

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

REPLY BRIEF OF APPELLANT

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¹ Defendant takes the assignments of error out of order, to facilitate decision.

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INTRODUCTION

Defendant starts with the ***Third Assignment of Error***, as it is both straightforward and dispositive. Moreover, defendant is obliged to raise and sound red-flags and alarms lest this Court inadvertently adopt the State's argument and the diminution of the Fourth Amendment it would wreak.

Though the Court need not reach the other issues, given the remedy for this error, defendant nonetheless addresses the State's arguments, below.

ARGUMENT

Third Assignment of Error

III. The affidavit in support of the second warrant lacked probable cause sufficient as to the entire property, yielding an overbroad warrant.

A. The warrant was astonishingly overbroad.

The State doubles-down on the trial court’s breathtaking conception of “nexus.” Its argument, like the court’s decision, accepts the staggering premise that it is lawful for the police to search an entire, multi-resident property whenever, anywhere on that property – persons’ bodies,² vehicles, multiple outbuildings, numerous bedrooms, bags, countless nooks and crannies, etc. – some unknown amount of white powdery substance has been located. If a person is found to be in possession of a personal-use quantity of drugs, the State believes that the Fourth Amendment is powerless to stop police from searching the residence, grounds and *bodies*, etc. of all his roommates!

It cites zero case-law embracing such a sweeping view of the Fourth Amendment. Nor does it address Professor LaFave’s warning about “the most obvious” defect relating to nexus: “[I]f 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.” LaFave, *Search and Seizure: A*

² Both affidavits and warrants, initial and second, sought/granted permission for law enforcement to search the bodies of the residents. A82, A156-A157.

Treatise on the Fourth Amendment § 3.7(d) (6th ed., Nov. 2025 update) (quoted at Blue Br. 35). Far from some “slippery slope argument,” *but see* Red Br. 21, defendant’s proposed holding is necessary to preserve principles of probable cause, nexus and particularity, especially for poorer individuals who disproportionately reside in multi-occupant buildings, like himself and countless Mainers.

The State’s hypothetical about a safe – police obtain a second warrant to search inside it – is inapposite but in an instructive way. Red Br. 23. A safe is definite, discrete and quite limited. In contrast, the location to be searched here – everything on a multi-resident property, including persons’ bodies – is just the opposite. It is general, expansive, not at all limited. It is obviously overbroad.³ The application and affidavit failed to establish sufficient nexus to support that breadth.

B. The remedy is suppression of everything listed on pages A84 through A88 of the Appendix.

The remedy is to excise the State’s evidence in one fell-swoop. The inventory of the overbroad second search, *see* A84-A88, reveals that the entirety of the State’s evidence was obtained during execution of the second, general warrant. While overbroad portions of warrants may, in some cases, be severed and only the resulting fruits suppressed, severance is not available here:

³ Despite defendant’s reminder in a post-denial motion for more findings and conclusions, *see* A57, the court’s rulings “did not address the issues of overbreadth....”

[J]ust because the portions of a warrant *can* be severed does not necessarily mean we *may* sever them in all instances. Every court to adopt the severance doctrine has further limited its application to prohibit severance from saving a warrant that has been rendered a general warrant by nature of its invalid portions despite containing some valid portion. In such instances, we may save the valid portions of the warrant and admit seized items only if the valid portions of the warrant make up the greater part of the warrant. This ‘greater part’ inquiry focuses on the warrant itself rather than upon the analysis of the items actually seized during the search. When determining what provisions make up the greater part of a warrant, we will tally the valid and invalid provisions in a warrant.

United States v. Cotto, 995 F.3d 786, 799 (10th Cir. 2021) (cleaned up; internal quotation marks and citations omitted; emphasis in original). This is remarkably simple here: The search of one finite “place to be searched” – where the white powdery substance was located – was backed by probable cause. *Everything* else, based on the affidavit submitted, was averred absent nexus, resulting in an overbroad warrant and search, and is therefore invalid. Nothing can be severed from the general warrant.

Finally, after having waived (explicitly and for lack of development) a good-faith-exception argument below, the State, in its brief, barely mentions good faith. *See* Red Br. 22-23. Ironically, it does not address defendant’s argument about waiver, *see* Blue Br. 36-37, thereby once again waiving

reliance on the doctrine. Nor does it address any of defendant's other arguments about good-faith, either. *See* Blue Br. 37-39. How much of the State's lifting must the courts do before an argument is waived? When might defendant have the opportunity to respond to the arguments the State hasn't yet raised?

Second Assignment of Error

II. The Court erred by denying a *Franks* hearing as to S/A McGuire's warrant (MDEA), i.e., the second warrant.

The State responds with a strawman argument: “[T]he initial search warrant did not authorize [police] to search for additional illicit substances.” Red Br. 20. While technically true, this overlooks what’s in plain view. Law enforcement officers would have lawfully seen, and even seized, any drugs in plain sight during their first search. *See Arizona v. Hicks*, 480 U.S. 321, 326 (1987). Indeed, they did exactly that as to the white powdery substance they found. If officers in the initial search combed for a key and pieces of paper, surely they searched in cupboards, under mattresses and in junk drawers. Where can drugs fit that a post-office-box key and a few papers cannot?

The State also dickers over timing. Red Br. 18-19 (“The second search warrant was signed at almost the same time as the conclusion of the first search warrant.”). The important point is the nature of the search that had been undertaken: 15 agents, for several hours, for items as small as a key, and, whichever the case, either actually “exhausted” or virtually “exhausted.” The affidavit contained none of that.

Defendant agrees with the State that “we all hope law enforcement” will obtain a second warrant when in doubt.⁴ Red Br. 19. But what the law requires is, when they do so, they don’t omit information from their affidavits

⁴ There is a material difference between obtaining a second warrant to seize the already-found white powder and seeking a second warrant to search an expansive property and several bodies thereon despite knowing they’ve already been searched.

that would undermine the lawfulness of a second search. This is no “absurd” expectation. *But see* Red Br. 20. Before spending a day ripping apart your house trying to find your missing car-keys, wouldn’t you want to know that 15 enterprising officers trained to ferret out missing car-keys had searched it for hours and come up empty-handed? It seems unreasonable to withhold that information.

First Assignment of Error

I. The court erred by denying a *Franks* hearing as to Det. Mitkus’ search warrant (Lincoln County), i.e., the first warrant.

The State presents a surfeit of arguments, which defendant takes one at a time.

A. Defendant’s *Franks* motions were supported by documents authored by the State’s own witnesses and produced in the State’s own discovery.

The State contends defendant offered only conclusory statements not supported by affidavit or other sworn statements. Red Br. 9-10. However, defendant provided portions of search warrant affidavits and police reports authored by the investigating detective. *See* A172 (listing them). Is the State implying that documents – some of which are sworn affidavits – authored by its own key detectives are not reliable and trustworthy evidence? If so, it simultaneously calls into question the veracity of those officers’ statements to the judicial officers who granted the warrants at issue. Should we go there, or is this just point-scoring?⁵

B. Defendant’s arguments were timely and are preserved.

According to the State, “[f]or the first time on appeal” defendant raises the question of Det. Mitkus averring “unlawfully obtained information” in

⁵ The State similarly details how defense counsel “failed to appear” at a conference on September 4, 2024. Red Br. 6. Regrettably, counsel was eight minutes late in signing on to Zoom, immediately contacting the court to notify it of the calendaring mistake.

the form of cell-site location data (CSLI). Red Br. 12. Here is an excerpt of the filing in which defendant preserved this argument:

Renewal of Franks Hearing and Suppression Hearing Request- Lincoln County Warrant

Mr. McMoarn renews his request that this Court suppress all evidence in his case stemming from the Lincoln County warrant on October 11, 2024, where that the cell phone location data from searches of David Carver and Michael MacCoole's Verizon records- discussed in Det. Mitkus's affidavit (where Michael Murphy was the affiant) to SW-128- should not have been disclosed by Det. King of the Rockland PD to any other officers in other jurisdictions or about other cases without a further warrant specifically authorizing that disclosure. See, e.g. *United States v. Hulscher*, No. 4:16-CR-40070-01-KES, 2017 WL 1294452, at *7 (D.S.D. Feb. 10, 2017), report and recommendation adopted as modified, No. 4:16-CR-40070-01-KES, 2017 WL 657436 (D.S.D. Feb. 17, 2017) (where a warrant only authorized cell phone data use in the specific case for which the warrant was requested).

Where this information was unlawfully obtained, Mr. McMoarn requests a further Franks Hearing and Suppression Hearing request; he asserts that if this unlawfully obtained information had been struck from the affidavit to the Lincoln County warrant, probable cause to search his property would be vitiated.

(A75-A76) (excerpt). It is the State, rather, that made no argument about this issue until appeal.⁶

C. The State's interpretation of 16 M.R.S. § 648 and 16 M.R.S. § 805-A is an unconstitutional one.

The Fourth Amendment explicitly makes issuance of a warrant dependent upon a showing of probable cause "particularly describing the place to be searched." U.S. CONST., Amend. IV. Overbroad warrants, as defendant has established elsewhere in the briefing, are also unlawful. So

⁶ Defendant has "standing" to complain about this. *But see* Red Br. 14-15. He does not challenge Sgt. King's original search warrant for Carver and MacCoole's CSLI. Rather, he targets Det. Mitkus' *Franks*-violative use of such data in the warrant to search the subject property without first obtaining a subsequent warrant to obtain that data.

are ones based on stale information or deficient in proof of nexus between the suspicion and the place to be searched. Yet, the State believes that the Legislature has simply enacted its way around these portions of the Constitution.

The State reads 16 M.R.S. § 805-A(1)(A) to permit unbridled sharing of Fourth-Amendment-protected materials between any criminal justice entities, for any reason, in perpetuity. Imagine a geofence warrant that in 2026 vacuums up your CSLI data at “the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, or the by-the-hour motel.” *Chatrie v. United States*, ____ U.S. ____, 2026 U.S. LEXIS 2878, * 28 (June 29, 2026) (cleaned up). Let’s even suppose there’s particularized probable cause for the search in 2026. If the State’s view is correct, the recipient police-department may upload that data to a database shared with other criminal justice agencies for use at any time for any reason. If you’re lucky enough to live until 2126, for example, any agency – in Maine or anywhere else⁷ – can access, search and manipulate this same CSLI for any purpose, even one lacking probable cause.

⁷ 16 M.R.S. § 803(4) (“‘Criminal justice agency’ means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. ‘Criminal justice agency’ includes the Department of the Attorney General, district attorneys’ offices and the equivalent departments or offices in any federal or state jurisdiction. ‘Criminal justice agency’ also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.”).

Were the State's conception correct, the Fourth Amendment's particularity and nexus requirements are on thin ice. Overbreadth and staleness are nothing in the face of the share-it-with-anyone-anytime statute. Even probable cause – heck, once in a criminal-justice agency's clutches, it's fair game for any use – is no longer required. No worries about nexus. Defendant cannot underscore this enough: **This Court cannot constitutionally adopt a position that CSLI or other phone data, once collected, is fair game for sharing with any police department, constable's office, sheriff department, intelligence agency and neighborhood-watch group for any reason and in perpetuity.** To preserve the constitutionality of 16 M.R.S. § 805-A(1)(A) and 16 M.R.S. § 648, this Court must construe the former to apply only to non-Fourth-Amendment-protected materials.

D. The references to two different pickup trucks are significant.

“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 State's argument goes. Red Br. 16. But it was *the court* that mistook the trucks, not just some “individual.” Red Br. And that is the point defendant is seeking to convey: The court, in its own analysis of whether the initial warrant was supported by probable cause, conflated the two. *Compare* A97 (court correctly notes that the affidavit stated that CI heard suspect bragging about having parted out a Chevrolet dump-truck) *with* A101-A102 (court reasons that warrant was not stale because CI's information about hearing suspect had parted out

GMC suggested smaller parts still present on subject property). There was no “parting out” of the stolen GMC. Obviously, this demonstrates that the affidavit offered less proof of nexus than the court found.

Fourth Assignment of Error

IV. The court erred in aggravating defendant's sentence based on "pecuniary gain."

The State sees a "glaring fact" that a "pecuniary gain" – which even it characterizes as "slight" – accrued to defendant by virtue of his "maintaining ownership in his home." Red Br. 26. It has not answered the question, which its reading raises: Is there any such thing as trafficking that does not yield "pecuniary gain," considering the barebones definition the State and the court have given that term? If the answer is no, then how is "pecuniary gain" distinct from the nature and seriousness of the offense counted at Step One?

The State offers no answer regarding the quantum of gain. At sentencing, it offered no evidence as to what, if any, drug proceeds went towards defendant's home ownership. Surely, it wasn't much: His brother observed that defendant needed roommates to help him pay the mortgage and "struggled to make payments on his house." *See* Def. Mitigation Report, Exhibit 1, p. 1 (unpaginated). As the court had the opportunity to see via officers' bodycam during the suppression hearings, defendant's house was in serious disrepair – draped with a blue tarp, exposed structural components, and unfinished areas of the house. Where all evidence pointed to the fact that the house was not only dilapidated, but that he could barely afford it, even with help from multiple roommates, it was error for the court to construe this as the type of "pecuniary gain" that might reasonably justify aggravation.

CONCLUSION

For the foregoing reasons and those presented in the Blue Brief, 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,

July 7, 2026

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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