THE MAINE SUPREME JUDICIAL COURT,
SITTING AS THE LAW COURT

Docket No. PEN-25-245

STATE OF MAINE
Plaintiff/Appellee

v.

JOSHUA MARTIN
Defendant/Appellant

ON APPEAL FROM THE PENOBSCOT COUNTY
UNIFIED CRIMINAL DOCKET

BRIEF FOR APPELLANT, JOSHUA MARTIN

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Statement of the Facts

06/21/2024 – Motion to Suppress Hearing

1. Officer Freeman had received a report that an occupant and/or operator of a truck had gone through drive-thru and a witness saw an open can of Twisted Tea with a straw in it. (Hearing on Motion to Suppress Transcript pg. 5-6).
2. The vehicle was located as described behind the Burger King off to the side parking lot and stopped. (Hearing on Motion to Suppress Transcript pg. 7).
3. The officer saw the Twisted Tea container in the console. (Hearing on Motion to Suppress Transcript pg. 8).
4. Officer Freeman then obtained driver information from both persons. (Hearing on Motion to Suppress Transcript pg. 9).
5. The officer asked again about the can and was told it was from the night before; he obtained the can, and it was nearly full; and he seized the can. (Hearing on Motion to Suppress Transcript pg. 10-11).
6. Officer Curtis had Mr. Martin step out of the vehicle and searched him while attempting to identify him. (Hearing on Motion to Suppress Transcript pg. 11).

7. The officer removed a baggie from Mr. Martin and then searched the vehicle for drugs. (Hearing on Motion to Suppress Transcript pg. 12-13).
8. The officer understood from dispatch that he was looking for a vehicle with an open can of Twisted Tea with a straw in it as his primary focus of concern. (Hearing on Motion to Suppress Transcript pg. 15-16).
9. There was discussion of dispatch changing 'intoxicated' to 'drunk' regarding the operator. (Hearing on Motion to Suppress Transcript pg. 16-17).
10. The officer confirmed the couple was eating chicken nuggets in the truck when he approached and told them someone had concerns. (Hearing on Motion to Suppress Transcript pg. 20).
11. On his bodycam, Officer Curtis said, "you don't appear intoxicated to me, I don't see anything wrong here." This was at the first contact between the officer and Mr. Martin (Hearing on Motion to Suppress Transcript pg. 20-21).
12. Officer Curtis testified, "he was currently not operating; he was parked, he was not operating erratically." (Hearing on Motion to Suppress Transcript pg. 21).
13. The officer dumped out the contents of the Twisted Tea can. (Hearing on Motion to Suppress Transcript pg. 22).

14. The officer did not preserve the can contents or test them. (Hearing on Motion to Suppress Transcript pg. 23-24).

15. The truck had no cover or cap and no trunk; it was an open bed with a large toolbox. (Hearing on Motion to Suppress Transcript pg. 26).

16. Officer Freeman was present and training Officer Curtis; Officer Curtis used a screwdriver to open the toolbox and a second smaller box inside, both without a warrant. (Hearing on Motion to Suppress Transcript pg. 27-28).

17. No *Miranda* warnings were given to Defendant. (Hearing on Motion to Suppress Transcript pg. 28).

18. Officer Curtis testified the vehicle was parked in the parking lot. (Hearing on Motion to Suppress Transcript pg. 31).

19. The Defendant didn't give identification information and the officer got him out of the vehicle and cuffed him. (Hearing on Motion to Suppress Transcript pg. 34).

20. He later gave his name while in cuffs. (Hearing on Motion to Suppress Transcript pg. 35).

21. A search of Mr. Martin outside of the truck after the arrest found a methamphetamine pipe next to his wallet. (Hearing on Motion to Suppress Transcript pg. 36).

22. The officers searched the locked containers in the truck bed – toolbox and smaller box inside, both locked, and located drugs after opening both with a screwdriver. (Hearing on Motion to Suppress Transcript pg. 38-39).
23. The State admitted Exhibit 1, a flash drive of all videos and the 911 call. (Hearing on Motion to Suppress Transcript pg. 40).
24. The officers' reports were admitted. (Hearing on Motion to Suppress Transcript pg. 41).
25. After Defendant exited the vehicle, the officer asked for his identity; Defendant would not provide accurate information initially, but later identified himself as Joshua Martin, and his bail conditions. (Hearing on Motion to Suppress Transcript pg. 46-47).
26. Also, when outside of the truck, Defendant also replied he had an outstanding warrant. (Hearing on Motion to Suppress Transcript pg. 48).
27. The officer agreed with Officer Freeman, that the primary reason they went there, to the Burger King facility, was because they said something about an open Twisted Tea with a straw in it in the vehicle. (Hearing on Motion to Suppress Transcript pg. 49-50).
28. He also agreed the area where they were located was in the parking lot of Burger King. (Hearing on Motion to Suppress Transcript pg. 50).

29. The officer acknowledged that 29-A M.R.S.A. §2112-A, requires an open container offense to occur on a public way, and that the Burger King parking lot was not a public way. (Hearing on Motion to Suppress Transcript pg. 51).
30. Defendant admitted Exhibits 7-11. (Hearing on Motion to Suppress Transcript pg. 60).
31. The Court issued a Motion to Suppress Order in this matter on October 1, 2024, granting the Defendant's Motion to Suppress.
32. The State then filed a Motion for Further Findings of Fact and Conclusions of Law and for Reconsideration of the Suppression Order on October 22, 2024.
33. Following the State's motion, the Defendant promptly filed an objection with the Court on October 23, 2024.
34. The Defendant moved to dismiss the States' Motion for Further Findings of Fact and Conclusions of Law and for Reconsideration of the Suppression Order and recited facts to the Trial Judge.
35. The Dispositional Conference in this matter was set for October 28, 2024.
36. The State's Motion for Further Findings of Fact and Conclusions of Law and for Reconsideration, proceeded without a hearing granted to Defendant on the State's motion.

05/13/2025 – Sentencing

1. The Sentencing occurred on 05/13/2025, wherein Count 7 (forfeiture) was heard.

2. Defendant presented evidence that the $2,862.00 in his wallet was from the sale of his truck to his father. (Sentencing Hearing Transcript pg. 32-37, Defendants Exhibits 1 and 4, pg. 32).

3. Defendant also argued that the wallet was taken as part of a *Miranda* violation, stemming from the questions pertaining to his identity and his non-Mirandized responses directing police to his wallet, where his truck sale cash was located.

4. Defendant contends State and Federal standards for search and seizure of private property and forfeiture were not met in this case and any forfeiture violated his Eighth Amendment Rights.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the trial court erred in granting the State of Maine's Motion for Further Findings of Fact and Conclusions of Law and Reconsideration of its Order granting Defendant's Motion to Suppress.

II. Whether the trial court was without jurisdiction pursuant to 4 M.R.S.A. §165, the Maine Constitution, it's separation of powers, or otherwise, to alter/amend the Maine Rules of Criminal Procedure, by granting the State of Maine's unauthorized Motion for Further Findings of Fact and Conclusions of Law and Reconsideration, resulting in an illegal action, denying Defendant due process and fair trial rights under the United States and Maine Constitutions.

III. Whether the trial court erred in rescinding its initial Order which granted the Defendant's Motion to Suppress and then denying Defendant's Motion to Suppress.

IV. Whether the seizure of $2,862.00 from Defendant's wallet and any forfeiture was justified, and whether the forfeiture constitutes an excessive fine or penalty violation.

SUMMARY OF THE ARGUMENT AND STANDARDS OF REVIEW

Summary of the Argument

1. Defendant contends the Court's original suppression order was correct, there was no reasonable articulable suspicion to stop Defendant, and the open container statute required a public way which did not exist; and if allowed, *Miranda* violations, *Rodriguez* stop requirements and a warrant for searching, were all violated, requiring suppression.
2. Lastly, money from the sale of his truck should not have been forfeited as an Eighth Amendment violation, and since it was obtained by a *Miranda* violation when police asked for his identity, and he directed them to his wallet, all while in handcuffs.

Standards of Review

1. [The Law Court's] review of questions of law, including alleged constitutional violations and statutory interpretation, is de novo. *Malenko v. Handrahan,* 2009 ME 96, ¶ 21, 979 A.2d 1269; *In re Robert S.*, 2009 Me. 18, ¶12, 966 A.2d 964.
2. The Supreme Judicial Court reviews an interpretation of the rules of civil procedure de novo and looks to the plain language of the rules to determine their meaning. *Bertin v. Bertin,* 71 A.3d 729, 2013 ME 70; *In re MB*, 65 A.3d

1260, 2013 Me. 46; *Town of Poland v. T & M Mortg. Solutions, Inc*., 987 A.2d 524, 2010 Me 2.

3. The determination of a rule violation involves both the interpretation of the rules, which is reviewed de novo as a matter of law, and the finding of the facts that determine the applicability of the rules, which is reviewed for clear error. *Smith v. Central Maine Power, Co.,* 988 A.2d 986, 2010 ME 9.
4. The Court examines the plain meaning of statutory language seeking to give effect to the legislature intent, and construes the statutes to avoid absurd, illogical, or inconsistent results. *CMP Co, supra; Carrier v. Sec. of State,* 2012 Me. 142, 60 A 3d 1241.
5. As it relates to findings of fact or motions to reconsider, the Court applies a 'clear error' or 'sufficiency of evidence' review of the Trial Court's fact-finding; the Court applied 'abuse of discretion' review of questions involving the Trial Court's exercise of its discretion; and the Court employs 'de novo' review on questions of law. *See* courts.maine.gov-Appellate Practice Guide for use with the Maine Rules of Appellate Procedure.
6. A Motion to Reconsider, must allege an error, omission or new material that could not previously have been presented as a matter of law. *See State v. Di Pietro*, 2009 Me. 12, ¶15, 964 A.2d 636, 641, and cases cited therein.

Otherwise, a Motion to Reconsider or for Findings of Fact and Conclusions of Law are decided based on an abuse of discretion standard. *Id*.

7. However, a criminal Motion for Further Findings of Fact and Conclusions of Law or Reconsideration, if not allowed by the Criminal Rules, should be decided de novo, following *Bertin v. Bertin, supra*.

ARGUMENT

I. THE COURT ERRED IN GRANTING THE STATE OF MAINE'S MOTION FOR FURTHER FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECONSIDERATION OF ITS ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS

A. General Background

1. Pursuant to Me. R. Crim. P. 12(b)(3)(A), motions before trial and including "motions to suppress evidence and other motions relating to the admissibility of evidence, shall be served upon the opposing party, but not filed with the Court, at least 7 days before the date set for the dispositional conference under Rule 18;" *i.e.*, the State's motion was due by October 21, 2024, the State did not comply with the filing requirements of Rule 12(b).

2. Defendant was prejudiced by the rule noncompliance by the State, as he remained incarcerated for a significant period of time and it was extremely difficult to coordinate meetings and preparation with him on such a motion before the October 28, 2024, scheduled Dispositional Conference.

3. Further, the State's motion was filed pursuant to M. R. U. Crim. P. 41A(d); there was no basis to seek a Motion for Reconsideration.

4. Further, Me. R. App. P. 2(A)(f)(2) states an appeal must be accompanied by a written approval by the Attorney General or a representation of that approval (approval to be filed within 7 days), none of which has been filed in this case; *See also* Me. R. App. P. 21(b).

5. In its filing, not only did the State violate the 7-day pre-dispositional conference rule, but also the written Attorney General approval requirement; Defendant has been severely prejudiced as to the tactics involved.

6. The States' Motion for Further Findings of Fact and Conclusions of Law and Reconsideration was neither filed correctly nor timely; Dismissal of the State's motion was in order.

7. The State's motion was limited to those instances when "the Court fails to make such facts and conclusions;" a situation that does not exist here. Additionally, the rule does not permit a "reconsideration" motion per se. *See* Rule 41A(d).

8. As noted in its original Suppression Order, and as stated by Defendant in his argument and filings at the motion hearing phase, there was no probable cause for Brewer Police to detain Defendant in his vehicle at the Brewer Burger

King parking lot, pursuant to the alleged statutory offense involved; nothing more needs to be stated on the subject.

9. Furthermore, the Defendant requested that a hearing on the State's Motion for Further Findings of Fact and Conclusions of Law and for Reconsideration be held with a record of the proceedings, none of which were provided, denying the Defendant due process and his day in Court.

10. It is instructive to note that the Maine Supreme Judicial Court, in *Williamson v. Finlay*, 2023 Me. 78, stated in a civil action that the civil rules for tolling the period of time which an appeal can be filed, pursuant to Me. R. App. P. 2B, was strictly construed in that case, ultimately dismissing the appellants appeal, because of an improper post judgment motion that was not permitted by the rules as a tolling one, thus missing time to file an appeal. That same logic has to be extended to this case on the criminal rules, as those rules are also limited as to what is allowed to be filed in a Motion to Suppress Order, something that was not properly filed by the State, which means they have missed their 21 days to file their appeal if, in fact, they were going to do so.

A. <u>The Criminal Rules of Procedure</u>

"The Rules of Criminal Procedure are promulgated by the Supreme Judicial Court pursuant to its statutory power to prescribe rules in criminal

cases. In addition, the Supreme Judicial Court has the inherent authority to establish rules to regulate the conduct of business before it." *See* Cluchey and Seitzinger, *Maine Criminal Practice*, §1-3, at pg. I-7, and I-7, fn. 15, 16, citing 4 M.R.S.A. §9, and cases therein.

Further, Me. R. Crim. P. 1(c), states: "when no procedure is specifically prescribed, the Court shall proceed in any lawful manner not inconsistent with the Constitution of the United States or the State of Maine, the Maine Rules of Criminal Procedure, these rules, or any applicable statutes." *See Maine Criminal Practice, supra,* at §1.5, wherein we are reminded that "In its first opportunity to consider the application of this provision, the Law Court elected to apply the Rule conservatively. In *State v. Nichols*, 325 A.2d 28 (Me. 1974), the Court refused to authorize pursuant to former Rule 57(a) discovery requested by the State that exceeded the discovery expressly allowed by the State by the Rules." *Id*. Further, "the Court on several occasions has resorted to the cannons of construction that requires that criminal rules, like criminal statutes, be strictly construed in favor of criminal defendants, particularly when substantial rights of the defendant are involved." *Id*. at §2.2.

All of this is particularly critical to a criminal defendant when faced with a State's appeal, as controlled by 15 M.R.S.A. §2115-A**.**

"The Supreme Judicial Court may provide for implementation of this section by rule." Id, §2115-A(1); (5),(7).

Also, Me. R. App. P. 21(e), states: "if the State files a motion for findings of fact and conclusions of law pursuant to Me. R. U. Crim. P. 41(A)(d), the appeal period shall be tolled during the pendency of the motion. If the motion is granted, the appeal period shall begin to run once either (1) written findings and conclusions are entered or (2) a notation reflecting that no findings and conclusions have been made is entered on the criminal docket." (This Rule was effective January 1, 2001) (nowhere does the Rule permit the State to file a Motion for Further Findings of Fact and Conclusions of Law or Reconsideration).

Further, Me. R. U. Crim. P. 41 A(d) states as follows:

"Order. If the motion is granted, the court shall enter an order limiting the admissibility of the evidence according to law. If the motion is granted or denied, the court shall make findings of fact and conclusions of law either on the record or in writing.

If the court fails to make such findings and conclusions, a party may file a motion seeking compliance with the requirement. If the motion is granted and if the findings and conclusions are in writing, the clerk shall mail a date-stamped copy thereof to each counsel of record and note the mailing on the Unified Criminal Docket. If the findings and conclusions are oral, the clerk shall mail a copy of the docket sheet containing the relevant docket entry and note the mailed on the Unified Criminal Docket." (Effective January 1, 2015).

Here, the Court made findings of fact and conclusions of law in its original order granting Defendant's Motion to Suppress. The State was without authority to then file a Motion for Further Findings of Fact and Conclusions of Law and Reconsideration of that suppression order. And, a strict construction of the Rule, further prohibited the State's motion. And as

noted above, the State's motion did not meet the standards necessary for reconsideration.

The Defendant's position is: The Rules exist for a reason – they are either applied equally against the State, or the rules mean nothing, particularly when Defendant's constitutional rights are at stake.

The Defendant/Appellant is mindful of several cases in which Motions for Further Findings of Fact and Conclusions of Law and Reconsideration were filed, but none are controlling here. For example, in *State v. Menard*, 822 A.2d 1143 (Me. 2003), the Court dealt with a State's Notice of Appeal on a suppression motion. The State filed a Motion for Reconsideration and Conclusions of Law on a suppression order. *Id* at 1145. There was no challenge by Defendant cited in the decision, to the State's Motion for Reconsideration. It does not appear that the State sought further findings as in this case.

And in *State v. Dipietro*, 964 A.2d 636 (Me. 2009), the Court held that the Defendant's Motion for Reconsideration and Findings of Fact and Conclusions of Law, denied by the Trial Court, was appropriate. *Id* at 641. The Court went on to state that: "Because the Court made sufficient findings on all contested issues and because *Dipietro's* Motion for Reconsideration did

not allege an error, omission, or new material that could not have previously been presented, the Court did not abuse its discretion in denying *Dipietro's* Motion to Reconsider and for Findings of Fact and Conclusions of Law." *Id*.

Here, the Defendant challenges the State's Motion for Further Findings and Reconsideration something not done in *Dipietro* by the State. And here, the State sought further findings and reconsideration, different from the cited example cases.

There was no valid basis for the State's Motion to Reconsider or Further Findings, nor did the Criminal Rules directly authorize the same. If *arguendo*, the Court permits de facto Motions for Further Findings and/or Reconsideration in criminal motions to suppress, then it is clear the State did not meet the standards required for filing either motion. *Dipietro, supra* at 641, "Motions for Reconsideration of an order shall not be filed unless required to bring to the Court's attention an error, omission, or new material that could not previously had been presented. The Court may in its discretion, deny a Motion for Reconsideration without a hearing before opposition is filed." *Id*. The State did not meet this standard in its Motion to Reconsider or for Further *Findings* in this case.

In *State v. Hayford*, 412 A.2d 987 (Me. 1980), the Court allowed a State's Motion to Reconsider under former Criminal Rule 57(a), which permitted Courts to proceed "in any lawful manner not inconsistent with the Constitution of the State of Maine, these rules, or any applicable statutes if no procedure is specifically prescribed." *Id* at 990. And as noted in fn. 7 of the *Hayford* decision, "this opinion should not be construed as requiring a Superior Court Justice to hold a hearing whenever a motion for reconsideration is filed. Reconsideration is an extraordinary procedure. In the exercise of sound judicial discretion, a Justice may, and in most cases should, summarily deny the motion without hearing." *Id* at pg. 990, fn. 7. And what is worse, here, Defendant Martin was not even provided an opportunity for a hearing on the State's Motion for Further Findings of Fact and Conclusions of Law and Reconsideration; thus, denying him his day in Court and due process. *See Knight v. Knight,* 387 A.2d 603, 605 (Me. 1978) (citizens entitled to their day in Court, a due process right). Every person has a basic right to due process under Federal and State Constitutions, which includes fair notice and an opportunity to be heard before a Court acts on matters affecting that person's rights. *In re: Estate of Wilson*, 2000 Me. 49, ¶20, 747 A.2d 582, 587, appeal after remand, 2003 Me. 92, 828 A.2d 784 (Me. 2000); *In re: Stanley*,

133 Me. 91, 174 A.3d (Me. 1973). The Maine and United States Constitutions create coextensive due process rights. *DoeI v. Williams*, 2013 Me. 24, 61 A.3d 718; *In re: D. P.,* 2013 Me. 40, 65 A.3d 1216 (Me. 2013). Due process requires a fair and unbiased hearing. *Friends of Maines Mountains v. BEP*, 2013 Me. 25, 61 A.3d 689; fundamental requirement of due process is the opportunity to be heard at a meaningful time in a meaningful manner. *In re: A. M*. 2002 Me. 118, 55 A.3d 463. *See also*, *Me. Const*. Art. I §6-A; *US Const*. Amend. 14 (due process).

And lastly, Me. R. U. Crim. P. 41A(d), does not itself contain language even remotely similar to the old Criminal Rule 57(a), cited in *Hayford*. Although, in fairness, Me. R. Crim. P. 1(c), may apply generally, but certainly not specifically to Rule 41A(d), which Rule contains a specific method to follow on Motions to Suppress. Thus, a strict construction of Rule 41A(d) is consistent with Court practice as noted above, *eg Nichols, supra*, particularly considering Defendant's Constitutional rights and the strict Rules for a State's appeal. So, the Trial Court indisputably erred.

Additionally, one other Court reminded us that "ordinarily a Motion for Reconsideration is appropriate only if a moving party presents newly discovered evidence, if there has been an intervening change in the law, or if

the moving party can demonstrate that the original decision was based on manifest error of law or was clearly unjust." *American Holdings v. Town of Naples*, State of Maine Business and Consumer Court, Docket No.: BCD-CV-2014-43 (05/15/2015), citing *In re: Hannaford Bros. Co., Customer Data Sec. Breach Litig*., 600 F. Supp. 2d 94, 97 (D. Me. 2009). The *American Holdings* Court went on to remind us that "In Maine, motions for reconsideration shall only be filed to bring to the Court's attention an error, omission or new material that could not previously have been presented." *Id* at pg. 1. In fact, that Court, in its footnote 1, reiterated, "The Advisory Committee on the Maine Rules of Civil Procedure explains that Rule 7(b)(5) was added to 'make clear that such motions are not to be encouraged. Too frequently, disappointed litigants bring motions to reconsider not to alert the Court to an error…but solely to reargue points that were or could not have been presented to the Court on the underlying matter. *Id* at pg. 1, fn. 1 and cases cited therein. As noted in the *American Holdings* decision, equally applicable to the State's argument in this case, "the Court concludes that the Town's arguments made in this motion have already been made and were rejected by the Court in its prior order, and therefore the Town's Motion to Reconsider that order in denied." *Id* at pg. 2.

Without belaboring the point, since Maine's Criminal Rules do not expressly permit Motions for Further Findings of Fact and Conclusions of Law and Motions to Reconsider Motion to Suppress orders, the reference to Maine's Civil Reconsideration Rule is appropriate. The State did not meet even the Civil Rule Standard for the unauthorized criminal Further Findings/Reconsideration motion, a further argument warranting reversal of the Trial Court's actions.

II. THE TRIAL COURT WAS WITHOUT JURISDICTION PURSUANT TO 4 M.R.S.A. §165, THE MAINE CONSITUTION, IT'S SEPARATION OF POWERS, OR OTHERWISE, TO ALTER/AMEND THE MAINE RULES OF CRIMINAL PROCEDURE, BY GRANTING THE STATE OF MAINE'S UNAUTHORIZED MOTION FOR FURTHER FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECONSIDERATION, RESULTING IN AN ILLEGAL ACTION, DENYING THE DEFNDANT DUE PROCESS AND FAIR TRIAL RIGHTS UNDER THE UNITED STATES AND MAINE CONSITUTIONS

A. General Background

1. The Maine Rules of Criminal Procedure do not expressly permit Motions to Reconsider or Further Findings of Fact and Conclusions of Law on Motions to Suppress. *See* M. R. Crim. P. 41A(d).

2. The Trial Judge (District Court) altered/amended the criminal rules, 41A(d), to permit the States' Motion for Further Findings of Fact and Conclusions of Law and for Reconsideration.

3. The District Court Trial Judge was without jurisdiction to alter/amend the Criminal Rules; only the Supreme Judicial Court is authorized to alter/amend the Criminal Rules. Compare 4 M.R.S.A. §165 with 4 M.R.S.A. §9.

4. The separation of powers, established by the Maine Constitution and the Legislature through its statutory recitations, of the District Court's jurisdiction, was violated in this case.

5. The Legislature enacted the statutory authority of District Court Judges (4 M.R.S.A. §165) and the Maine Supreme Court (4 M.R.S.A. §9) regarding their respective powers and duties. The Legislature enacted 15 M.R.S.A. §2115-A, regarding the authority of the State of Maine to Appeal criminal cases in Maine. And, §2115-A limits State's appeals to questions of law; it furthermore, authorizes the Supreme Court to implement a Rule for State's appeals. *Id* at §2115-A(7).

6. The Maine Supreme Judicial Court has implemented an Appellate Criminal Rule for State's Appeals in Me. R. App. P. 21; specifically, Rule 21(e) states, "if the State files a Motion for Findings of Facts and Conclusions

of Law pursuant to Me.R.U. Crim. P. 41A(d), the appeal period shall be tolled during the pendency of the motion…" Nowhere does Appellate Rule 21(e), permit the State to file a Motion for Further Findings of Fact and Conclusions of Law and for Reconsideration, as was done in this case. In fact, Me.R. U. Crim. P. 41A(d) does not permit such a filing either.

7. It was not the responsibility of the District Court Trial Judge to alter/amend the Criminal Rules, nor alter/amend the applicable statutory authorities in this case. The jurisdictional limits of the Court and the separation of powers prohibited these acts, warranting reversal of the Motion to Suppress denial, and reinstatement of the original Motion to Suppress Order.

8. In addition, the separation of powers mandates only the Legislature can enact such statutes, and the Courts are required to implement them. Generally, the separation of powers will not permit the Court to preempt a Statute by a Court rule or finding. Compare Me. Const. Art. 4 (Legislation) with Art. 6 (Judiciary). The Judicial Department may not interfere with the exercise of power by the Legislature. *See* Me. Const. Art. 3, §1, et seq; *Board of Overseers of Bar v. Lee,* 422 A.2d 998, app. dism., 450 U.S. 1036 (Me. 1980); *Veazie Bank v. Fenmo*, 75 US 533, 19 L.Ed. 482 (U.S. Me. 1869). The Courts cannot modify a Legislative statute that is clear and reasonable. *State v. York*

Utilities Co., 142 ME 40, 45 A.2d 634 (Me. 1946); *In re opinion of the Justices*, 103 ME 506, 69 A.2d 627 (Me. 1908). Here, the legislature has enacted statutes restricting State appeals in criminal cases, and the Maine Supreme Court has issued restrictions on the States' rights to request findings/conclusions under Rule 41A(d), which cannot be ignored by the Court. *Id.*

9. The Maine Constitution, Article III, recites the "Distribution of Powers," enacted in the State of Maine.

As the Law Court stated over a century ago, "The entire Legislative Power of the State is by the Constitution vested exclusively in the Legislature, and no part of that power can be transferred or delegated by the Legislation to either of the other departments of the government." *State v. Butler,* 105 Me. 91, 73 A 560 (Me. 1909).

The judiciary "may not interfere with the exercise of power by the executive or legislative departments within their constitutional spheres." *Board of Overseers of Bar v. Lee*, 422 A.2d 998, app. dism, 450 US 2d 1036(1980).

To determine whether conduct violates the constitutional separation of powers, the Court determines that if power was granted to one branch, and not

another. *See Mac I-mage of Maine, LLC, v. Androscoggin County,* 40 A.3d 975 (Me. 2012); *In RE Dunleavy,* 838 A.2d 338 (Me. 2003). The District Court's jurisdiction is limited to that enumerated in 4 M.R.S.A. §§152,165.

The District Court's modification of the Criminal Rules, misreading of the Legislative mandates limiting State's Appeals, then applying those modifications against the Defendant, was a violation of his due process rights, rather than an ex post-facto prohibition.

Those Court actions constitute a due process claim. *See U.S. v. Marcus*, 560 US 258, 263 (2010) and *Bouie v. City of Columbia*, 378 US 347, 353-354 (1964).

Thus, the actions of the Trial Court in rescinding its Motion to Suppress Order constitutes reversible error, and suppression should be reinstated.

III. THE TRIAL COURT ERRED IN RESCINDING ITS INITIAL ORDER WHICH GRANTED THE DEFENDANT'S MOTION TO SUPPRESS, AND THEN DENYING DEFENDANT'S MOTION TO SUPPRESS

A. FACTUAL BACKGROUND

1. Pursuant to the provisions of 29-A M.R.S.A. §2112-A (1)(D), a public way means a way, including a right-of-way, owned and maintained by the State, a county, or a municipality over which the general public has a right to pass. (This definition is part of the open container statute.)

2. The open container statute, pursuant to 29-A M.R.S.A. §2112-A (2) states that "the operator of a vehicle on a public way is in violation of this section if the operator or passenger in the passenger area of the vehicle: A. consumes alcohol; or B. possess an open container alcoholic container." (This is the violation section of the open container statute.)

3. The testimony at the hearing on the Motion to Suppress on June 21, 2024, was abundantly clear that the Burger King parking lot in Brewer, Maine, is not a public way.

4. The State of Maine has established the "Maine Emergency Services Communication Bureau," a division of the Maine Public Utility Commission, which regulates 911 calls in the State of Maine, 25 M.R.S.A. §2926.

5. The State of Maine has enacted the "911 Confidentiality of System Information Act" under 25 M.R.S.A. §2929.

6. It is a crime in the State of Maine to knowingly give false information to a law enforcement officer, 17-A M.R.S.A. §509.

7. The conversation between the 911 caller, Jacob Porter, Burger King Manager, and the dispatcher, are, in part, as follows:

"Dispatcher: Hi, how can I help you?

Jacob: Hi, my name is Jacob Porker (Porter) I need to report, um, an individual who I believe to be drinking and driving. I saw open containers when they

came through the drive through, and they are now pulled out front so I just wanted to try to get an officer over here to Brewer Burger King to try to make sure no one is drinking and driving because I did see an open container.

Dispatcher: What is the address there, Jacob?

Jacob: Um, 546 Wilson Street

Dispatcher: Burger King. What are they in for a vehicle?

Dispatcher: That's okay and they are parked right now in a parking spot?

Jacob: Um, he just walked out the front door in a big hurry, so I don't know if he's going to be leaving or not.

Dispatcher: Hey. Can one of the officers check Burger King? The guy is still there, and they think he's drunk.

Brewer Police Department (talking with someone else): The guy is still there, he's at Burger King, and they think he's intoxicated. This is the dispatcher. If someone can be on their way.

Jacob: Um, it doesn't look like he's driving erratically or anything, but he could just be really good at drinking and driving. Like, I hate to say it, but that's kind of the day in age we live in.

Jacob: Uh, parked out back. It looks like they're dumping something. Or something's going on.

Dispatcher: Is he the only one in the car?

Jacob: No, there's a passenger too. I just, I don't know, all I know is I saw an open container. I went to criminal justice school, and I was told that like technically by law where I am like acting manager that if I see an open container that I have to call the police.

Jacob: Yeah… Like, I'm not 100% sure if he is drinking, like I said, all I know is I saw the open containers. I asked my co-worker if she smelled alcohol and she said she wasn't sure, but it did smell like it.

Dispatcher: Okay. Do you know what it was?

Jacob: Twisted Teas and it had a straw in it.

Dispatcher: Okay. Is he still out back?

Jacob: Uh, yes.

8. Officer Brandon Curtis's cruiser footage shows, in part, the following:

   At 53:40 the officers start messing with the lock on the locked box in the bed of the truck

   At 54:53 they break the locked box open in the bed of the truck. They immediately pull out a smaller locked box that was inside that locked box

   At 55:25 they break open the smaller locked box that was inside the larger one in the bed of the truck

   At 56:35 they begins going through the belongings inside the larger locked box in the bed of the truck

9. Officer Paul Hacker's body cam footage shows, in part, the following:

   At 9:08 they put him in handcuffs and that is when Josh provides the officers with his true identify and tells the officer to look in his wallet in his pocket for his identification

   At 10:15 they find a meth pipe in his front pocket while searching his person

   At 26:47 the officers open both doors to the truck and start to search the vehicle – (Motion to Suppress Exhibit 1).

10. Officer Ryan Freeman's bodycam footage shows, in part, the following:

At 17 seconds Officer Freeman approaches the vehicle and Josh asks what's going on. Officer Freeman said that people just had some concerns so they're just stopping by to talk to him and make sure everything is okay.

At 11:49 they put him in handcuffs

At 19:50 they seize the cash from Josh's wallet

At 29 they start searching the inside of the vehicle. Officer Freeman asks Officer Curtis if he's going to do an impound search warrant on it and Officer Curtis says no and that it doesn't matter who owns the truck.

At 30:41 Officer Freeman opens the glove compartment and searches it. That's when they find the little black notebook with some cash in it. They find pipes, a lighter, and tin foil resin also in the glove compartment.

At 49 minutes they start going through the stuff in the bed of the truck

At 53:22 Officer Curtis says he's just going to break the locked box in the bed of the truck

At 53:33 Officer Freeman starts messing with the lock in the bed of the truck

At 54:33 they use a screwdriver to break the lock

At 54:47 they open the container

At 54:59 they take out the smaller locked box in the container from the bed of the truck

At 55:07 Officer Curtis uses the screwdriver to break open the smaller locked container in the bed of the truck

11.Defendant had also filed a Motion for Return of Seized Property, to wit, the cash located in his wallet for the sale of his Chevy Ton Truck to his father, Marc Martin. The case in his wallet totaled $2,862.00 from the $5,702.00 sale of his truck. (*See* Sentencing Hearing Transcript, pg. 32)

B. MAINE'S OPEN CONTAINER STATUTE

1. As noted at the Motion to Suppress Hearing, 29-A M.R.S.A. §2112-A requires for an offense of an open container drinking in a vehicle prohibited violation, that the act be conducted on a public way. *Id*. In this case, the evidence only supports the finding that the call from the Burger King Manager to dispatch, further to the Brewer Police Officers, was inappropriate and shouldn't have occurred as there was no evidence that any person observed the vehicle on a public way when an open container of alcohol was involved. No one saw the vehicle driving on a public way into Burger King or leaving Burger King.

2. As a result, there was never any reasonable articulable suspicion to report the Defendant by the Brewer Burger King personnel, nor for dispatch to forward the message to the Brewer Police Department for the Brewer police officers to stop and seize Defendant in the parking lot of the Brewer Burger King. See generally *State v. Wilcox*, 2023 Me 10, 288 A.3d 1200. As noted in

Wilcox, the standard of reasonable articulable suspicion requires less than probable cause, but more than speculation or an unsubstantiated hunch. *Id*. The standard was clearly violated by all concerned, particularly the Brewer police, and any and all evidence obtained in any form must be suppressed as a result of the illegal stop, search, and seizure from the outset.

C. PROBABLE CAUSE

When police use an informant or citizen caller for a search, the Courts rely on the *Illinois v. Gates*, 462 US 213 (1983), standard of 'totality of circumstances' to determine whether probable cause exists. The *Gates* Court relied on *Aguilar v. Texas*, 378 US 108 (1964) and *Spinelli v. US*, 393 US 410 (1969).

Generally, if officers can corroborate the facts of the informant/citizen caller, probable cause can be supported. *See State v. Perrigo*, 640 A.2d 1074 (Me. 1994); *State v. Rabon*, 2007 Me. 113, ¶¶14-15, 930 A.2d 268, 275.

In *State v. DiPietro*, 964 A.2d 636 (Me. 2009), "the officers had properly detained DiPietro and his friends, based on observation of open containers of alcohol in the vehicle." Here, the officers did observe open containers of alcohol in the vehicle, but in fact, stated they saw no evidence of drinking – nothing was going on, in the parking lot. In other words, there was no

reasonable articulable suspicion to take matters further, based on a "busy-body call from the Burger King manager." *See State v. Menard*, 822 A.2d 1143, 1145-46 (Me. 2003), (stating "the Constitution of the United State and Maine require only the presence of a reasonable and articulable suspicion in order for an offer to make a valid investigatory stop of a vehicle.") It was not objectively reasonable from the Brewer Police Officers, in the Burger King parking lot, while Defendant and his girlfriend were eating chicken nuggets, minding their own business, to detain Defendant for a false open container violation. *Id* at 1146.

Here, the questionable 911 call from the Burger King manager, claiming some police training, did not provide much reliable information. What is worse, the Brewer Police Officers made statements and found Defendant was not intoxicated – that is, there was no corroboration of the statements of the officious intermeddler. There was no probable cause to go further, after that initial stop – even if that was arguably permitted. Rather, it was the dispatcher who altered the call from possible intoxication to drunk, a gross error by law enforcement.

D. SEARCH OF PICKUP PASSENGER COMPARTMENT V. LOCKED BOX IN BODY OF PICKUP

The lawful bounds of a search of the passenger compartments of a vehicle are well established, as accessible areas to a driver/passenger. *New York v. Belton*, 453 US 454 (1981). "Police may search a vehicle compartment incident to arrest if the defendant is within reaching distance of the compartment when arrested; otherwise, a warrant is required. *Arizona v. Gant*, 556 US 332 (2009).

However, the search of a trunk with a container is permitted only if probable cause exists to believe it contains contraband. *Calif. v. Acevedo*, 500 US 565 (1991). And it is okay to seize movable luggage or other closed containers, but not to open them without a warrant. *US v. Chadwick,* 433 U.S. 1 (1997). The Court relies on the Carroll doctrine, that vehicle searches require probable cause. (Heightened expectation of privacy in locked toolboxes). *Carroll v. US*, 267 US 132 (1925).

Here, there was no probable cause to search and no warrant to open the locked toolbox in the bed of the pickup truck, which was not within the passenger compartment. To be clear, the officers used a screwdriver to break the lock off the toolbox. They then proceeded to open another locked container inside of the toolbox by breaking the lock as well.

Here, it appears an overzealous Burger King manager conjectured a customer might be intoxicated; his guess was wrong. The 911 officer made the speculation worse by saying "drunk."

A tolerable duration of a traffic stop is only as long as is necessary to complete the tasks associated with the traffic infraction investigation, such as driver's license check, warrant check, vehicle registration and proof of insurance, and the warning/issuing of a traffic ticket. *Rodriguez v. U.S.* 575 U.S. 348 (2015). "Authority for the seizure ends when tasks tied to the traffic infraction are or reasonably should have been completed." *Id*. In under 2 minutes the officer completed the tasks tied to the traffic infraction/intoxication guess.

While certain unrelated investigations such as brief questioning or a K-9 sniff are permitted as long as they do not lengthen the roadside detention, the detention becomes unlawful when the traffic stop is prolonged beyond the time reasonably required to complete the mission of issuing a warning or a ticket. *Id*. Absent reasonable suspicion, unnecessarily prolonging a traffic stop can constitute an unreasonable seizure. *Id.* That is what occurred here with Defendant. The authority to conduct the intoxication check and the moving violation investigation should have been quickly completed. Officers did not

have the necessary reasonable suspicion of a crime to lawfully prolong the stop once the miniscule investigation was completed.

It appears that the State may be relying on *State v. Ireland* for its assertion that the search of the locked toolbox in the bed of the truck, and the second search of the locked box within the locked toolbox, both opened with a screwdriver by the police, was somehow justified. See *State v. Ireland*, 1998 Me 35, 706 A 2d 597. However, reliance on *Ireland* is misplaced in this case since in *Ireland,* the police smelled marijuana on the driver who then decided to open the trunk of the vehicle, wherein they saw in plain view multiple marijuana plants, which resulted in criminal charges. If there was a valid stop, arrest, and search of the Defendant in this case, then the police had a right to search the passenger compartment of the truck, in accordance with *Carroll v. US,* 267 US 132 (1925); *see also California v. Chimel*, 395 U.S. 752, (1969), but there was no probable cause to look into other areas, unlike what occurred in *Ireland*. The search of the passenger compartment is well established, incident to an arrest, as long as there is probable cause to believe that contraband exists. *Id*. However, that does not extend automatically to trunks of a vehicle unless there is probable cause to believe that contraband exists in the trunk of a vehicle. *Id*. Here, however, there is no trunk for the police to

search in the pick-up truck. Rather, there was a locked toolbox in the bed of the truck to which the officer described as old. The Defendant would not give the officers the combination to the lock, so they pried it open with a screwdriver. They then found a smaller locked box therein, that they also pried open with a screwdriver, all without a warrant. This activity clearly violates *Gant, Acevedo,* and *Chadwick*, *supra. See also, State v. Drewry*, 2008 Me. 7. Further, there was nothing in plain view, unlike *Ireland*. A warrant was required.

E. RODRIGUEZ VIOLATIONS

The stop here was based on a flimsy intoxication call from a Burger King manager misinterpreted as "a drunk call" by the dispatcher with the Brewer Police Department, then stopping him at Burger King in Brewer. The officer found no basis for OUI or intoxication. Nevertheless, Defendant was questioned without *Miranda*, with searching and seizure of evidence regarding drugs and arrested for a false name. A warrantless search of a locked toolbox and a locked box (broken open with a screwdriver) in the bed of the pickup revealed contraband. It is Defendant's position that police had no probable cause to detain him in the first place, due to the flimsy intoxication call; under *Rodriguez*, this stop for "intoxication" suggestions, should have

ended when the officer stated there are no signs of impairment! If this stop was okay, then it should not have lasted for all the time it did, the very facts rejected by the *Rodriguez* Court. *See Rodriguez v. US*, 575 US 348, 352 (2015).

In addition, prolonging the stop and the questioning of him after the event, without *Miranda*, and using the information to search him, seize property, and then pry open a locked toolbox and a smaller locked box with a screwdriver, are all illegal warrantless searches. *Rodriguez, supra.* Everything after the officer determines there was nothing wrong, should be suppressed, assuming the initial stop was even permissible in the parking lot.

F. THE 911 DISPATCHER ALTERING THE TIPSTER'S "INTOXICATION" SPECULATION TO "DRUNK"

Based on the new statutory status of 911 dispatchers and calls, Dispatchers are clearly under the chain of law enforcement professionals. The 911 dispatcher altering the Burger King Manager's "intoxication" speculation to "drunk" constituted unreasonable conduct. Altering a truthful statement of a caller to something more sinister to police constitutes a false report to the police by the 911 dispatcher and is not objective under any stretch of the law. *See generally Delaware v. Prouse,* 440 U.S. 648, 654(1979) (the reasonableness standard requires "that the facts upon which an intrusion is

based be capable of measurement against 'an objective standard'"). While it is correct that a negligent act might still result in a permissible seizure, so long as it is not done in an unreasonable way, that is not what happened here. See generally *U.S. v. De Leon-Reyna*, 930 F.2d 396(5th Cir. 1991). An actor's belief cannot be characterized as "reasonable" if it is grounded on facts produced by that actor's unreasonable conduct. *Id.,* Citing *Delaware v. Prouse,* at p. 654.

Furthermore, police may not have a reasonable suspicion to detain someone based on an anonymous tip alone, but they could have reasonable suspicion if that tip information was corroborated by an independent investigation. See *Alabama v. White*, 110 S.Ct. 2412, 2417 (1990). Here, there was not adequate corroboration of a violation with an open alcoholic container with a straw in it because it was not occurring on a public way. There was no indication of intoxication, whatsoever, if that even was a basis for the stop, which the police doubted, based on testimony. Without that corroboration, both Maine and Federal law have been violated regarding the tipster's bad information.

G. MIRANDA RIGHTS

It is clear that the Defendant made many statements as part of the interrogations by the officers from the time they approached his vehicle to speak with him. That included information about his name, allegations about false names, direction to his wallet (cash), denial of lockbox combination, questions regarding drugs, and the back and forth, while he was in police custody. Whether handcuffed or not, he's in custody when ordered outside of the vehicle. Suppression is warranted there, as well.

IV. THE SEIZURE OF $2,862.00 FROM DEFENDANT'S WALLET AND ANY FORFEITURE WAS NOT JUSTIFIED, AND THE FORFEITURE VIOLATED DEFENDANT'S EIGHTH AMENDMENT RIGHTS AGAINST EXCESSIVE FINES AND PENALTIES.

A. GENERAL BACKGROUND

Defendant had also filed a Motion for Return of seized property, to wit, the cash located in his wallet for the sale of his Chevy Ton Truck to his father, Marc Martin. The cash in his wallet totaled $2,862.00 from the $5,702.00 sale of his truck as stated in the bill of sale (Defendant's Exhibit 1, Sentencing Transcript pg. 32). The State did not meet its burden on seizing and retaining private property, nor the forfeiture of the private sale of his truck. Joshua

Martin had a business of buying and selling vehicles. (Sentencing Transcript pg. 32-37 and Defendant's Exhibit 4, pg. 32)

The Defendant's father testified and documented his purchase of Defendant's truck, for use on his father's farm, which was the cash held in Defendant's wallet. This was unrebutted. (*See* Sentencing Hearing Transcript pg. 34-37, Defendant's Exhibits 1 and 4, pg. 32).

There was no connection provided by the State of the truck sale to any of the offenses charged. The Defendant claims there was no procedural or factual proof presented for forfeiture and any forfeiture violated his Eighth Amendment guarantees.

In *Timbs v. Indiana*, 586 US 146 (2019), the Supreme Court reminded us that the Eighth Amendment to the U.S. Constitution does not permit excessive fines or penalties from being imposed and is applicable to the States. In *U.S. v. Bajakajian*, 524 US 321, 334 (1998), the Court stated, "The touchstone of the constitutional inquiry under the excessive fines clause is the principle of proportionality: the amount of the forfeiture must bear some relationship to the grounds of the offense to punish." *Id*. The forfeiture in that case was "grossly disproportionate to the gravity of defendant's offense." *Id*. *See also, Austin v. U.S*., 509 US 602 (1993).

The forfeiture of Defendant's money in his wallet from the private sale of his truck to his father was excessive and unconstitutional; further, since the police only went to his wallet (with the money) stemming from a *Miranda* violation regarding proving his identity, a fact on which he had a right to remain silent, the search/seizure and forfeiture should never have occurred.

There is no proportionality to the private vehicle sale money seizure and forfeiture, to the offense, thus violating *Bajakajian, Austin* and *Timbs.* The forfeiture was illegal.

Lastly, the provisions of 15 M.R.S.A. §§5821, et seq., do not appear to have been met in this case, nor was the requisite burden of proof met by the State. Defendant/Appellant is entitled to the return of the $2,862.00 seized from his wallet. Specifically, the §5826 proceeding was without adequate State produced evidence for the forfeiture, as required by §5826(4).

CONCLUSION

For all the foregoing, Appellant, Joshua Martin, hereby requests that his appeal be granted, that the original suppression order be reinstated, thus warranting a dismissal of the Indictment.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I, N. Laurence Willey Jr., Esq., attorney for Defendant/Appellant, hereby certify that I have made service of the above Brief for Joshua Martin, Defendant/Appellant, by mailing two conformed copies thereof, by regular course of the United States mail, postage prepaid, to:

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