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FACTS AND PROCEDURE

In 2023, law enforcement agencies in Lincoln County and Knox County were investigating a suspected theft ring. As a result of this investigation, Detective Jared Mitkus of the Lincoln County Sheriff's Office obtained a search warrant for the Appellant's, Lee McMoarn (hereafter the Appellant), Medway Road, Molunkus property on October 11, 2023. (A. 161-A. 162) This search warrant was signed by Judge John Martin. The search warrant outlined that the items being sought were: (1) White 2018 GMC 3500; (2) GMC keys; (3) Post Office key belonging to Dylan Peaslee; (4) Septic Plans; and (5) Whitefield road commission paperwork. (A. 162)

This first search warrant¹ was executed at the Medway Road address on October 11, 2023, limited to searching for those items outlined above, which related to a suspected Class B Theft by Unauthorized Taking or Transfer (value greater than \$10,000). (A. 162) During the execution of the first search warrant, officers located a white powdery substance in plain

¹ For the sake of clarity, the State will refer to the search warrant obtained by Detective Mitkus as the first search warrant and the search warrant obtained by Special Agent Gary McGuire as the second search warrant

sight that based on their training, education, and experience appeared to be an illicit substance. In part because of the inherently dangerous nature of fentanyl, and because the search for illegal drugs was not outlined in the first search warrant, officers contacted the Maine Drug Enforcement Agency in Aroostook County² to draft a separate, second search warrant to permit a search of the Medway Road location for illicit substances.

While the officers at the Medway Road location continued to search the property pursuant to the first search warrant, Special Agent Gary McGuire³ drafted a short search warrant. S/A McGuire's search warrant outlined that the Medway Road property was currently being searched under another judicially approved search warrant, that apparent illicit substances were located, and requested judicial approval to search the Medway Road property for additional illicit substances. (A. 78- A. 81) This search warrant was approved by Justice of the Peace Michael Carpenter.

² Molunkus is located in Aroostook County.

³ Special Agent Gary McGuire has since returned to the Aroostook County Sheriff's Department. For consistency, the State will refer to him as S/A McGuire throughout this brief since that was his role at the time of this investigation. (Tr. Of 7/15/2025 hearing at 19-20)

A subsequent search was then conducted at the Medway Road location, pursuant to the second search warrant. This second search warrant uncovered 2.3 grams of cocaine, 25.6 grams of fentanyl, and 27.4 grams of methamphetamine. The Appellant was charged with Aggravated Trafficking in Scheduled Drugs (17-A M.R.S.A. § 1105-A(1)(M)), Unlawful Trafficking of Scheduled Drugs (17-A M.R.S.A. § 1103(1-A)(A)), and three counts of Unlawful Possession of Scheduled Drugs (17-A M.R.S.A. § 1107-A(1)(B)(2), (7), (8)) on October 11, 2023.⁴

Counsel was appointed to this matter on January 29, 2024. (A. 6) The first dispositional conference in this matter was held on July 16, 2024. (A. 8) The first Motion to Suppress and Request for a *Franks*⁵ Hearing was filed on or about July 18, 2024. (A. 8; A. 116) A conference was held on September 4, 2024. Counsel for the Appellant failed to appear and a scheduling order was issued relating to the filing of pre-trial motions. (A. 8) Despite the scheduling order requiring the Appellant to file any pre-trial motions by

⁴ These facts were summarized at the conditional plea hearing on December 19, 2025. (Tr. from 12/19/2025 hearing at 13 – 18)

⁵ *Franks v. Delaware*, 438 U.S. 154 (1978)

October 4, 2024, the second Motion to Suppress and Request for *Franks* Hearing was filed on October 7, 2024. (A. 8; A 119) Another Motion to Suppress and Request for *Franks* Hearing was filed by the Appellant on October 28, 2024. (A. 9; A. 135) Both motions requesting a *Franks* hearing submitted by the Appellant were devoid of any sworn statements, affidavits, or explanations of why sworn statements or affidavits were absent. (A. 119 – A. 129; A. 135- A. 154) After a conference with the lower court on February 21, 2025, the Appellant attempted to remedy the lack of sworn statements and affidavits by submitting what he characterized as “supporting reliable documentation.” (A. 171) Notably, the reliable documentation provided were all reports and documents that related to the ongoing Lincoln County and Knox County investigations along with a Facebook post from the East Millinocket Police Department. No independent offer of proof was provided.

These Motions were denied on March 5, 2025. The Appellant filed additional motions, which were denied by the lower court. Specifically, the lower court found that the Appellant failed to make the required substantial

preliminary showing. (A. 13; A. 41- A. 44) There was also a Motion to Suppress filed as it related to the second search warrant on June 13, 2025. A hearing was held on July 15, 2025. Ultimately, the Motion to Suppress related to the second search warrant was denied on July 24, 2025. (A. 14; A. 46-A. 56)

After exhaustive motion practice, the Appellant entered a conditional plea on December 19, 2025. This appeal followed.

ISSUES

- 1. Did the lower court err by denying Defendant's Motion for *Franks* Hearing related to the first search warrant?**
- 2. Did the lower court err by Denying Defendant's Motion for *Franks* Hearing related to the second search warrant?**
- 3. Did the lower court err in denying Defendant's Motion to Suppress the Fruits of the second search warrant?**
- 4. Did the sentencing court improperly and unlawfully aggravate defendant's sentence based on unsupported findings?**

ARGUMENT

I. The Motion Court Did Not Err by Denying Defendant's Motion for Franks Hearing Related to the First Search Warrant.

The standard of review for the denial of a *Franks* hearing is either clear error or de novo, because the court's decision must be affirmed under either standard. *See State v. Boutilier*, 2011 ME 17, ¶ 1 n. 1.

The Appellant's brief skims over the requirements necessary to obtain an evidentiary *Franks* hearing. (Bl. Brief 22) The Appellant is correct that there needs to be a "substantial preliminary showing." However, the Appellant failed to fully define what exactly constitutes "substantial preliminary showing." A criminal defendant can make a substantial preliminary showing by attacking specific information in the affidavit through sworn statements. *See State v. Hamel*, 634 A.2d 1272, 1273-1274 (Me. 1993). The defendant's challenge *must consist* of more than conclusory, contrary statements. *Id.* (emphasis added). In fact, the substantial preliminary showing that the defendant *must* make is in the nature of an offer of proof. *See State v. Thompson*, 2017 ME 13, ¶ 21, 154 A.3d 614 (emphasis added).

In prong one of the *Franks* analysis, the Appellant was required to show that the affiant either recklessly or deliberately made a false statement or misleading omissions. These allegations should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. *See State v Dickinson*, 2005 ME 100, ¶ 8, 881 A.2d 651. Additionally, affidavits or sworn or otherwise reliable statements of witnesses should be furnished or their absence satisfactorily explained. *Id.*

As a practical matter, the Appellant never provided anything beyond conclusory statements. (A. 116; A. 119; A. 135). No affidavits or sworn or otherwise reliable statements of witnesses were furnished, nor were their absence explained, much less satisfactorily explained. The “offer of proof” by the Appellant was almost exclusively comprised of documents provided in discovery as part of the ongoing theft investigations in Lincoln and Knox Counties. (A. 171) As to the second prong, the Appellant would be required to show, through his offer of proof, that the allegedly false statement is necessary to the finding of probable cause. *Boutilier*, 2011 ME 17, ¶ 15. The

Appellant failed to make a substantial preliminary showing in his initial filing and therefore could not have met either of the two prongs that entitled him to a *Franks* hearing. The Appellant's motion should have been denied without the conference on February 21, 2025, because of this failure to provide the lower court with any genuine offer of proof or an explanation as to the absence of any actual offer of proof.

Despite the Appellant's Motion for *Franks* Hearing containing mostly impermissible conclusory statements and lacking any offer of proof, the court below held a conference on the request for *Franks* hearing. (A. 104 –A. 111) The lower court's findings regarding this request are extensive, ultimately resulting in a determination that only three of the eleven⁶ allegations were relevant to the Appellant's request for *Franks* hearing. (A. 107)

The only allegation of the Appellant's request for a *Franks* hearing that was called into question by the lower court related to paragraph 11 of the

⁶ The motion for *Franks* hearing contained paragraphs 1 through 13. The motion did not contain a paragraph 3. At the conference on February 21, 2025, the Appellant withdrew paragraph 13. (A. 107)

Appellant's motion. Paragraph 11 consisted of the first search warrant's omission about *where* stolen items had been recovered from. (A. 110) Consistent with this Court's case law, the lower court set aside the information it deemed to be misleading or made with reckless disregard. The court then determined whether there were still sufficient allegations remaining to support a finding of probable cause. *Boutilier*, 2011 ME 17, ¶ 15, 12 A.3d 44. If, removing this information from a search warrant, probable cause still exists, then a hearing is not warranted. *Id.* The lower court determined that removing paragraph 11 did not remove probable cause from the first search warrant.

For the first time, on appeal, the Appellant raises the issue of "unlawfully obtained information." The Appellant's analysis regarding the sharing of the cell-phone data is erroneous. The Appellant, similar to the initial request for *Franks* hearing, uses a conclusory statement to support his position- "Defendant contends that sharing search-warrant-obtained information with a different agency in a different investigation is unlawful." (Bl. Brief 23) The Appellant has provided no case law and no statutes to

support his conclusion. Case law or statutes supporting this conclusion simply do not exist. Further, the Appellant's position ignores the fact that the cell-phone data was being shared for the *same* investigation involving a suspected theft ring occurring in Knox and Lincoln Counties, resulting in some of the stolen items going to the Appellant's address. This is apparent throughout the first search warrant affidavit. (A. 163-A. 164)

The Appellant also misstates the language in 16 M.R.S. § 642(1). The statute states, "A government entity may obtain electronic device content information directly from a provider of electronic communication service or remote computing service only in accordance with a valid search warrant issued by a duly authorized justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56 or as otherwise provided in this subchapter." No where in this statute does it state that the information could only go to the "governmental entity" that sought it and that it could not be shared with any other agency.

In fact, 16 M.R.S. §§ 804 and 805-A discuss limitations on dissemination of intelligence and investigative record information and exceptions to the

limitations. Specifically, in § 805-A(1)(A), the first exception is “by a Maine criminal justice agency to another criminal justice agency.” The Appellant’s argument here simply does not have any basis in law.

The Appellant additionally misstates the language in 16 M.R.S. § 648. The *warrant* is not valid for more than 14 days after issuance. 16 M.R.S. § 648 (emphasis added). The information obtained by the warrant does not have a 14-day death toll.

The Appellant also conflates the issue. Providing cell-phone data for a specific and shared investigation does not amount to providing law enforcement with *all* data, for *any* purpose, by *anyone* and in *perpetuity*. (Bl. Brief 24) The search warrant for the cell-phone data specifically states that the affiant was seeking the cellphone data for specific dates⁷. (A. 188)

The Appellant further does not have standing to contest the search warrant and its results arising out of a search of *another* individual’s phone. The cell-phone data shared belonged to an individual that was being

⁷ It appears that the dates requested are either absent from the search warrant itself or did not make it into the Appendix

investigated under the first search warrant. “[A] defendant cannot assert a Fourth Amendment violation when the evidence is derived from a search of property in which he does not have a constitutionally efficient expectation of privacy.” *See State v. O’Donnell*, 2019 ME 98, ¶20, 210 A.3d 815. Further, “[c]ourts have consistently held that defendants have standing to challenge a search of cell phones in which they have some ownership or possessory interest, but *do not* have standing to challenge the acquisition of information showing a phone’s location when the defendant has no property interest or expectation of privacy in the particular device subject to search.” *Id.* at ¶ 21 (emphasis added).

Because the Appellant’s assertion that the cell-phone data was illegally obtained by Detective Mitkus is fatally flawed, it stands to reason that the three bullet points made by the Appellant also fail. (Bl. Brief 26-27) There is also nothing nefarious about law enforcement using different methods to better understand data to make their investigations more efficient. Law

enforcement has various tools at their disposal to more efficiently review data, such as Trax, Nighthawk, or Cellebrite⁸.

The Appellant also uses a red herring to confuse the issue by pointing out that the vehicle in question was a GMC, while the cooperating witness had heard about a different truck, a Chevrolet. (Bl. Brief 28) In fact, both Chevrolet and GMC are brands of General Motors.⁹ It is not unreasonable for an individual to believe that that a vehicle is a Chevrolet when it is a GMC or vice versa.

The Appellant argues that 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. In Appellant’s Motion (A. 146), he references a report from the East Millinocket Police Department regarding a *stolen* boat motor being located at the Medway Road property *and* that the Appellant led the officers to this *stolen* boat motor.

⁸ This is an non-exhaustive list of programs available to law enforcement

⁹ <https://www.gm.com/our-brands>

Since the cell-phone data was not illegally provided to Detective Mitkus, the information contained in the search warrant about the truck traveling to the Medway Road, Molunkus address would remain as part of the probable cause analysis for the warrant-issuing judge. That fact, along with all the remaining information¹⁰ in the search warrant, including the statement about the stolen boat motor located on the property on September 28, 2023, would have provided the judicial officer sufficient probable cause to grant the search warrant. As such, the lower court did not err in denying the Appellant's motion for *Franks* hearing as it relates to the first search warrant.

II. The Court Did Not Err in Denying Defendant's Motion for Franks Hearing Related to the Second Search Warrant.

The State's analysis for successfully requesting a *Franks* hearing is above. The State renews those arguments here. The same standard of review would also apply. The Appellant simply did not reach the substantial preliminary showing to warrant an evidentiary *Franks* hearing.

¹⁰ Sans the one paragraph the lower court excluded from the first search warrant affidavit

The Appellant's argument appears to ignore that the first search warrant related to a suspected Theft by Unauthorized Taking or Transfer. The second search warrant obtained by S/A McGuire related to suspected illicit substances. S/A McGuire testified that he received a call from the officers, *while* they were searching the Medway Road address, that they had located suspected illicit substances. (Tr. of 7/15/2025 hearing at 24 – 27) S/A McGuire further testified as to the process that he took to obtain the search warrant: reached out to a supervisor, drafted the search warrant, had it reviewed, and then had it signed by a neutral Justice of the Peace. (Tr. of 7/15/2025 hearing at 24 – 27)

There was no evidence that the search warrant obtained by S/A McGuire was sought *after* the officers already at the Medway Road property completed their search. The Appellant's argument that the information of a completed search should have been included in the second search warrant is at odds with testimony trial counsel elicited during the Motion to Suppress hearing on July 15, 2025. Trial counsel offered their own timeline to S/A McGuire, stating that the search pursuant to the first search warrant

concluded at approximately 2:00pm. (Tr. of 7/15/25 hearing at 9) The time stamp¹¹ at the bottom of the second search warrant was approximately 2:00pm. It is illogical to then argue that S/A McGuire would independently have the information that the search under the first search warrant was concluded when he drafted the second search warrant. The second search warrant was signed at almost the same time as the conclusion of the first search warrant.

It is immaterial whether the search conducted in the first search warrant was concluded prior to obtaining the second search warrant. Instead of continuing to search for contraband outside the scope of the first search warrant, Detective Mitkus did what we all hope law enforcement will do. He requested a new search warrant tailored to the new facts and observations that occurred during the search. The officers conducting the search under the first search warrant were searching for a dump truck (or its parts), a post office key, septic plans, and other paperwork. They were not searching for illicit substances. Although the officers could have seized the

¹¹ Handwritten "1400" at (A. 83)

“white powdery substance” viewed in plain sight, the initial search warrant did not authorize them to search for additional illicit substances. Trial counsel conceded this point. (Tr. of 7/15/25 hearing at 6) The information provided to the judicial officer in the second search warrant was that there was a lawful search warrant being executed at the Medway Road address, that there was a white powdery substance consistent with illicit substances viewed in plain sight, and that MDEA is familiar with the individuals that frequent that address to be known drug users/traffickers. (A. 78–A. 83)

The Appellant’s argument as to the second search warrant is absurd. Law enforcement had contemporaneous information that illicit substances were at the Medway Road address. With that information, they obtained a second search warrant based on probable cause for items viewed in plain sight. There is no evidence that S/A McGuire was aware at the time he drafted the search warrant the other officers had completed their search. In fact, there is no evidence that at the time S/A McGuire received the call to obtain the second search warrant that the officers on scene were done with their “exhaustive” search.

Once again, the Appellant asserts that his conclusory statements, without any offer of proof, warrants a full *Franks* hearing. This Court's case law does not support that belief. The lower court rightly denied the appellant's motion.

III. The Motion Court Did Not Err in Denying Defendant's Motion to Suppress the Fruits of the Second Search

This Court will "review the court's factual findings for clear error and its legal conclusions de novo and will uphold the court's denial of a motion to suppress if any reasonable view of the evidence supports the court's decision." See *State v. Martin*, 2026 ME 24, ¶ 34, 354 A.3d 1075 (quoting *State v. Cunneen*, 2019 ME 44, ¶ 13, 205 A.3d 885). Most of the State's arguments related to the Motion to Suppress the Fruits of the Second Search are encompassed in the arguments above. The State reasserts those arguments here.

As it relates specifically to the probable cause in both the first and second search warrants, this Court's precedent is instructive. The affidavit must indeed establish a sufficient nexus, but direct nexus evidence is not necessarily required. "The nexus 'need not, and often will not, rest on direct

observation, but rather can be inferred from the type of crime, the nature of the items sought, the extent of an opportunity for concealment and normal inferences as to where a criminal would hide [evidence of a crime].” See *State v. Samson*, 2007 ME 33, ¶ 15, 916 A.2d 977. Here, there was a direct nexus. Law enforcement officers conducting a lawful search of a residence found what appeared to be illicit substances in plain sight. The officers then used the information directly in front of them, at that time and location, to request a second search warrant. This nexus relies on direct observation.

The Appellant’s slippery slope argument fails. There is no support for the contention that mere suspicion of drug possession, without a nexus to a person’s home, would provide probable cause to authorize a search warrant. However, in this case, the information contained in the search warrant was two-fold. First, there was already a valid search warrant being executed by law enforcement for suspected illegal activity at the Medway Road address. Second, during that search law enforcement observed contraband outside the scope of the first search warrant and requested a second search warrant while the original officers were still at the Medway Road address.

These requests happen frequently. For example, if law enforcement executes a search warrant in a residence searching for specific items related to a suspected crime and locate a locked safe, instead of opening the safe to see what is inside, a second search warrant is obtained. The safe might belong to someone else, it might not contain the contraband being sought, and countless other “what ifs”. The expectation is that, in the interest of an individual’s right to privacy, another search warrant will be obtained.

Additionally, as laid out in the lower court’s order dated July 24, 2025, there was conclusive evidence that suspected drugs would be found at the time of the search. (A. 56) Even if this Court were to determine that there was no probable cause for the second search warrant, officers had a good faith reliance on the second search warrant. The reliance on the second search warrant was objectively reasonable. “[W]here an officer’s conduct is objectively reasonable, ‘excluding the evidence will not further the ends of the exclusionary rule in any appreciable way . . .’” *See United States v. Leon*, 468 U.S. 897, 919-20 (1984) (quoting *Stone v. Powell*, 428 U.S. 465 at 539-540 (White, J., dissenting)). Here, S/A McGuire obtained a search warrant based

on the contemporaneous information he received from officers at the Medway Road address and it was approved by a neutral Justice of the Peace. There was “literally nothing more” S/A McGuire could do in seeking to comply with the law. *Id.* at 921.

The State is not conceding that either search warrant lacked probable cause. In the lower court, the State steadfastly argued and continues to argue here, that both the first search warrant and the second search warrant had sufficient probable cause to be issued by a judicial officer. The lower court did not err in denying the Defendant’s Motion to Suppress the fruits of the second search.

IV. Sentencing Court Did Not Improperly and Unlawfully Aggravate Defendant’s Sentence Based on Unsupported Findings.

This Court “review[s] questions of law de novo . . . including the legality of the sentence . . .” *See State v. Brockelbank*, 2011 ME 188, ¶ 15, 33 A.3d 925.

The Appellant was charged with a Class A Aggravated Trafficking in Scheduled Drugs. The mandatory minimum prison sentence, to serve, is outlined in 17-A M.R.S. § 1125. The Appellant received the mandatory

minimum 4-year sentence. The Appellant's sentencing exposure ranged from 9 months to 30 years.¹²

The issue the Appellant raises here is the letter, submitted by the Appellant's brother, and attached to the Appellant's sentencing memorandum. The Appellant argues that the letter should not have been considered by the lower court in any manner that would negatively impact the Appellant's sentence. The Appellant chose to attach the letter to his sentencing memorandum, in an effort to receive something lower than the mandatory minimum time to serve.

The Appellant, during sentencing, appeared to try to distance himself for the length of time he had been receiving some pecuniary gain. (Tr. from 12/19/2025 hearing at 65-66) The lower court found his statement regarding the time the Appellant engaged in trafficking to not be credible. (Tr. from 12/19/2025 hearing at 73)

The Appellant still owned his Medway Road, Molunkus address, at least at the time of sentencing, despite the fact he had no consistent, legal

¹² 17-A M.R.S. § 1125.; 17-A M.R.S. § 1604(1)(A)

employment. The Appellant still owned his house despite being incarcerated, with other individuals remaining there. (Bl. Brief 42) Maintaining ownership of a home, in these circumstances, is a pecuniary gain. The Appellant acknowledged he was selling, in part, to feed his own habit. However, that doesn't mean the lower court or this Court should then ignore the other glaring fact that, even as slight as it may be, a pecuniary gain is achieved by the Appellant maintaining ownership in his home.

The lower court also only ordered the mandatory minimum fine that the Legislature has enacted relating to certain drug offenses. *See* 17-A M.R.S. § 1126(2). Section 1126 would allow the sentencing court to order a fine up to the value, as pleaded and proved by the State, of that scheduled drug. *See* 17-A M.R.S.A. § 1126(1). The State argued for just that. (Tr. from 12/19/2025 hearing at 29) The State also argued against the factors outlined in 17-A M.R.S. § 1126(3)¹³, that the court should not impose other than the minimum fine. (Tr. from 12/19/2025 hearing at 30)

¹³ The factors the court may consider are: (A) Reliable evidence of financial hardship on the part of the individual and the individual's family and dependents; (B) Reliable evidence of special needs of the individual or the individual's family and dependents; (C) Reliable evidence of the individual's income and future earning capacity and the individual's assets and financial

In contrast, the Appellant did not go through any of the factors listed in Section 1126(3). There is a brief discussion about fines during the Appellant's sentencing argument; however, it did not address the specific factors that are outlined. (Tr. from 12/19/2025 hearing at 55)

CONCLUSION

The lower court did not err in denying the Appellant's request for *Franks* hearing for either the first or second search warrant. Further, the lower court did not err in denying the Appellant's Motion to Suppress the fruits of the second search. Finally, the Appellant's sentence is consistent with sentencing guidelines as outlined in *State v. Hewey*, 622 A.2d 1151 (Me. 1993). This Court should affirm the rulings of the lower court relating to both search warrants, the Motion to Suppress, and the sentence outlined by the lower court.

June 17, 2026

Respectfully submitted,
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resources from whatever source; (D) Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and (E) The impact of imposition of the mandatory fine on the individual's reasonable ability to pay restitution under Chapter 69.

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2026, I mailed a copy of Appellee's brief to Appellant's counsel as required by M.R. App. P. 1E.

June 17, 2026

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