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

LAW COURT DOCKET NO. Ken-24-563

STATE OF MAINE
Appellee

v.

DONTE JOHNSON
Appellant

ON APPEAL from the Kennebec County
Unified Criminal Docket

BRIEF OF APPELLANT

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INTRODUCTION

(I) Around 9 a.m. on a sunny Saturday morning in June, three police vehicles suddenly converged upon a car waiting at a stoplight at perhaps the busiest intersection in Augusta – the entrance to the Civic Center and the Marketplace retail complex. The officers barricaded the car in which defendant was driving. Their guns drawn and pointed at the occupants, police swarmed and extracted the driver and defendant from the vehicle, immediately placing them in handcuffs. After being searched for weapons, defendant was whisked away into a police vehicle.

What was the basis for this dangerous "felony stop"? A police officer *suspected* that the car contained the same individual who had fled from him the night before, leaving a trail of drugs and cash. Candidly, however, the officer admitted that his identification was tenuous. As that identification came a great distance through binoculars, the officer "could not specifically say that's the same person." Certain identification came only *after* the arrest. In the circumstances, police unreasonably and unlawfully effected a hazardous stop that constituted an arrest. Because they did so without probable cause, they violated the Fourth Amendment.

(II) Maine courts are backlogged, unable to afford criminal defendants – not to mention scores of other litigants – timely trials and adjudications. Without sufficient help from the other branches of government, the judiciary must take all reasonable steps to move cases. Yet, in this case*, for six months*, the State failed to comply with a *court order* requiring production of the lead officer's numerous work reprimands,

requiring several months' more delay for litigation about a sanction for its failure. Even without the court order, the reprimands should have been disclosed before the suppression hearing, at which the reprimanded officer's testimony had been central.

By failing to dismiss the case, the lower court abused its discretion. Its refusal to dismiss left defendant between a rock and a hard place: either completely forgo any semblance of a "speedy" trial (at that point, three years had already passed since the prosecution commenced) so that he could have another suppression hearing at which, this time, the fact-finder would be apprised of the officer's "shoot-from-the-hip" tendencies, or proceed to trial without the fair suppression hearing he should have had.

Respectfully, this is no time for half-measures. Until Maine courts hold the State to account for its slipshod discovery practices, our courts and all persons necessitating their services will continue to suffer. This is a case by which this Court should draw the line.

(III) By enacting the statutory sentencing scheme, the Legislature has forbidden judges from counting the same fact at both the steps codified at 17-A M.R.S. § 1602(1)(A) *and* (B). Paragraph-(B) considerations are restricted to those "other" than Paragraph-(A) ones. The court violated these statutes, counting the quantity of drugs in which defendant trafficked at both steps.

STATEMENT OF THE CASE

After a jury-trial, defendant was convicted of aggravated trafficking of cocaine, 17-A M.R.S. § 1105-A(1)(D) (2019)[1] (Class A) (Count I); aggravated trafficking of fentanyl, 17-A M.R.S. § 1105-A(1)(M) (Class A) (Count II); unlawful trafficking in cocaine base, 17-A M.R.S. § 1103(1-A)(A) (Class B) (Count III); and refusing to submit to detention, 17-A M.R.S. § 751(1)(A) (Class E) (Count IV). The jury acquitted defendant of failing to provide his name to police, 17-A M.R.S. § 15-A(2) (Class E) (Count V). The bench entered two orders of criminal forfeiture, 15 M.R.S. § 5826 (Counts VI & VII). Thereafter, the Kennebec County Unified Criminal Docket (Mitchell, J. Daniel), imposed a principal sentence of nine years' prison, suspending all but seven years of that term for the duration of three years' probation. This appeal follows.

I. Suppression

Defendant begins by discussing the evidence adduced at the suppression hearing. Then, he outlines the basis for his motion to suppress and the court's ruling.

A. The evidence adduced at the suppression hearing

Approaching 10 p.m. on the night of June 4, 2021, Officer Guptill parked his police-cruiser near the intersection of Boothby and State Streets in Augusta. (MTS 12-13). He observed a Chevy Tracker pull into Boothby

[1] Though the statutes of conviction for Counts I through III have since been amended, *see* P.L. 2021 c. 396, §§ 1-4 (effective Oct. 18, 2021), none of those amendments affect the issues on appeal.

Street and, about 30 seconds later, return to the intersection. (MTS 13). This "stood out as suspicious to" Guptill. (MTS. 13). Also, the Tracker's license-plate light was out, so Guptill gave pursuit down State Street. (MTS 13).

A short distance away, Officer Guptill activated his blue lights, and the Tracker took a right onto Bridge Street, pulling off to the side of the road. (MTS 13-14). As he approached the stopped Tracker, Officer Guptill observed that, in addition to the driver and frontseat passenger, there were three individuals seated in the backseat. (MTS 15). None of the three in the backseat were wearing a seatbelt, so Guptill requested proof of their identity. (MTS 14-15, 17-18).

In these few short seconds, Officer Guptill testified, he was able to observe that the passenger sitting in the back, right seat was wearing a backpack. (MTS 15-16). That individual wore a hoodie tightly drawn to his face, leaving just a couple braids of hair, eyes, and the person's "large" nose visible to Guptill. (MTS 16-18). In all, the officer spent between 4 and 5 seconds peering at those in the backseat. (MTS 76-77).

As Guptill turned his focus back to the driver, he heard a car-door open, looked back, and saw the backseat-passenger with the large nose running away. (MTS 18). The fleeing person ran down a dirt path next to the Aveda Institute, ignoring the officer's commands to stop. (MTS 19). Thick vines slowed Guptill's pursuit, and he had to watch as the suspect, wearing a blue-purple backpack, fought through the growth and disappeared into the night. (MTS 20).

Later, near where the suspect had evaded Guptill, police aided by a K9 located a gray cellphone, amounts of cash, and a bag of suspected drugs. (MTS 30-33). These items were dry, which was important to Officer Guptill, given the fact that it had rained earlier that evening. (MTS 32-33). Police were not able to locate the suspect who fled on foot. (MTS 29).

The next morning, June 5, Officer Guptill returned to the area, believing that whoever had left behind the drugs and money would attempt to retrieve them. (MTS 36-37). Staked out so that he could observe the entrance to Boothby Street, Officer Guptill peered through his binoculars.[2] (MTS 36-37). A few minutes after 8 a.m., an individual caught Guptill's attention. (MTS 38-39). The Black male was wearing a black shirt (*not* a black hoodie-style sweatshirt), white sneakers, and a backpack resembling that worn by the fleeing suspect the night before. (MTS 39-40). He had dreadlocks. (MTS 40).

Sometime after the individual disappeared behind a building, a Volkswagen left the building's parking lot. (MTS 40, 99). Spying from his binoculars, Officer Guptill was surprised that, in the car, he could see no passenger-side headrest even though it appeared as if that seat's seatbelt was engaged. (MTS 41). Focusing, Guptill saw curly hair and bits of a black-skinned forehead. (MTS 41). He could not see the person's eyes or much of

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[2] The Court may see the difficulties presented by this vantage point, presented in DX 16.

Unless otherwise noted, all references to exhibits are to the parties' suppression (not trial) exhibits.

the skin. (MTS 97, 101). "From the binocular view," Officer Guptill agreed, he "could not identify the person [he] saw the night before as the person" in the passenger seat. (MTS 102). Nor could he even "specifically say" that the person whose forehead he subsequently spied in the Volkswagen was "the same person" who he'd seen through his binoculars minutes earlier. (MTS 102).

But Officer Guptill had a hunch, so he followed the car in his cruiser. (MTS 42, 102). At some point, the Volkswagen exceeded the speed limit by a few miles per hour. (MTS 42-44). Deciding to conduct a felony stop, Officer Guptill called in additional units. (MTS 103). Just outside the entranceway to the Augusta Civic Center and the popular Marketplace retail-shopping complex, three police vehicles converged on the car at a stoplight, blocking the car in. Each of the responding officers swarmed the car, their guns drawn. (DXs 3 & 4; MTS 22-23). The driver and defendant were removed from the vehicle at gunpoint, handcuffed, and defendant was removed from the scene. (DX 3 ca. 1:00 to 3:00). As COVID was then raging, defendant wore a mask covering his mouth and nose. (*Ibid.*). This Court may view video-recordings of that encounter, DX 3 and DX 4. *Commonwealth v. Tremblay*, 107 N.E.3d 1121, 1124 (Mass. 2018) (noting the "long-standing tradition" of appellate courts independently reviewing documentary evidence such as video-recordings).

B. The motion to suppress and ruling

On appeal, defendant renews only one suppression-related argument.[3] Specifically, he continues his contention that Officer Guptill's tenuous identification of defendant, through binoculars, as the suspect from the night before, and his supposition that such was the same person whose forehead he spied in the Volkswagen, "did not provide an adequate basis to stop the car and arrest Donte Johnson at gunpoint." (A109).

The court (Stokes, A.R.J.) most closely addressed this suppression argument by writing:

> [T]he court finds that Guptill was objectively reasonable in suspecting that the passenger in the Silver VW was the same person who had discarded or lost drugs and case as he ran away from the pursuing officer. The facts and circumstances outlined earlier in this Decision justified Guptill's stop of the Silver VW.

(A32). Among such "facts and circumstances" are:

- On June 4, Guptill saw a suspect "wearing a hood tied around his neck such that only his eyes, his nose (described as being big) and some dreadlock braids were visible. Guptill made direct eye contact with the

[3] Defendant raised others below: (1) that Officer Guptill's identification of defendant was unreliable, which was denied because the police did not arrange any suggestive procedures; (2) that the stop of the Tracker on June 4 was conducted without reasonable suspicion, which was denied because Guptill reasonably suspected a violation of 29-A M.R.S. § 1909; and (3) that the stop of the car on June 5 was conducted without reasonable suspicion, which was denied because Guptill reasonably suspected the Volkswagen was speeding. By agreement of the parties, certain post-arrest statements were excluded for *Miranda*-related reasons.

passenger. The man had a light purple or blue backpack pulled up onto his shoulders, which Guptill found unusual." (A29);

- On June 4, "Guptill described the fleeing passenger as a [B]lack male wearing a black sweatshirt, black pants, white socks and white sneakers." (A29);
- On June 5, "Officer Guptill saw a man crossing Boothby Street, who he believed matched the description of the fleeing passenger from the previous evening. It was a [B]lack male, with dreads, and a backpack. From Guptill's vantage point and with the aid of binoculars, he could see that the man was wearing the same type of clothing as the unknown suspect. He was not wearing a hood." (A30);
- "A few minutes" later, Guptill "saw a vehicle leaving the area," though it was not the same one from the night before. Guptill "saw that the front seat passenger head rest was missing, but he could see the passenger seat belt and the top of the passenger's head and curly hair." He suspected this position was indicative of the passenger "trying to conceal his presence and/or identity." (A30);
- The vehicle was "intercepted by a police vehicle cutting in front of it while Officer Guptill's vehicle was positioned behind it. Several officers approached the VW with their weapons drawn." (A30);

- Thereafter, Guptill returned to the vehicle and located "a black sweatshirt and a purple backpack."[4] (A31).

II. Discovery violation and sanction

The order denying defendant's motion to suppress was entered roughly five months after the suppression hearing. The month after its entry, defense counsel moved for a discovery order. (A112). In the motion, counsel explained, the suppression hearing had been reported in the media, prompting other defense attorneys to notify counsel that Officer Guptill "had been reprimanded several times by his department." (A112). Counsel noted that, upon learning this, counsel quickly requested the reprimand information from the State's attorney. (A112). Despite the two separate requests, counsel averred, "No response was forthcoming." (A112).

About five weeks after the defense motion for discovery, the court (Worth, J.), issued an order requiring (1) Officer Guptill complete a "Law Enforcement Officer Giglio Inquiry," and (2) the State to deliver to the defense any records of Officer Guptill's "reprimand information." (A50). This order was entered on August 30, 2023.[5]

However, some six months later (March 1, 2024), defense counsel followed up with the court, noting that the State had not complied with the

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[4] Officer Guptill also found a lanyard that he recognized from video-footage of the suspect on June 4. (MTS 29, 47).

[5] Apparently, the clerk's office never sent a copy of the order to defense counsel, and the prosecutor received a copy only days earlier. *See* Defendant's *Motion to Continue* of Sept. 27, 2023. In other words, the attorneys received the order *nearly a month* after it was entered. The police department received it on September 27, 2023. (5/3/24 Tr. at 14).

discovery order. (A53). As counsel noted, jury-selection was then set for less than a week later. (A53). Counsel sought dismissal or, if the court was disinclined to dismiss the case, some lesser sanction nonetheless necessitating continuation of the impending trial. (A53).

It took about two months for the court to convene a sanctions hearing. By that point, the case against defendant had been pending for nearly three years. At the hearing, Guptill and the prosecutor explained the reasons for the State's delayed compliance with Judge Worth's order. (*See*, *generally*, 5/3/24 Tr.).

The defense having finally received the records, the parties also took the occasion to discuss their contents. Perhaps most salient was a reprimand documenting Guptill's prior entry into a home without lawful authority to do so. As defense counsel recounted, the reprimand stated that Guptill "failed to conduct a thorough investigation and collect the complete information before taking action in this search" – similar in tenor to the theory of the defense in our case. (A119; 5/3/24 Tr. at 21). On another occasion, Guptill had demonstrated a "lack of experience and common sense" when he discharged his firearm in close proximity to bystanders. (A119-20; 5/3/24 Tr. 7, 24-25). There were four other reprimands, each pertaining to Guptill's failure to follow proper department procedures in one way or another. (A120). Defense counsel characterized Guptill's record as portraying "an officer who makes snap judgments and doesn't follow procedures" – sort of "[a]n officer who 'shoots from the hip,' so to speak." (A120).

The court (Murphy, J.) easily found a discovery violation. "This is not the first case of Giglio problems in that DA's office," the court added. (A65; 5/3/24 Tr. at 51). Moreover, the entry of a court order, "which is not a typical thing," should have lit "a four-alarm fire for the ADA" such that the need for prompt compliance was brought to the attention of the "office staff," the district attorney herself, "and the police agency." (A65-66; 5/3/24 Tr. at 51-52).

As counsel noted, Guptill's attention and diligence were central to the case. (A61; 5/3/24 Tr. at 47). Counsel began to mention the already-adjudicated suppression issues when the court cut him off: "Okay. We're not revisiting the suppression." (A61; 5/3/24 Tr. at 47). Counsel acquiesced, "We're not. No." (A61; 5/3/24 Tr. at 47).

At the hearing and in subsequent filings, the parties argued about appropriate sanctions. Defense counsel argued that "a message needs to be sent to prosecutors that they have got to comply with these kind of orders." (A66; 5/3/24 Tr. at 52). The experienced attorney, himself a former prosecutor, added, "I'm sure the [c]ourt's aware of the fact that compliance with Brady and Giglio is spotty at best in this state...." (A64; 5/3/24 Tr. at 50). Noting how the State-caused delay – at the time, the parties were litigating this issue some 16 months after defendant first requested disclosure of Guptill's reprimands – had set back the trial, the defense sought dismissal. (A120). As "the minimum sanction that should be imposed," the defense alternatively sought exclusion of certain cellphone-related evidence. (A120).

Six weeks after the parties' submissions, the court entered a handwritten order, finding a "serious" discovery violation, "given the length of time the State took to finally comply." (A54). It stated that a "meaningful sanction must be imposed given the failure of the DA's Office to comply with a very clear order for such a long time." (A54). The delay was "completely unacceptable," such that it "cannot and will not 'count' against the Defense if speedy trial rights are challenged." (A54). However, the court declined to dismiss the case, instead ordering exclusion of the aforementioned cellphone-related evidence. (A54).

Trial finally commenced about two months later.

III. Trial

Defendant does not make a trial-based argument on appeal. However, he briefly discusses the case to provide the Court with context and to highlight the State's reliance on evidence that he contends should have been suppressed.

The defense was premised on the notion that Officer Guptill was "overly anxious" to apprehend the suspect who fled from him on June 4. (1Tr. 79). In the defense opening statement, counsel suggested that Guptill thought, "It's a [B]lack guy, and he's in the same place, and he's got similar clothes on. It's got to be the same guy." (1Tr. 80, 81). This was a sort of "tunnel vision," counsel argued in closing. (2Tr. 99-102). He added, "[W]hat happened is the first [B]lack person he saw, he said, that's got to be the guy." (2Tr. 106). In service of that defense, counsel sought to elicit evidence that

the clothing – *e.g.*, black sweatpants and sweatshirts and white sneakers – are quite common. (1Tr. 233-34).

However, three pieces of evidence discovered after the arrest of defendant limited the effectiveness of such a defense. In the brief two-day trial, "backpack" appears in the transcript 80 times. Seventeen of those mentions were from the prosecutor, in the State's closing argument. (2Tr. 80, 81, 82, 83, 87, 92, 95, 97, 98, 109, 112, 116). As for the sweatshirt found in the Volkswagen, the prosecutor developed evidence and argued that it was covered in leaves similar to those found at the scene. (1Tr. 176-78; 2Tr. 97-98). In its rebuttal argument, the first piece of "corroboration" the State mentioned was the sweatshirt. (2Tr. 109). The State also both elicited evidence that Guptill saw the suspect with a lanyard on June 4, (1Tr. 148-49, 169-71), and argued that the same lanyard was found in defendant's car. (2Tr. 82, 87, 92, 98, 109). These items, unlike ubiquitous white sneakers and black sweatpants, were specific to defendant and, therefore, quite important to identification of defendant as the suspect who fled on June 4.

Rounding out the State's identification-evidence was the gray cellphone found on the ground in the thicket on June 4. It contained a photo of a Black male who, to some, looks like defendant. (2Tr. 44-45). It also contained bus-line boarding passes for several people other than defendant. (2Tr. 50-51). A chemist testified that the drugs found on June 4 include: a 35-gram[6] substance containing some amount of fentanyl; a 16-gram

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6 These amounts are rounded to the nearest whole gram.

substance containing some about of cocaine bases; and 236 grams' of substances containing some amount of cocaine hydrochloride. (1Tr. 283-86). As defense counsel acknowledged outside of the earshot of the jury, this case was a whodunnit: "[W]hoever was responsible for this amount is … no doubt a trafficker." Simply, the case was about who that "person is." (2Tr. 68).

IV. Sentencing

The sentencing judge declared that he found defendant's to be "a very difficult case." (A71; STr. 47). On one hand, defendant clearly cares very much for his family and has been on excellent behavior in the three-plus years since his arrest (he was mostly out on bail). (A71; STr. 47). On the other, the offenses were "very serious" and carry with them consequences for the community. (A71; STr. 47).

In setting the basic sentence, the court noted that defendant "was moving large amounts of cocaine and fentanyl": more than twice the amount necessary to constitute aggravated trafficking of cocaine, and nearly six times as much needed to justify a conviction for aggravated trafficking of fentanyl. (A72; STr. 52-53). Because of these "significant" quantities, the court set the basic sentence "in the higher end of the scale" – 12 years' prison. (A72-73; STr. 52-53, 57). At the second sentencing step, the court identified a number of mitigating factors and some aggravating ones, including one at issue in this appeal:

> [T]he [c]ourt believes that the large amount of fentanyl and cocaine in this case seized from Mr. Johnson at the time of his arrest are aggravating factors.

(A74; STr. 59). After determining that the mitigating factors outweighed the aggravators, the court set a maximum sentence of nine years' prison. (A74; STr. 59-60). Finding that probation was appropriate, the court then suspended two years of prison so long as defendant successfully completes three years of probation. (A74; STr. 60-61).

ISSUES PRESENTED FOR REVIEW

I. Did the motion court commit reversible error by concluding that the arrest of defendant on June 5 was lawful?

II. Did the trial court commit reversible error by declining to order dismissal of the case as a sanction for the State's discovery violation?

II. Did the sentencing court commit obvious error by double-counting the quantity of drugs defendant trafficked both in setting its basic and maximum sentences?

ARGUMENT

First Assignment of Error

I. The motion court committed reversible error by concluding that the arrest of defendant on June 5 was lawful.

A. Summary of the argument

This Court has an important role to play, not just in safeguarding Mainers' Fourth Amendment rights in court; it must also act to forestall unsafe and unnecessary police-citizen interactions that could easily result in tragedy.[7] An important step in doing so is to enforce the distinction between *Terry*[8]-style stops with risky, full-blown "felony stops" of the sort seen here.

Based on the investigating officer's mere suspicion – he acknowledged he could not definitely identify the suspect – police conducted an unreasonable stop. Because it exceeded the scope permitted by the reasonable suspicion that supported it, that stop offended the Fourth Amendment, and suppression of the non-attenuated fruits is necessary.

B. Preservation and standard of review

This assignment of error is preserved because of defendant's motion to suppress. As discussed above, defendant argued that Officer Guptill's identification of the suspect on June 5 "did not provide an adequate basis to

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[7] In recent years, Maine has the highest rate of police-involved homicides amongst New England states. Portland Press Herald, *Database shows Maine's rate of police shootings highest in New England since 2015* (March 2, 2022): pressherald.com/2022/03/02/database-shows-maines-rate-of-police-shootings-highest-in-new-england-since-2015 (accessed April 29, 2025).

[8] *Terry v. Ohio*, 392 U.S. 1 (1968).

stop the car and arrest Donte Johnson at gunpoint." (A108-09). As a result of this preservation, this Court's review is bifurcated: Review of factual findings is for clear error, and legal issues, such as conclusions, are subject to plenary review. *State v. Akers*, 2021 ME 43, ¶ 23, 259 A.3d 127 (*per curiam*). Defendant adds a caveat: This Court, which is in just as good a position to view the video-recordings introduced as suppression exhibits, may exercise plenary review of those exhibits without deferring to the court below. *Tremblay*, 107 N.E.3d at 1124; *McCloud v. State*, 208 So. 3d 668, 676 (Fla. 2016) ("Inasmuch as a ruling is based on an audio recording or videotape, the trial court is in no better position to evaluate such evidence than the appellate court, which may review the tape for facts legally sufficient to support the trial court's ruling.") (cleaned up).

C. Analysis

The police who undertook the dangerous arrest of defendant lacked probable cause to do so. They could not, with any certainty, identify the passenger in the Volkswagen on June 5 as the suspect from the night before. Rather than conducting a reasonable, *Terry*-style investigative stop to verify their bare suspicions, they went straight to an arrest, only after which their suspicions ripened into probable cause. This Court should reverse the suppression court's conclusion that the stop was lawful, thereby protecting defendant's Fourth Amendment rights and stemming the tide of Maine police officers conducting unjustified, hazardous "felony stops."

1. Probable cause was lacking at the moment the arrest was effected.

Defendant agrees with Officer Guptill: He could *not* identify the person on Boothby Street, perhaps 2,000 feet[9] from the scene of the previous night's events, whom he spied from a distance through binoculars, as the suspect from the night before. (*See* MTS 102: Guptill "could not identify the person [he] saw the night before as the person"). A positive identification was yet more impossible after the individual on Boothby Street disappeared behind a building, and a "few minutes" later, (A30), Guptill's attention shifted to a Volkswagen in which Guptill could only see a black forehead and a curl or two of hair. (*See* MTS 102: Guptill: "I could not specifically say that's the same person."). After all, "a prudent and cautious" officer would know that black skin and curly hair are not a reasonable basis to initiate a dangerous "felony stop" on Augusta's busy summer streets. *Cf. State v. Lepenn*, 2023 ME 22, ¶ 16, 295 A.3d 139 (standard for probable cause).

To recap, when police executed the arrest of defendant, they knew:

- A Black male was in the general vicinity of – *i.e.*, somewhere between 1,000 and 2,000 feet – of where the drugs were found between 10 and 12 hours earlier. (A30; MTS 38-39).
- Through binoculars, it appeared that the male wore clothes similar to those worn by the suspect the night before, and, like

[9] This Court may take judicial notice of the Google Map in the area between the Aveda Institute and Boothby Street. *See United States v. Rodríguez-Kelly*, 2024 U.S. Dist. LEXIS 172879, *3 (D.P.R. Sept. 23, 2024).

the suspect the night before, "including the backpack." (A30; MTS 39-40).

- The Black male on Boothby Street "had dreadlock hair similar to the" suspect the night before. (A30; MTS 40).
- The male crossed the street and disappeared behind a building. "A few minutes after the man" did so, "Guptill saw a vehicle leaving the area. The vehicle was not the same vehicle Guptill had stopped the night before but was a [si]lver V[olkswagen]." (A30; MTS 40).
- The passenger headrest in the Volkswagen "was missing," (A30), and "the seat had been leaned back." (MTS 41). But Officer Guptill claimed he could "see black, curly hair and a little bit of black skin" on someone sitting in the passenger seat. (MTS 41). This was the entirety of the basis for Guptill's belief that the passenger in the Volkswagen was the suspect from the night before. (A30).
- Indeed, Officer Guptill "could not identify the person [he] saw the night before as the person" in the car. (MTS 102). He "could not specifically say that's the same person." (MTS 102).
- The Volkswagen exceeded the speed-limit by 8 miles per hour. (MTS 42).

The suppression court's conclusion – that Officer Guptill "was objectively reasonable" in effectuating the stop – proves too little. Yes,

defendant concedes, it would have been perfectly reasonable to undertake a *Terry*-style stop of the Volkswagen to verify his suspicions. The way the police actually stopped the vehicle, however, was not reasonable. It far exceeded the scope – verifying Guptill's suspicions – and went right to a high-risk arrest at gunpoint and an attendant search incident to arrest.

2. Law enforcement's unreasonable "stop" effected an arrest rather than a mere *Terry*-style stop.

There is an important distinction to be drawn "between investigatory stops, which can be justified by reasonable suspicion, and other detentions that the law deems sufficiently coercive to require probable cause – detentions that are sometimes called 'de facto arrests.'" *United States v. Zapata*, 18 F.3d 971, 975 (1st Cir. 1994). "To qualify" as the former – "a mere *Terry* stop" – the "detention must be limited in scope and executed through the least restrictive means." *State v. Donatelli*, 2010 ME 43, ¶ 12, 995 A.2d 238 (quotation marks and citation omitted). Here, police far exceeded the least restrictive means.

"The conventional method of classification in respect to such detentions consists of asking whether 'a reasonable man in the suspect's position would have understood his situation,' in the circumstances then obtaining, to be tantamount to being under arrest." *Zapata*, 18 F.3d at 975, quoting *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984); *see Dunaway v. New York*, 442 U.S. 200, 212 (1979) (probable-cause standard applies because the defendant was placed in a police car, told he was not free to leave, and would have been physically restrained had he tried to leave). "This

objective, suspect-focused inquiry is informed by [courts'] assessment of the reasonableness of the detaining officer or officers' actions in response to developing conditions." *United States v. Chaney*, 647 F.3d 401, 409 (1st Cir. 2011). "The government has the burden of demonstrating that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." *United States v. Melendez-Garcia*, 28 F.3d 1046, 1052 (10th Cir. 1994).

Perhaps the most relevant of such circumstances here is officers' unreasonable show of force. As the Tenth Circuit has reiterated, it is the prosecution's burden to demonstrate that drawn-firearms are reasonable:

> Drugs and guns and violence often go together, and thus this might be a factor tending to support an officer's claim of reasonableness. However, there was no evidence or testimony from the police that they had reason to believe these particular suspects had guns or were violent or that the circumstances of this particular encounter warranted the unusual intrusiveness of handcuffing the defendants during the *Terry* stop. In the absence of such evidence, the naked fact that drugs are suspected will not support a per se justification for use of guns and handcuffs in a *Terry* stop.

Id. at 1052-53. In the words of this Court, when it is the State's burden to establish the lawfulness of an unwarranted stop, "we cannot relieve an officer of the duty to actually testify respecting the bases for, and the nature of, his suspicions." *State v. Garland*, 482 A.2d 139, 145 (Me. 1984). Nothing in the record suggests any basis for the officers' use of guns, let alone a

reasonable one. Such cuts to "a significant degree toward a finding of a de facto arrest." *Chaney*, 647 F.3d at 409.

Handcuffs, too, are "some 'of the most recognizable indicia of traditional arrest.'" *Chaney*, 647 F.3d at 409, quoting *United States v. Acosta-Colon*, 157 F.3d 9, 18 (1st Cir. 1998). Again, their use requires the State "'to point to some specific fact or circumstance that could have supported a reasonable belief that the use of such restraints was necessary....'" *Chaney*, 647 F.3d at 409, quoting *Acosta-Colon*, 157 F.3d at 18-19. However, the State has not developed evidence supporting any such basis for the officers' use of handcuffs here, let alone a reasonable one.

Next, it is noteworthy that the police barricaded the vehicle in which defendant was driving. This, too, is a factor cutting significantly in favor of a determination that an arrest, rather than a mere "stop," occurred. For example, the Second Circuit has determined that an arrest occurred when three or four DEA cars "block[ed]" a suspect's "forward progress," agents approached the suspects' vehicle with guns drawn, and restrained the suspects. *United States v. Marin*, 669 F.2d 73, 81 (2d Cir. 1982). So has the Illinois Supreme Court. *People v. Adams*, 546 N.E.2d 561, 566 (Ill. 1989) (suspect's car is "surrounded' by police). Even in the context of mere *Terry*-style investigative stops, after all, the Supreme Court has reasoned, any "attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no passenger would feel free to leave in the first place." *Brendlin v. California*, 551 U.S. 249, 257 (2007). Certainly, a

reasonable person in defendant's position would've known he was not free to terminate the encounter and go on his way. *Cf. Zapata*, 18 F.3d at 975.

Defendant realizes that the duration of the seizure – measured from the initiation of the stop until Officer Guptill located the backpack, sweatshirt and lanyard[10] – is not long. Nonetheless, police conduct subject to the Fourth Amendment must be "'justified at its inception.'" *Rodriguez v. United States*, 575 U.S. 348, 365 (2015), quoting *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185 (2004). And such a seizure is unlawful whenever it "resemble[s] a traditional arrest." *Hiibel*, 542 U.S. at 186. Nor is Fourth Amendment violation somehow converted to a lawful encounter merely because it is "de minimis." *Rodriguez*, 575 U.S. at 352-54, 356-57. Indeed, the overwhelming show of force – the physical extirpation of defendant from the car – obviated the need for a lengthy investigation, instead granting Guptill unfettered access to the car via a search-incident to arrest à la *Arizona v. Gant*, 556 U.S. 332, 351 (2009).

This stop was out of proportion to the facts held up to justify it. While it is understandably tempting to accommodate even the slightest concern for "officer safety," excessive reliance on that notion – especially when no such concern has been vocalized – tends to undermine the public's safety and discourage thorough policework. The public does not benefit from police conducting high-risk stops on major thoroughfares in broad daylight in

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[10] When Guptill located these items, defendant concedes, he had probable cause supporting the full-scale arrest that he had already effectuated.

circumstances like ours. But it is an easy shortcut for police to take: overwhelm the suspect into a restrictive arrest and gain access to his vehicle and his person based on mere reasonable suspicion. This Court should moderate overly aggressive police tactics like this. Maine appears to be seeing an uptick in "felony stops," and the public will be hurt if the trend continues. *E.g.*, *Lepenn*, 2023 ME 22, ¶¶ 7-9; *State v. Rosario*, 2022 ME 46, ¶ 15, 280 A.3d 199; *State v. Lagasse*, 2016 ME 158, ¶ 6, 149 A.3d 1153; *see also State v. Barclift*, 2022 ME 50, ¶ 8, 282 A.3d 607 (lacking even reasonable suspicion, "the police blocked in the vehicle that [the suspect] was entering and approached him from multiple directions with guns drawn" at a busy bus station). Maine's anomalous rate of police-involved shootings suggests they may *already* be getting hurt.

3. The error is not harmless beyond a reasonable doubt.

Other than rather unremarkable features – *e.g.*, black skin, black clothes, a large nose, and a dreadlock or two (described the next day as "curly" hair) – observed in mere seconds, in the middle of the night or through binoculars at a great distance, there wasn't much that meaningfully tied defendant to the suspect on June 4. The backpack, the sweatshirt (with leaves), and a piece of a lanyard are the strongest evidence of such a connection. Each of these was located and seized *after* police developed probable cause.

These non-attenuated fruits of the illegal seizure and search clearly tipped scales at trial. Certainly, the State has not proved that the error in

admitting these items was harmless beyond a reasonable doubt. *Cf. Akers*, 2021 ME 43, ¶ 50 (such is the applicable harmlessness standard).

Second Assignment of Error

III. The trial court committed reversible error by declining to order dismissal of the case as a sanction for the State's discovery violation.

A. Summary of the argument

Discovery sanctions have two primary functions: They must make a defendant "whole," and they should punish and deter repeat discovery violations. In light of the unfortunate "new normal" whereby cases now pend in Maine courts for far longer than what would have been tolerable to Mainers during any prior epoch, *see Winchester v. State*, 2023 ME 23, ¶¶ 20, 22 n. 8 & 9, 291 A.3d 707, there is less room for error than ever before. Slipshod discovery practices – let alone a failure to comply with court orders for months on end – will prolong already-too-long times to trial and gum up the works for others seeking access to our overstrained courts. Respectfully, the lower court abused its discretion by declining to impose the only remedy capable of vindicating each of these interests: dismissal.

B. Preservation and standard of review

This issue is preserved by virtue of motions, memoranda, and hearings mentioned above and excerpted in the Appendix, pages A50 through A69 and A112 through A125. Therefore, this Court will review the court's denial of defendant's motion to dismiss for an abuse of discretion. *State v. Reed-Hansen*, 2019 ME 58, ¶ 17, 207 A.3d 191.

C. Analysis

In a moment, defendant will turn to a discussion of how the court's refusal to dismiss the case omitted to alleviate any of the ills that discovery

sanctions must address. Before doing so, however, it is important to understand the nature of the discovery violation, as that should inform the selection of an appropriate sanction.

This was as plain a violation as there can be. Compliance did not require interpretation of M.R. U. Crim. P. 16 or any constitutional standard, though those provisions were offended, too. Rather, the State had only to follow the unambiguous terms of Judge Worth's order requiring production "in full" of "reprimand information for Officer Sebastian Guptill," "including employee records of Officer Guptill detailing any violations of Augusta Police Department Policy and internal affairs investigations into the same." (A50). While, at the hearing held to investigate the State's failure, the State adduced evidence that the police department's lawyer wanted to first vet Judge Worth's order, (5/3/24 Tr. at 15-16, 39-40), there is a process for doing so enshrined by rule. *See* M.R. U. Crim. P. 16(d)(2). The timeframe contemplated for such a process is a matter of days, far less than the six-plus months it took for the State to do its diligence – and even then only *after* the defense sought sanctions. A police department's lawyer enjoys no exception to judicial discovery orders.

To truly understand the violation, it is important to recognize that, even absent Judge Worth's order, the State was obligated to produce the reprimand evidence *more than a year* earlier than it did, certainly before the suppression hearing. For starters, a prosecutor's due-process discovery duties apply at suppression hearings. *See Reed-Hansen*, 2019 ME 58, ¶ 15. Just a few months ago, a federal district court judge sitting in Maine

criticized a federal prosecutor's failure to turn over to the defense evidence of a Maine police officer's reprimands. *United States v. Banks*, 2025 U.S. Dist. LEXIS 35118, 2025 WL 642246 (D. Me. Feb. 27, 2025) (Walker, J.). In that case, fortunately for the government, a resourceful[11] defense lawyer had been able to obtain the reprimand information that the government had withheld, such that the defense was able to utilize those reprimands at the suppression hearing. 2025 U.S. Dist. LEXIS 35118, * 9, 2025 WL 642246, ** 4-5. Regardless, the judge lambasted the prosecutors, noting the "obvious" impeachment value of the reprimands and the attendant constitutional importance for disclosure. 2025 U.S. Dist. LEXIS 35118, ** 10-12, 2025 WL 642246, ** 4-5. "Evidence of a police officer's policy violations may call into question the veracity of his testimony, and repeated violations even more so." 2025 U.S. Dist. LEXIS 35118, ** 9-10, 2025 WL 642246, * 5.

Anyway, Rule 16 requires more than do federal constitutional standards. *Cf. Reed-Hansen*, 2019 ME 58, ¶ 13. "[A] a prosecutor cannot commit a *Brady*[12] violation without also violating his or her automatic discovery obligations pursuant to Rule 16." *State v. Hassan*, 2018 ME 22, ¶

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[11] The defense lawyer had utilized the Freedom of Access Act (FOAA) to obtain some of the withheld information. Incidentally, in Maine state courts in recent years, the Maine Commission on Public Defense Services has had to resort to contracting with an attorney specializing in FOAA because State prosecutors so frequently fail to disclose evidence such as this. In other words, Maine taxpayers are footing the bill to pay for a defense lawyer to do the discovery-work that prosecutors are obligated to do but aren't doing consistently.

[12] *Brady v. Maryland*, 373 U.S. 83 (1963).

21, 179 A.3d 898. That is because Rule 16 requires the automatic production of "information" "that tends to create a reasonable doubt of the defendant's guilt." Objectively, the fact that the lead officer and sole eyewitness capable of identifying defendant as the suspect has a track-record of "shooting from the hip" tends to create doubts about the State's case, particularly its suppression case (in which it was the defense theory that that very officer acted recklessly and unreasonably). *Cf. Banks*, 2025 U.S. Dist. LEXIS 35118, * 4, 2025 WL 642246, * 2 (admitting, at suppression hearing, investigating officer's reprimands to demonstrate a "pattern of him disregarding law and policy if he felt he was in the right."); *see also* Advisory Committee Note to Former M.R. Crim. P. 16 [1978] (Automatic discovery provision "obviates the need for defense counsel to go on a fishing expedition for '*Brady* material.'").

All of this is to say, the State's violation contravened court order, constitutional standards, and court rule. The thoroughness of the State's error suggests "slipshod" discovery practices deserving of the most serious sanction. *Cf. Reed-Hansen*, 2019 ME 58, ¶ 18.

1. Because the case had been pending for nearly three years, dismissal was the only remedy capable of vindicating defendant's rights.

A trial court's choice of sanction must make a defendant "whole," or else it abuses its discretion. *Cf. State v. Poulin*, 2016 ME 110, ¶ 27, 144 A.3d 574 ("The trial court cannot … permit a discovery violation to deprive a defendant of a fair trial."). In other words, this Court will review to determine whether the prejudice wreaked as a result of the violation was

"'mitigated – or not – by the trial court's ruling.'" *State v. Page*, 2023 ME 73, ¶ 14, 306 A.3d 142, quoting *Poulin*, 2016 ME 110, ¶ 28. A key component of the court's sanction is "its duty to administer an orderly and efficient process for ensuring that a case timely proceeds to trial." *State v. Burbank*, 2019 ME 37, ¶ 17, 204 A.3d 851.

Respectfully, the court's denial of dismissal falls short of each of these benchmarks. Defendant did not receive a fair suppression hearing, one at which Justice Stokes was apprised of Officer Guptill's history of over-aggressiveness and lack of compliance with procedures. Given the importance of Guptill's credibility and diligence to the suppression issues – *e.g.*, did he really see what he claimed to have seen, and did he act reasonably? – the withholding of the reprimands compromised defendant's right to a fair hearing. This Court affords considerable deference to fact-finding judges' suppression findings because of their "opportunity to view witnesses and assess their credibility." *State v. Connor*, 1998 ME 1, ¶ 7, 704 A.2d 387. Except, Justice Stokes didn't have all the information he should have had.

Having finally prized the reprimands from the State's hands more than a year after the suppression hearing ended, defendant had to choose whether to reopen the suppression record. How many more months of delay would that have entailed? Would doing so have required a different judge, given Justice Stokes' transition to active-retired status and the Kennebec County Unified Criminal Docket's tendency to have a multitude of judges handle

different proceedings in any one case?[13] And what then of Justice Murphy's statement that "We're not revisiting the suppression"? (A61; 5/3/24 Tr. at 47).

At that point, defendant's case had been pending for nearly three years. For how long was defendant, who hails from New York, to continue to endure the odyssey that is a criminal case in Maine state court while subject to $75,000 bail? He had already seen the suppression hearing, which was originally scheduled to be held in summer 2022, continued three times (once "due to clerical error" and twice more at the State's request because of an officer's sickness and Officer Guptill's vacation[14]) until January 2023. The first time around, the order denying suppression was not entered until three months and three weeks after the parties completed their post-hearing filings. Based on this track-record, defendant could do the math: He might well have to wait in limbo for the better part of another year to receive the suppression hearing he should have had the first time.

Our rules are designed "to provide for the just determination of every proceeding governed by them." M.R. U. Crim. P. 2. To achieve as much, the rules "shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay."

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[13] Four different judges entered the orders at issue in this appeal: Stokes, A.R.J.; Worth, J.; Murphy, J.; and Mitchell, Daniel, J. Given this revolving door, it must be difficult for judges to honor each other's orders or reconsider them as new information comes to light.

[14] *See* Docket entry for 09/26/2022; State's *Motion to Continue* of Aug. 18, 2022; State's *Motion to Continue* of Nov. 21, 2022.

Ibid. Forcing a defendant to wait anything approaching another year because of the State's slipshod discovery practices is no remedy at all. Quite the opposite, it is a free-pass for the State.

2. A significant remedy was needed to deter repeat violations.

This Court is aware that "all too often" and in "[v]ery recent cases," the State of Maine has come up with "new" information at the very last minute. *State v. Dennis*, 2024 ME 54, ¶ 35 n. 16, 320 A.3d 396 (Stanfill, C.J., concurring). In fact, here, the State failed to come up with such information timely enough for it to be used at the suppression hearing. A judge with unparalleled vantage to know of what she is speaking found, "This is not the first case of Giglio problems in that DA's office." (A65; 5/3/24 Tr. at 51).

What defendants in Maine have, clearly, is a right to discovery, not least when it is mandated by court order. What Maine defendants often lack, though, is a sufficient remedy when that right is violated. Defendant suggests that this Court is frequently seeing discovery problems because prosecutors and the bodies that under-resource them remain untouched by meaningful consequences. Attendant to its supervisory authority, this Court should intervene and clarify that judicial officers' orders and procedural rules carry with them the force of law, violations of which will not be tolerated.

Separate from their authority to dismiss a case pursuant to M.R. U. Crim. P. 16(e), Maine judges may do so "on the court's own motion" should there be any "unnecessary delay" of trial. M.R. U. Crim. P. 48(b)(1). They can and should do so when appropriate to relieve "trial court congestion" and

to ensure "prompt processing of all cases reaching the courts." *State v. Wells*, 443 A.3d 60, 63 (Me. 1982). If this is not the time to do so, it is difficult to conceive of a time when Rule 48(b)(1) will ever be invoked.

Third Assignment of Error

III. The sentencing court committed obvious error by double-counting the quantity of drugs defendant trafficked both in setting its basic and maximum sentences.

A. Summary of the Argument

Statutory law forbids what happened here. At Step One, 17-A M.R.S. § 1602(1)(A), the court appropriately considered the quantity of drugs trafficked by defendant. However, the court then violated 17-A M.R.S. § 1602(1)(B), which commands courts to consider only "all *other* relevant sentencing factors." (emphasis added). It did so by again counting the fact that, in its words, defendant trafficked in "a large amount" of drugs. It lacked statutory authority to do so, and the error is clear and not harmless beyond a reasonable doubt.

B. Preservation and standard of review

This argument was not preserved by a contemporaneous objection. Therefore, this Court's review is for obvious error. *State v. Miller*, 2005 ME 84, ¶ 11, 875 A.2d 694 ("We review matters not preserved before the sentencing court for obvious error."). This means: an error that is plain, impinges upon substantial rights, and seriously affects the fairness, integrity or public reputation of court proceedings. *State v. Pabon*, 2011 ME 100, ¶ 29, 28 A.3d 1147.

C. Analysis

Defendant addresses the elements of the obvious-error test, seriatim:

1. The court erred.

At Step One, a court must consider "the particular nature and seriousness of the offense as committed by the offender." 17-A M.R.S. § 1602(1)(A). It did so, among other ways, by counting the "significant" drug-quantities in which defendant trafficked. (A72; STr. 52-53).

The error is seen in what the court did next: It said that the same thing – drug quantity – was also an aggravating factor. Again, under the duly enacted statute, 17-A M.R.S. § 1602(1)(B), the court thereby violated the requirement of considering only "other" factors. This is a plain statutory violation.

2. The error was plain.

The fact that the error could have been avoided if the court had only followed the unambiguous language of § 1602(1)(B) is proof that the error is plain. *See People v. Pollard*, 307 P.3d 1124, 1133 (Colo. App. 2013) (One way an error can be plain is when it violates "a clear statutory command."). So, too, is the fact that this Court's caselaw clearly recognizes that drug quantity is to be considered at the first step, § 1602(1)(A). *E.g.*, *State v. Plummer*, 2020 ME 143, ¶ 16, 243 A.3d 1184 ("The fact that Plummer was convicted of trafficking a large amount of heroin and cocaine base was an objective factor properly considered by the court at the first step of its analysis."); *see Pollard*, 307 P.3d at 1133 (Errors also qualify as plain when they contravene caselaw or well-settled legal principles.).

3. The error affected substantial rights.

There is a reasonable probability that defendant would have received a lesser sentence. *See Pabon*, 2011 ME 100, ¶ 35. Such an inquiry looks to whether the illegal consideration was an important factor in setting the sentence. *United States v. Hatcher*, 947 F.3d 383, 390 (6th Cir. 2020); *United States v. Gonzalez-Castillo*, 562 F.3d 80, 81 (1st Cir. 2009). There is little question about that here: The "large amount of fentanyl and cocaine in this case" was the first aggravating factor mentioned by the court. (A74; STr. 59). While, it is true, the court did reduce the basic sentence after determining that the mitigating factors outweighed the aggravating ones, the fact remains that, had the court not considered the illegal factor, it would likely have determined that the mitigators were even more weighty. That's a basis to reduce defendant's sentence. Because a fair reading of these events indicates that the court "was – or might have been – influenced" by an unlawful consideration, this prong is satisfied. *Cf. State v. Moore*, 2023 ME 18, ¶ 27, 290 A.3d 533.

4. This Court should remand for resentencing.

When judges plainly violate unambiguous statutes, it does not sit well with the public. After all, "It is a fundamental American principle that we are governed by the rule of law, and that all are presumed to know what the law is." *State v. Austin*, 2016 ME 14, ¶ 11, 131 A.3d 377. To excuse a judge's failure to "know what the law is" but to hold average citizens to a higher standard undermines the integrity and reputation of our courts. The only appropriate antidote is remand for correction of the error.

CONCLUSION

For the foregoing reasons, this Court should vacate defendant's convictions and remand with instructions to dismiss the indictment with prejudice, or, in the alternative, to grant defendant's motion to suppress the evidence obtained after the moment he was seized on June 5. Alternatively, this Court should vacate defendant's sentences and remand for resentencing.

Respectfully submitted,

May 16, 2025

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CERTIFICATE OF FILING AND SERVICE

I have filed this brief, and served opposing counsel, as listed on the briefing schedule and the Board of Bar Overseers' (email) directory, in compliance with M.R. App. P. 1D(c), 1E and 7(c).

/s/ Rory A. McNamara