip apart a multi-resident homestead.

Though the court cited it for support, *see* A99, *State v. Nunez*, 2016 ME 185, 153 A.3d 84 does not help the State or its warrant. Unlike here, in *Nunez*, the affidavit adequately apprised the authorizing judicial officer that the individual whose home was searched was known to be “Shorty,” whom a specifically named source (David Ireland) had both bought drugs from, and sold drugs for – trafficked, that is. 2016 ME 185, ¶¶ 4, 7. Moreover, the affidavit in *Nunez* related how David Ireland’s account was corroborated by a second, also named, source (Rolando Cabrera). *Id.* ¶¶ 5, 7. Defendant short-hands this significant distinguishing feature of *Nunez*: Unlike here, the *Nunez* affidavit provided a substantial basis to conclude that the person who owned the home was an active drug-dealer. In contrast, our case does not

present a situation where the judicial officer had any basis to conclude that the subject property belonged to a drug-*trafficker* (rather than someone possessing a personal-use quantum of drugs).

That is not the only difference. Here, we have three property owners; *Nunez* does not. *Id.* This is a meaningful distinction. As Professor LaFave observes:

The described place must “match up” with the probable cause showing. One type of defect, perhaps the most obvious, is where the probable cause determination is not sufficiently focused to justify a search of the described place. For example, if an affidavit merely says that an informant observed drugs in an apartment house or a similar multiple-occupancy structure, this will not suffice to support a warrant for search of a particular unit within that structure.

Search and Seizure, supra, § 3.7(d). In other words, “when a single warrant identifies two discrete but related places, such as a dwelling and a vehicle located there,” there is “a legitimate” problem “that the affidavit shows probable cause as to one of the places but not the other.” *Id.*

In fact, that appears to be what occurred here. In the third paragraph of his affidavit, McGuire – seemingly cutting and pasting from Det. Mitkus’ earlier affidavit – stated he believed “some or all of the aforementioned items are located at 531, 535, and 537 Medway Rd.” A81. Instead of a rubber stamp, a judicial official weighing an intrusion upon one’s “castle” certainly must not tolerate ambiguity about where, if anywhere, on three sprawling properties, vehicles and bodies there exists probable cause.

S/A McGuire could have easily obtained this information, presumably. The reason nexus and particularity are so important in situations like this. Affiants can, if they are vague in their descriptions and broad in their requests, obtain unsupported access to areas for which there is no probable cause. Here, there is no substantial basis for a finding that probable cause existed to search all of 535 Medway Road, its outbuildings and vehicles simply because somewhere on that property – or perhaps *three* properties – an officer found an unspecified amount of powder.

2. The good-faith exception is inapplicable.

Defendant starts with the cleanest option available to this Court. It is entirely inappropriate for an impartial arbiter of fact and law to prod a particular party to present a particular defense.⁷ Such raises separation-of-powers concerns. *See* ME CONST., Art. III §§ 1-2; *see State v. Pelletier*, 2019 ME 112, ¶¶ 10-13, 212 A.3d 325. Judicial officers, moreover, have heightened responsibilities in this regard, as the appearance of a “prosecutor in robes” grievously undermines the appearance of fairness and respect for the court system, even when the improper judicial involvement concerns merely tangential issues. *Cf. State v. Bard*, 2018 ME 28, ¶¶ 50-52, 181 A.3d 187. This is even more so when, with echolalic frequency, this Court holds

⁷ A reminder of the pertinent facts: (a) The court sua sponte prodded the State to offer a “good faith” defense, A77; (b) the State omitted to make a good-faith-exception presentation or argument, prompting defense counsel to state that the argument had been waived, Tr. of 7/15/25 at 78; and (3) only after the court repeatedly invited the State to clarify its position, did the State reluctantly invite a good-faith holding, Tr. of 7/15/25 at 78-82.

that defendants’ attorneys have “waived” arguments. As a matter of its supervisory authority,⁸ this Court should recognize the same here.

It is the State that “bears the heavy burden of proving that the good-faith exception applies.” *United States v. Ramírez-Rivera*, 800 F.3d 1, 32 (1st Cir. 2015) (quotation marks and citation omitted). It offered no evidence, highly relevant to good-faith reliance, about which officers actually conducted the second search, whether those officers ever read the warrant or the affidavit, or whether those officers were directed by S/A McGuire. Indeed, on this record, there is no evidence that they ever even saw or knew of the warrant or affidavit. This record does not support good faith. These things must be proven, not assumed away.⁹

Alternatively, also as a matter of its supervisory authority, this Court views the good-faith exception with disfavor. *See State v. Weddle*, 2020 ME 12, ¶¶ 33-36, 224 A.3d 1035. It has endorsed the exception only in “unique circumstances,” where police have acted pursuant to a statute the constitutionality of which the Court itself had endorsed only a few years

⁸ In addition to concerns about fairness and respect for the judiciary, the exercise of supervisory authority is necessary to motivate the sort of thoroughgoing adversarial litigation that puts judges in the best position to rule on the merits.

⁹ An example of the consequences of the State’s waiver: After the State omitted to develop any good-faith evidence but nonetheless sought, after being further prodded by the court, to benefit from such a defense, defendant attempted to respond by noting that the judicial officer, Justice of the Peace Carpenter, should have known better (*i.e.*, he acted as a rubber stamp) because he was formerly an attorney general. Tr. of 7/15/25 at 83-84. The State objected: “[T]here was no testimony elicited by the defense regarding this particular justice of the peace that’s been referenced multiple times.” Exactly, and that’s one of the problems with excusing a waiver such as this.

prior. *Id.* ¶¶ 2, 36. These are not such circumstances. S/A McGuire was not rushed; agents were on scene, discussing snacks and their pay-scales, while securing the residence. Tr. of 7/15/25 at 10. S/A McGuire's problem, rather, was, in the light most favorable to him, simply carelessness or disinterest. Authoring warrants is a hugely significant task, not only for those who are being searched or arrested, but for victims and public safety. *Cf. State v. Akers*, 2021 ME 43, 259 A.3d 127 (per curiam) (barebones affidavit, among other problems, scuttles State's homicide conviction, leading to suppression of the victim's corpse and release of convicted murderer). This Court, obviously, plays an important role in ensuring that it is done correctly. Upholding three-paragraph, seven-sentence, 143-word affidavits based on "good faith" will not rectify the poor choice of authoring a sloppy, inadequate warrant application. The deficiencies will repeat, without remedy.

Additional considerations make the good-faith exception inappropriate here. As a matter of law, it is not available when "the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth." *United States v. Leon*, 468 U.S. 897, 923 (1984), citing *Franks*, 438 U.S. at 154. Above, defendant has noted the affidavit's faults along these lines.

Another exception to the exception fits. The warrant was "based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *Leon*, 468 U.S. at 923, quoting *Brown v. Illinois*, 422 U.S. 590, 610-11 (1975) (Powell, J., concurring). S/A

McGuire wanted to send 20 officers to search where 15 officers had just “exhausted” their search warrant. He identified a large expanse of property and three potential owners of an unknown amount of white powder.

The application for this search warrant contained other indicia of “rubber-stamping,” including: S/A McGuire could not recall where the warrant was signed or whether the Justice of the Peace made any amendments or even asked any questions; the Justice of the Peace corrected only the sloppy copy-and-pasted date on the warrant; and when the State asked whether “policies” for seeking warrant-review from a Justice of the Peace rather a judge had been followed, S/A McGuire could not recall what those policies were, but nonetheless swore that he followed them, prompting the court to remark that it was “not persuaded that there is a particular policy.” Tr. of 7/15/25 at 24-27, 31-34, 46-49.

This Court should hold that the affidavit S/A McGuire authored was not a reasonable basis to permit a Fourth-Amendment intrusion. A contrary ruling will put police on notice that they may obtain search warrants for multi-resident homes whenever *any* amount of drugs is found *anywhere* on some sliver of that property. All they have to do is be imprecise enough to obtain a overbroad warrant.

Fourth Assignment of Error

IV. The sentencing court improperly and unlawfully aggravated defendant's sentence based on unsupported findings.

A. Summary of the argument

Defendant contends that there is no basis for two aggravating factors identified by the court: that he sold drugs for “pecuniary gain”, and that he sold drugs to people living in his home.

B. Preservation and standard of review

Defendant preserved his argument against pecuniary-gain aggravation. *See Defendant's Sentencing Memorandum* at 2 (“selling a little bit to support his own habit”) Mitigation Memorandum (attached as exhibit to Defendant's Sentencing Memorandum at 4-5) (selling because “I needed my own drugs”); STr. 61 (“trying to support my drug habit”). No contemporaneous objection was made to the court's decision to aggravate defendant's sentence because of its finding that defendant was “selling to the folks, perhaps, that were living [in his residence].” STr. 73.

Sometimes, this Court reviews factual findings at sentencing for clear error, when preserved, and for obvious error, otherwise. *State v. Goncalves*, 2025 ME 70, ¶ 43, 340 A.3d 639. In M.R. App. P. 20 appeals, notwithstanding, this Court has historically reviewed a court's identification of aggravating and mitigating factors for abuse of discretion. *E.g.*, *State v. Gaston*, 2021 ME 25, ¶ 36, 250 A.3d 137. Here, though, defendant requests de novo review for misapplication of principle, just as are basic sentences vetted. *Id.* at ¶ 34. Defendant is aware of no principled reason why

maximum sentences, in contrast, should be subject to a less thorough standard of review. Given the Legislature’s expansive remit to this Court, *see* 15 M.R.S. §§ 2154 & 2155, defendant seeks de novo review, so as to better unify objective sentencing criteria.

C. Analysis

Defendant takes the two unsupported findings in order.

All “trafficking” is surely for “pecuniary gain” in the nominal sense. Otherwise, such “trafficking” is actually just “furnishing.” *Compare* 17-A M.R.S. § 1101(17) *with* (18); *see* 17-A M.R.S. § 1101(17)(C) (defining “traffick” as “to otherwise furnish **for consideration**”) (emphasis added). But there is no universal pecuniary-gain aggravator, of course, because money is fungible, and it matters, culpability-wise, why a person seeks to sell drugs for money.

Traffickers who sell for no reason other than commercial gain – *i.e.*, financial motive – can truly be said to be doing so for “pecuniary gain.” *Cf.* *State v. Plummer*, 2020 ME 143, ¶¶ 13-17, 243 A.3d 1184. Those who sell to make just enough money to feed an addiction, in contrast, are less blameworthy. They are motivated to “feed” an addiction rather than amass wealth. This Court should endeavor to ensure that this line is not blurred, as it was below.

The State contended, “Mr. McMoarn acknowledged he was selling the drugs to support his habit and to ensure that he could keep his home.” STr. 30. It suggested such was supported by a letter written by defendant’s brother. STr. 24-25. And the court accepted the State’s contention, finding

such evinced “some pecuniary gain,” aggravating defendant’s sentence as a result. STr. 73; A35.

Respectfully, the brother’s letter does not support such a finding. Exhibit 1 attached to the Mitigation Memorandum submitted with *Defendant’s Sentencing Memorandum*, rather, details how, since his addiction worsened, defendant has lost his driver’s license, been unable to maintain employment and “has struggled to make the payments on his house, the last thing he has.” Ex. 1 at 1 (unpaginated). Calling this “pecuniary gain” is a misapplication of principle.

Also unsupported is the court’s aggravating finding, “The inference is, is [sic] since he was selling that much that often that he’s selling to the folks, perhaps, that were living there.” STr. 73; A35. There is no evidence in the record before the court that those “perhaps” living at the residence were buying drugs from defendant. Indeed, as his own brother wrote, those “friends” remained at the residence – presumably, still using drugs all the while – during defendant’s incarceration. Ex. 1 at 2 (unpaginated) of Mitigation Memo. submitted with *Defendant’s Sentencing Memo*. If anything, the evidence suggests that persons in the residence were supplied by others.

CONCLUSION

For the foregoing reasons, this Court should vacate defendant’s convictions, or, in the alternative, vacate defendant’s sentence, then remand for proceedings not inconsistent with its mandate.

Respectfully submitted,

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CERTIFICATES OF FILING & SERVICE

I have filed this brief, and served opposing counsel, as listed on the service list, in compliance with M.R. App. P. 1D(c), 1E and 7(c).

/s/ Rory A. McNamara