

**STATE OF MAINE
SOMERSET, ss.**

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: SOM-23-261**

**STATE OF MAINE,
Appellee**

v.

**DALVIN PEGUERO,
Appellant**

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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PROCEDURAL HISTORY

On November 17, 2022, the Somerset County Grand Jury returned an indictment charging Dalvin Peguero (“Peguero”) with one count of Aggravated Trafficking of Scheduled Drugs, Class A¹, and one Criminal Forfeiture. (*State of Maine v. Dalvin Peguero*, SOMCD-CR-2022-01026, A. 24). The same day, a Notice of Joinder was filed to join the prosecution with that of co-defendant Yonaury Arias-DeJesus. (A. 2). On November 23, 2022, Peguero filed a Motion to Suppress. (A. 26). A hearing on the Motion to Suppress was held on February 10, 2023. (A. 3). That same day, Peguero filed a Motion for Relief from Prejudicial Joinder. (A. 3). On March 30, 2023, the Court issued an Order on the Motion to Suppress, denying in part and granting in part. (A. 11). Two Motions in Limine were filed by Peguero on May 22, 2023, followed by a third on May 30, 2023. (A. 6). On June 4, 2023, the Court issued an Order on All Pending Motions, which included the various Motions in Limine, as well as an order severing the trials. (A. 16). A jury was selected on June 7, 2022. (A. 7). A renewed Motion to Suppress was filed by Peguero and denied the same day. (A. 7). The jury trial commenced on June 12, 2023. (A. 8). The jury returned a verdict of guilty on the substantive charge on June 14, 2023. (A. 4). The jury

¹ 17-A M.R.S. §§ 1105-A(1)(M) (2017).

deliberated for approximately five minutes. (T.T. 504-505). A sentencing hearing was held on June 29, 2023. (A. 9). The Court sentenced Peguero to 10 years confinement and a \$400 fine on Count 1, and found sufficient evidence for the forfeiture, Count 2. (A. 21). Notice of Appeal was filed on July 10, 2023. (A. 10).

STATEMENT OF FACTS

In 2022, MDEA was investigating a group of drug traffickers operating behind two different Facebook accounts (alias “Maicol Tejada” and “Juan Medina”) being used interchangeably to traffick fentanyl. (Trial Transcript, 40-41, June 12, 2023, hereinafter cited as “T.T. __.”).

During 2022, Yonaury Arias-DeJesus and other individuals began selling heroin/fentanyl from a camper on the property of Anthony Merrow in Hartland. (T.T. 226-227). Merrow also purchased drugs from these individuals directly. (T.T. 227).

MDEA used a confidential informant (CI) to set up a controlled purchase via the Maicol Tejada account on June 16, 2022. (A. 38). The purchase was to take place at 54 Athens Road, in Hartland, Maine, and was set up via Facebook messages observed by the agents. (A. 38). This was a residence belonging to Anthony Merrow. (A. 38). The CI was surveilled driving to 54 Athens Road and

walking to a camper on the rear of the property. (A. 38). The CI then exited and returned to the agents with 5 sticks (50g) of fentanyl. (A. 38).

Merrow eventually tried to remove the individuals from Hartland, and was then told by an unknown individual to find them another place to stay. (T.T. 228-229). This led Merrow to set them up at his green camper in Cambridge, and he was given heroin in return. (T.T. 229-230). Merrow described many apparent drug transactions with people coming and going and buying heroin from these individuals after they were set up in the new camper. (T.T. 231). At some point, Merrow described taking Arias and his associate to Lawrence, Massachusetts, and leaving them there. (T.T. 231-233). Arias reappeared with Dalvin Peguero at the Cambridge property sometime in the overnight hours leading into September 1, 2022. (T.T. 233). They gave Merrow a stick of fentanyl, which he understood was for letting them stay again. (T.T. 235).

On September 1, 2022, Special Agent (SA) Daniel Gastia observed a message from one of those accounts that said "fire," which was code for a fentanyl delivery. (T.T. 44). The message went on to give a GPS coordinate which came back to 614 Dexter Road in Cambridge, Maine (Merrow's property). *Id.* MDEA obtained and executed a search warrant for 614 Dexter Road that same day. (T.T. 44-47). While surveilling before the search, a vehicle registered to Merrow was seen driving away from the residence. (T.T. 116-

121). Peguero had gotten into Merrow's truck and put coordinates into Merrow's phone, indicating that he wanted to go to a location in Blue Hill. (T.T. 237-238). Peguero brought with him a small square box that looked like a radio to Merrow and concealed it under a pile of clothing in the back seat. (T.T. 239).

SA Steve Morrell pulled over the truck as it was leaving the area and found it to be driven by Anthony Merrow, with Dalvin Peguero as passenger. (T.T. 136-139). Merrow was immediately cooperative on the scene and provided detailed information. (T.T. 139-140). SA Morrell located 7 pressed sticks of fentanyl concealed inside a fake speaker box behind the passenger seat. (T.T. 141-142).

Meanwhile, state tactical team members found Yonaury Arias-DeJesus attempting to flee one of the campers on the property. (T.T. 269, 344). Inside that camper, agents discovered 15 and $\frac{1}{4}$ sticks of pressed fentanyl in a cabinet, 21 sticks in an open bag of rice, and 99 sticks in a sealed bag of rice. (T.T. 347, 283, 62). Over \$13,000 cash was also recovered from that camper. (T.T. 64-65). This camper showed signs of recent use and habitation. (T.T. 54). The other camper on the property did not have power, a working toilet, or other signs of habitation. (T.T. 352-353). The primary residence had Merrow's bedroom, which contained one stick of fentanyl, consistent with the payment he

described. (Trl. Trl. 310-311). A total of 1,458g of pressed fentanyl powder was found in the camper alone, worth between \$160,000-\$180,000. (T.T. 72).

STATEMENT OF THE ISSUES

- I. Was testimony about ongoing drug trafficking by the Co-Defendant and his other accomplices on the properties of Anthony Mellow properly admissible?**
- II. Were the two campers parked in front of Anthony Mellow's residence properly incorporated in the search warrant?**
- III. Is there a minimum amount of time that a jury must deliberate?**
- IV. Was there sufficient evidence to support a conviction for Aggravated Trafficking?**

SUMMARY OF ARGUMENT

1. The evidence of prior trafficking activity demonstrated the intent and knowledge of the accomplices as well as an ongoing plan to which the Defendant was an accomplice. The trial court only allowed limited evidence to be introduced and did not abuse its discretion.
2. The motion to suppress was properly denied as the campers were adequately identified as part of the premises to be searched. Even if not explicitly included, the campers were appurtenant to the main structure and therefore covered by the warrant.
3. There is no minimum period for jury deliberation and a short deliberation standing alone is not evidence of jury misconduct.
4. There is overwhelming evidence of guilt which is legally sufficient to convict Peguero of Aggravated Trafficking, whether as a principal or as an accomplice.

ARGUMENT

I. The evidence of the ongoing trafficking of his accomplice was admissible evidence of intent, knowledge, and common plan as to this Defendant.

A. Standard of Review

This Court reviews a trial court's decision to admit evidence of prior bad acts under M.R. Evid. 404(b) for clear error, and its determination under M.R. Evid. 403 for an abuse of discretion. *State v. Ferguson*, 2019 ME 10, ¶23, 200 A.3d 272.

B. The evidence of ongoing trafficking activity permissibly demonstrates intent, knowledge, and an ongoing plan.

Evidence of prior crimes, wrongs, or bad acts may be admitted for permissible purposes including demonstrating intent, preparation, knowledge, and plan, among others. *State v. Osborn*, 2023 ME 19, ¶17, 290 A.3d 558. Implicitly and explicitly contesting his knowledge and intent (and, by association, the existence of any plan) was core to Peguero's defense.

One of the State's theories presented consistently through the prosecution was that Peguero was an accomplice to Arias-DeJesus in the ongoing trafficking, as well as to the individual (unnamed at trial) behind the Facebook account and the phone calls to Mero. *See* (T.T. 191-193, 200-201) The evidence supported that both Peguero and Arias-DeJesus were

constructively in possession of similarly packaged fentanyl, had arrived together, were using the same camper that the majority of the drugs were openly found in, had sold drugs out of the camper that day, and were the only two individuals on the scene capable of communicating to each other (as the only two Spanish-speakers, neither of whom spoke English). (T.T. 228, 233-236). The evidence further supported that this had been an ongoing scheme, with the continual involvement of Arias-DeJesus and other unnamed individuals importing and trafficking large quantities of fentanyl with Merrow assisting locally. (T.T. 227-231).

Based on Peguero's involvement as an accomplice to Arias-DeJesus and others involved in this drug distribution operation, , it was permissible to offer evidence of prior instances of drug trafficking that tended to show this was an ongoing plan or scheme. As the accomplice to this scheme, demonstrating Arias-DeJesus's knowledge and intent to traffick drugs was also relevant. Evidence of prior drug sales (or attempts to facilitate them) are properly admissible to show intent to traffick drugs. *State v. Cote*, 444 A.2d 34, 36 (Me. 1982). Particularly where these instances were similar in nature (they all involved one of the same accomplices, Merrow, and they all involved one of the same camper vehicles being used in substantially the same manner for the sale of drugs), they were highly probative of an ongoing scheme and combination.

C. There was no unfair prejudice.

The Court has the discretion to exclude evidence if its probative value is substantially outweighed by a danger of unfair prejudice, and in this context, prejudice means, “an undue tendency to move the fact finders to decide the issue on an improper basis.” *State v. Michaud*, 2017 ME 170, ¶ 8, 168 A.3d 802.

The evidence of the Cambridge search demonstrated that there was a substantial quantity of drugs that Peguero, Arias-DeJesus, and Merrow shared responsibility for as accomplices. (T.T. 72). The testimony of Merrow regarding the previous incident in Hartland demonstrated that there was an ongoing scheme involving Arias-DeJesus and other individuals situated identically to Peguero. It was properly admitted to demonstrate the intentions of the combination as a whole, including Peguero.

The Trial Court imposed considerable limitations on the extent into which the State could inquire into this material, and on the manner in which it could even be referred to. Despite the significant evidence that Peguero and Arias-Dejesus were part of a large-scale drug trafficking organization, the Court did not allow the State to introduce any evidence in that regard. *See* (T.T. 216). Courts are afforded wide discretion to make 403 determinations. *State v. Filler*, 2010 ME 90, ¶ 17, 3 A.3d 365. The record here indicates that the trial court

balanced the considerations of the parties in a fair and measured use of its discretion, which was not erroneous.

II. The motion to suppress was properly denied.

B. Standard of Review

When reviewing the denial of a motion to suppress, the trial court's factual findings are reviewed for clear error, and the legal conclusions are reviewed de novo. *State v. Nunez*, 2016 ME 185, ¶ 18, 153 A.3d 84.

B. The campers are adequately identified as part of the warrant.

The description of the premises to be searched must allow a searching officer to, "identify with reasonable effort and reasonable certainty the premises to be searched." *State v. Pelletier*, 673 A.2d 1327, 1329 (Me. 1996). As observed in the order denying the motion to suppress, "it has long been settled law in Maine that a search warrant and its supporting affidavit may be read together to supply a particular description of the place to be searched." *State v. Peakes*, 440 A.2d 350, 353 (Me. 1982).

The warrant describes the premises, in part, as, "a single wide, multicolored trailer with two campers in front of the property." (A. 30). Photographs of both campers are presented in the warrant. *Id.* A controlled purchase of fentanyl is described taking place at one of these campers while it was parked at a different address in Hartland. (A. 38). A vehicle at the target

premises was found to be registered to the same owner (Merrow) of the property where the controlled buy at the camper in Hartland took place. (A. 39).

The Court noted there was apparently no dispute that the campers are not buildings, but reasoned that they are not vehicles because they were not currently capable of motion. (A. 13 at FN 2). The State respectfully contends that they must, however, be treated as one or the other; either they are a stationary semi-permanent building on the property, or a vehicle. In either event, boxes on the warrant are checked for both “building” and “vehicle,” and one or the other necessarily includes these campers. (A. 31).

In either event, the Motion Court correctly found that the campers were “clearly” included in the description of the property to be searched. (A. 13).

C. The campers are also appurtenant to the main structure.

Even if this Court finds the campers were not unambiguously part of the property to be searched, they were still searchable structures appurtenant to the central building. Search warrants must be read in a practical, common-sense manner, and viewed through a real-world prism for realistic interpretation. *United States v. Fagan*, 577 F.3d 10, 13 (1st Cir. 2009).

Structures that are not explicitly mentioned in a warrant but can reasonably be viewed as part of the premises, even if they are not physically a part of those premises, have been held validly searched under warrants. *Id.* “So

long as the officers executing the warrant have an objectively reasonable basis, in light of the known characteristics of the location and the evidence at hand, for concluding that a structure is appurtenant to the premises specified in the search warrant, that structure may validly be searched under the purview of the warrant.” *Id.*

While it is a fact-specific analysis, the First Circuit noted that some helpful things to consider are the proximity to the described premises, the layout and context-specific relationship between the structure and the premises, and extrinsic evidence discovered that suggests appurtenance. *Id.* at 14.

The Motion Court noted the campers were very close to the primary building, and the layout “strongly suggests they were used to supplement the space in the main building.” (A. 14). Both these premises and the premises where the controlled buy took place were registered to Merrow, the prior controlled buy took place on a camper on the Hartland premises of Merrow, and Merrow cooperated extensively on the scene of this search. *See* (A. 38-39, T.T. 139-140). These provided even further extrinsic evidence that these campers were appurtenant to the described premises when the search was conducted.

III. There is no minimum period for jury deliberation.

B. Standard of Review

No complaint was made or preserved at the trial court about the length of jury deliberations. As this is presented as alleged jury misconduct, that claim would ordinarily be raised by a motion for new trial. *State v. Dionne*, 505 A.2d 1321, 1324 (Me. 1986). No such motion was raised in this case.

Where the alleged error has not been preserved at trial, it must be reviewed under the obvious error standard; that is, whether there has been a seriously prejudicial error tending to produce manifest injustice. *State v. Pabon*, 2011 ME 100, ¶ 18, 28 A.3d 1147. The four-part test is whether there is (1) an error, (2) that is plain, and (3) affects substantial rights; and only if those three are met, (4) whether the error seriously affects the fairness and integrity or public reputation of judicial proceedings. *Id.* ¶ 29.

B. A time period alone does not indicate juror misconduct.

Jurors need not spend any set minimum amount of time deliberating before announcing a verdict, and a short deliberation after a long trial does not suggest improper jury conduct. *State v. Cheney*, 2012 ME 119, FN 3, 55 A.3d 473. A relatively short deliberation is not, standing alone, enough to support a finding of juror misconduct. *Cuthbertson v. Clark Equipment Co.*, 448 A.2d 315, 318 (Me. 1982). As the Defendant has candidly admitted, there is a “mountain of case law from around the country upholding very short periods of deliberation.” (Blue Brief, 25 FN5).

There is no evidence of any juror misconduct in this case. There was, however, overwhelming evidence of guilt. There is simply no caselaw that the State is aware of that supports the Defendant's proposition to annul a jury verdict simply due to his dissatisfaction with the specific length of deliberation and their ultimate decision.

IV. There is legally sufficient evidence to convict Peguero of Aggravated Trafficking, whether as a principal or accomplice.

B. Standard of Review

Challenges to the sufficiency of the evidence require the Court to, "view the evidence in the light most favorable to the State to determine whether the factfinder could rationally find every element of the offense beyond a reasonable doubt." *State v. Woodard*, 2013 ME 36, ¶ 19, 68 A.3d 1250. As the factfinder, the jury is permitted to draw all reasonable inferences from the evidence presented at trial. *Id.* This Court vacates judgment upon a jury verdict, "only where no trier of fact rationally could find proof of guilt beyond a reasonable doubt." *Id.*

B. There was overwhelming evidence of guilt.

Peguero was found in a vehicle with over 70 grams of fentanyl (packaged in sticks) in a speaker-like box concealed directly behind his seat and within arm's reach. There was direct testimony that Peguero concealed it there himself, and communicated his desire to be transported with it to a location in

Blue Hill. Possession of four grams of fentanyl is sufficient to generate a permissible inference of trafficking based on quantity alone.

There was direct testimony that Peguero came from the camper where another over 1,400 grams of fentanyl powder (also packaged in stick form) was located, along with over \$13,000 in cash. *See* (T.T. 64, 72, 235). There was direct testimony that he was in the company of Yonaury Arias-DeJesus, who had sold fentanyl from the same camper on more than one prior occasion with various helpers, and that they had customers the very day of the search. Merrow also testified that he received a stick of fentanyl in compensation for allowing them to use the property. This same camper was the only other habitable structure on the property, and is also reasonable to infer connection between Peguero and Arias as they were both present at this remote property where they were the only ones able to communicate with each other (both speaking Spanish and no English).

Either of these caches of drugs are independently able to support a conviction for Aggravated Trafficking of fentanyl powder. 17-A M.R.S. §§ 1105-A(1)(M) (2017). Merrow's testimony showed that Peguero both directly exercised control over at least that which he brought to the vehicle, and could have exercised control over (or taken physical custody of) the other like sticks in the camper. Although Peguero has raised questions as to the credibility of

this testimony, “the testimony of the accomplice-witness is for the jury, and, if his testimony convinces beyond a reasonable doubt, they are authorized to find guilt.” *State v. Jewell*, 285 A.2d 847, 851 (Me. 1972).

Additionally, once presence is proven, accomplice liability may attach upon the State’s proof of any conduct promoting or facilitating the commission of the crime, however slight. *State v. Anderson*, 2016 ME 183, ¶ 20, 152 A.3d 623. Presence, in conjunction with other factors, can be sufficient for a jury to find a defendant guilty as an accomplice to drug trafficking. *Anderson* at ¶ 21. While there were several other factors articulated, Merrow’s testimony is sufficient to support either a principal or accomplice theory.

CONCLUSION

For the foregoing reasons, the State respectfully asks that the conviction be affirmed.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, Jason Horn, Assistant Attorney General, certify that I have sent a native PDF and mailed two copies of the foregoing “BRIEF OF APPELLEE” to Peguero’s attorney of record, James Mason, Esq.

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