**STATE OF MAINE**
**PENOBSCOT, ss.**

**SUPREME JUDICIAL COURT**
**SITTING AS THE LAW COURT**
**DOCKET NO: PEN-25-245**

**STATE OF MAINE,**
**Appellee**

**v.**

**JOSHUA MARTIN,**
**Appellant**

**ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET**

# BRIEF OF APPELLEE


**AARON M. FREY**
**Attorney General**

**JASON HORN**
**Assistant Attorney General**
**State's Attorney Below**

**KATIE SIBLEY**
**JOHN P. RISLER**
**Assistant Attorneys General**
**Of Counsel**

**JASON HORN**
**Assistant Attorney General**
**State's Attorney on Appeal**
**6 State House Station**
**Augusta, Maine 04333**
**(207) 446 - 1596**

## TABLE OF CONTENTS

**Section** **Page**

## TABLE OF AUTHORITIES

**Cases** **Page**

**Statutory Provisions & Rules** **Page**

## PROCEDURAL HISTORY

On January 25, 2023, the Penobscot County Grand Jury returned an indictment charging Joshua Martin (Martin) with two counts of Aggravated Trafficking of Scheduled Drugs, Class A,[1] one count of Unlawful Trafficking of Scheduled Drugs, Class B,[2] one count of Unlawful Possession of Scheduled Drugs, Class D,[3] one count of Failure to Give Correct Name, Class E,[4] one count of Violation of Condition of Release,[5] and one Criminal Forfeiture.[6] (*State of Maine v. Joshua Martin,* PENCD-CR-2022-03694, Appendix 30 (A.__)). The original Rule 18 disposition conference was held February 8, 2023. (A. 6). Subsequent disposition conferences were held on April 5, 2023, July 10, 2023, and October 3, 2023, before the case was initially set for a Rule 11 hearing on December 19, 2023. (A. 6-7). The Rule 11 hearing was then continued until February 9, 2024, then again to April 22, 2024. (A. 7-8). On April 25, 2024, Martin filed a Motion to Suppress. (A. 33). On July 8, 2024, Martin filed a

[1] 17-A M.R.S. §§ 1105-A(1)(G) (2011) and 17-A M.R.S. §§ 1105-A(1)(M) (2017).

[2] 17-A M.R.S. §§ 1103(1-A)(A) (2001).

[3] 17-A M.R.S. §§ 1107-A(1)(C) (2015).

[4] 17-A M.R.S. §§ 15-A(2) (2003).

[5] 15 M.R.S. §§ 1092(1)(A) (2003).

[6] 15 M.R.S. §§ 5821(6) (1989).

Memorandum of Law in Support of Defendant's Motion to Suppress. (A. 9). A hearing on the Motion to Suppress was held on June 21, 2024, at which time the parties were asked to submit written arguments. (A. 9). On July 8, 2024, Defendant filed a Supplemental Memorandum of Law in Support of Defendant's Motion to Suppress. (Defendant's Supplemental Memorandum of Law in Support of Defendant's Motion to Suppress). On the same day, the State filed its Memo of Argument on Defense Motion to Suppress. (Memo of Argument on Defense Motion to Suppress). On September 5, 2024, the case was on the trial docket call, and continued by J. Murray to a Rule 11 Hearing dated October 28, 2024. (A. 9). The Motion to Suppress was initially granted in a written order dated October 1, 2024. (*Roberts, J.*). (A. 19). The State filed a Motion for Further Findings of Fact and Conclusions of Law and to Reconsideration (sic) of the Suppression Order (hereinafter, the State's Motion) on October 22, 2024 (A. 40). Martin filed Defendant's Opposition to Plaintiff's Motion for Further Findings of Fact and Conclusions of Law and to Reconsideration of the Suppression Order on October 23, 2024. (A. 45). An Amended Motion to Suppress order was issued on February 20, 2025, vacating the prior order and denying the motion. (*Roberts, J.*) (A. 23). Martin then filed Defendant's Motion for Findings of Fact and Conclusions of Law Pursuant to M. R. Crim. P. 41A(d) on February 25, 2025. (A. 49). That motion was denied in an order dated

February 28, 2025. (A. 25). Martin then filed Defendant's Motion to Complete Motion to Suppress, dated March 4, 2025. (A. 53). Additional Findings were issued dated March 20, 2025. (*Roberts, J.*) (A. 26). On April 7, 2025, Martin entered a conditional guilty plea to the indictment based on a sentencing cap and the right to appeal the Amended Motion to Suppress Order. (A. 27). A sentencing hearing was conducted on May 13, 2025. Martin was sentenced on Count 1 to 14 years, with all but 7 years suspended, with 3 years of probation and a $400 fine, and all other counts were given concurrent sentences. (A. 15). The forfeiture in Count 6 was granted. *Id.* Notice of appeal was timely filed on May 19, 2025. (A. 19).

## STATEMENT OF FACTS

On November 21, 2022, the manager of a Burger King reported that a silver Chevy pickup came through their drive-thru with an open alcoholic beverage with a straw. (Mot. Tr. 5-6 (June 21, 2024), hereinafter "M. Tr."). Dispatch advised officers of this, as well as that, "they think he's intoxicated." *Id.* 16, Blue Brief 33. Officer Ryan Freeman from Brewer Police Department responded and found the truck parked behind the Burger King. (M. Tr. 6-7). A second responding officer, Ofc. Curtis, knew that Burger King does not sell alcohol. *Id.* 52. The Burger King parking lot opens up to one of the biggest and busiest streets in Brewer, Wilson Street. *Id.* 59.[7]

Ofc. Freeman initially got out of his cruiser to approach the truck without his blue lights on, but the truck started to leave. *Id.* 7. At that point, another officer pulled in front of the truck to prevent it leaving. *Id.* Ofc. Freeman approached the vehicle and noticed the Twisted Tea with a straw was present as reported. *Id.* 7-8. The vehicle registration was also expired. *Id.* 32-33. There was a male operator (Martin) and a female passenger. *Id.* 8. The driver claimed to be a Mark Madore and provided a date of birth, but could produce no paperwork, and the female claimed to have a last name of "Burby" and provided

[7] The geography of the lot, which the motion court found is only accessible via a public way, can be further confirmed by review of front-facing cruiser cameras in State's Exhibit 1 admitted at the suppression hearing.

a date of birth. *Id.* 9. Ofc. Freeman was unable to verify any of the identifying information provided. *Id.* 9-10. Meanwhile, Ofc. Curtis observed that the steering column had been stripped away and appeared hot-wired. *Id.* 33.

Ofc. Curtis continued to ask Martin for correct identifying information *Id.* 34. The female and male then both gave new, different dates of birth, which were also checked and appeared false. *Id.* 10-11. At that point, Ofc. Curtis asked Martin to get out of the vehicle due to the failing to give a correct name or date of birth. *Id.* 34. At some point, Martin said his real name but quickly corrected himself to a different one. *Id.* 46. Despite a verbal warning, Martin continued to not give a correct name, and he was then arrested for that offense. *Id*. 35. After being told he was under arrest, Martin finally gave his correct name and date of birth. *Id.* He also acknowledged having a warrant. *Id.* 48. Martin was found to have six active arrest warrants and 12 sets of active bail conditions. *Id.* 35. Martin then said his identification was in his wallet, Ofc. Curtis reached in to grab it and found a methamphetamine pipe next to it. *Id.* 36. A full search of Martin's person incident to arrest was conducted. *Id.* Martin was found to have 34 grams of methamphetamine in his right front pocket. *Id.* 37. Martin also had two packages of fentanyl totaling approximately 5 grams in another pocket. Martin also had $2,862 cash on his person. (S. Tr. 4). Later, officers learned the

female to be Jennifer Ward, who also had multiple active arrest warrants. (M. Tr. 13).

The truck itself was then searched based on probable cause, including a locked truck toolbox and a Pelican case within. *Id.* 38-39. The Pelican case was opened to reveal a block of 113 grams of fentanyl, a bag of 334 grams of methamphetamine, another 20-gram chunk of cocaine, as well as a scale with residue, hundreds of clean ticket bags, precut tin folds, and another $227 wrapped in electrical tape. (S. Tr. 5). There was a ledger located in the passenger floorboard that contained another $11. *Id.*

## STATEMENT OF THE ISSUES

**I. Whether the State is allowed to seek further findings of fact and reconsideration of a suppression order by motion, and whether that motion was timely filed.**

**II. Whether due process required an additional hearing on the motion.**

**III. Whether the trial court erred in granting the motion to reconsider.**

**IV. Whether there was sufficient evidence to grant the forfeiture, and whether it was grossly disproportionate to the offense.**

## SUMMARY OF ARGUMENT

1. Rule 41A permits filing motions for further findings of fact, and the State may file a motion to reconsider, just like a defendant. M.R. App. P. 2(A)(f)(2) does not apply to a motion to reconsider filed with the motion court. The motion was not filed late, as there was no upcoming dispositional conference and there had not been one since long before the order sought to be reconsidered was issued.

2. The Court was not obligated to conduct an additional hearing when the issue had already been fully litigated, and Martin did not request one.

3. The Court ultimately and properly denied the motion to suppress as there was a reasonable articulable suspicion that a violation had occurred or was about to occur. Martin was properly arrested for failing to give a correct name, then identified and arrested on his warrant, leading to drug evidence on his person, which led to the officers properly searching Martin's vehicle based on probable cause and the *Carroll* Doctrine. Martin identifying himself does not implicate *Miranda*, and no other challenged statements were articulated or preserved.

4. The sentencing court merged the forfeiture dispute into the sentencing hearing by agreement of the parties, comingling evidence, procedure, and argument. The information thus used as part of the sentencing was properly

evidence for the Court to consider and was sufficient. The Eighth Amendment argument was never raised or preserved previously.

## ARGUMENT

### I. The State is allowed to seek further findings of fact and reconsideration of an erroneous suppression order.

Martin challenges the ability of the State to file a motion seeking further findings of fact, or to reconsider the order suppressing evidence. When reviewing the interpretation of statutes, the Court does so de novo without deference to the trial court. *Smith v. Henson*, 2025 ME 55, ¶ 12, 339 A.3d 816. He further claims the State's filing was defective due to procedural errors. The Court also reviews the trial court's interpretation and application of Maine procedural rules de novo. *State v. Hassan*, 2018 ME 22, ¶ 11, 179 A.3d 898.

#### A. Rule 41A allows seeking further findings of fact.

If the court fails to make findings of fact and conclusions of law, a party may file a motion seeking compliance with the requirement. M.R.U. Crim. P. 41A(d). This Court has held that the party responsible for an adequate record has the burden to request the court to expand on inadequate findings in order for the record to be meaningful for appellate review. *State v. Izzo,* 623 A.2d 1277, 1280 (Me. 1993).

Here, the State is the party aggrieved by an erroneous suppression order and is thus responsible for ensuring there are adequate findings for potential appellate review. The State requested multiple additional fact findings be made

based on the hearing record, including about the specifics of what was communicated to dispatch regarding the manager's concerns of drinking, driving, and the odor of alcohol; whether dispatch communicated to the officer that, "they think he's intoxicated"; and, whether entering or leaving the Burger King parking lot required traveling on a public way. (A. 40). The State additionally requested further conclusions regarding the extent to which communicated information (to and from dispatch) affected the reasonableness of the stop, and whether the facts of the public way establish a reasonable suspicion that a criminal or civil violation already has, or was about to occur. *Id.*

None of these findings or conclusions were present in the original suppression order, despite being supported by the hearing record. (A. 21). To make the record meaningful for appellate review, particularly on the question of whether the officers had reasonable articulable suspicion to believe an open container or intoxication related offense/violation *had* or *was about to* occur, the State required these further findings to be made. The motion for further findings was proper under Rule 41A and *Izzo*.

**B. The State can file a motion to reconsider, just like defendants.**

The State agrees with Martin that there is no rule which expressly spells out a motion to reconsider, however it is a permissible and common practice this Court has seen before. *See State v. Hayford*, 412 A.2d 987 (Me. 1980), *State*

*v. DiPietro*, 2009 ME 12, 964 A.2d 636. The rules provide that, "when no procedure is specifically prescribed, the court shall proceed in any lawful manner not inconsistent with the Constitution of the United States or of the State of Maine, the Maine Rules of Criminal Procedure, these Rules, or any applicable statutes." M.R.U. Crim. P. 1(c)[8]. As a general rule, whether a pre-trial motion shall be granted rests within the sound discretion of the Justice who issued the original order. *State v. Hayford*, 412 A.2d 987, 990 (Me. 1980). In *Hayford*, the State filed a motion to reconsider an order granting a motion to suppress, and the trial court granted that motion to reconsider. As the Law Court noted in that decision, given the State's right of appeal from the order granting the motion to suppress, "the interests of judicial economy are well served where, as here, the presiding Justice determined that his original order was erroneous." *Id.*

Martin cites to *DiPietro*, which effectively acknowledges the propriety of filing a motion to reconsider. *State v. DiPietro,* 2009 ME 12, ¶ 15, 964 A.2d 636. There, the defendant's motion was properly denied as it did not allege an error, omission, or new material that could not previously have been presented. *Id*. In

[8] This is substantially identical to the former M.R. Crim. P. 57(a).

contrast, here, the State specifically alleged both relevant omissions in the findings of fact, as well as error by the motion court.

### C. M.R. App. P. 2(A)(f)(2) does not apply.

No notice of appeal was ever filed in this case; a motion to reconsider was filed. Exactly like in *Hayford*, the Superior Court retained continuing jurisdiction of the case, and the order didn't represent a final judgment. See *State v. Hayford*, 412 A.2d 987, 990 (Me. 1980). The rule cited by Martin explicitly, by its own terms, applies to a notice of appeal.

### D. The filing was timely.

Martin alleges two different theories that the filing was untimely. First, he claims that the motion was untimely pursuant to M.R.U. Crim. P. 12(b), which requires that, " 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." Assuming that this rule is applicable to the State's motion, there are multiple reasons this would still not be untimely.

First, the case was not set for a dispositional conference on October 28, 2024. The case was set for a Rule 11 hearing on that date. See (A. 10) The 12(b) service requirements thus have no relation to that court event.

Second, Martin's argument cuts against himself. Martin's motion to suppress was not filed until April 25, 2024. (A. 33). The original Rule 18 disposition conference was held February 8, 2023. (A. 6). There were, in fact, multiple subsequent and disposition conferences held on April 5, 2023, July 10, 2023, and October 3, 2023, before it was initially set for a Rule 11 proceeding on December 19, 2023. (A. 6-7). The Rule 11 was then continued until February 9, 2024, then again to April 22, 2024. (A. 7-8). Martin only tendered his Motion to Suppress three days after the third Rule 11 hearing, all of which were set after three disposition conferences. If anyone's motion is untimely, it is Martin's original motion to suppress.

The original order granting the motion to suppress did not issue until October 1, 2024. (A. 21). It would be illogical and contrary to the rules to require the State to give notice of its motion prior to the disposition conference, the last of which happened nearly a year prior to the order the State sought relief from. No further dispositional conference was set at the time, so the timing requirements of Rule 12(b) would be inapplicable to the State's motion.

The State filed its motion in response on October 22, 2024, 21 days later. While admittedly on the edge of the 21-day deadline to appeal under M.R. App. P. 2B(b)(1), it was still within that rule as well. The State's appeal period was tolled by filing of the motion, pursuant to M.R. App. P. 21(e), which also would

have restarted the time computation to appeal from the date of the order upon the State's motion.

The Defendant was not unfairly prejudiced by this filing and had time to file a written four-page argument in opposition to it only a day later, well before the Rule 11 hearing that was scheduled for October 28, 2024. (A. 45).

## II. The motion court was not required to hold another hearing.

Martin claims he was denied due process by the failure to hold an additional hearing on the State's motion. The Court reviews claims of procedural due process de novo. *State v. Moore*, 2023 ME 18, ¶14, 290 A.3d 533. When the State acts to deprive a person of life, liberty, or property, basic due process requirements include an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right at stake. *State v. Bilynsky*, 2008 ME 33, ¶ 7, 942 A.2d 1234.

Martin claims in his brief that he requested a hearing on the State's motion. (Blue Brief 19). He is mistaken. Martin filed a four-page "Defendant's Opposition to Plaintiff's Motion for Further Findings of Fact and Conclusions of Law and to Reconsideration of the Suppression Order." (A. 45). Nowhere in this document did Martin request a hearing. In fact, Martin wrote, "nothing more needs to be stated on the subject." (A. 46). Martin sought summary ruling by the Court based on the extensive pleadings which already existed.

By the point the motion court decided the State's motion, the record included the Defendant's Motion to Suppress, a lengthy testimonial hearing on June 21, 2024, a six-page Memorandum of Law in Support of Defendant's Motion to Suppress, a nine-page Supplemental Memorandum of Law in Support of Defendant's Motion to Suppress, the four-page Memo of Argument on Defense Motion to Suppress from the State, the original Motion to Suppress Order, the State's motion, and the last filing on opposition mentioned above. (A. 33, Supplemental Memorandum of Law in Support of Defendant's Motion to Suppress, Memo of Argument on Defense Motion to Suppress, A. 21, 40, 45).

In the same manner that a motion to reconsider is not expressly considered by the current rules, it is not a hearing of a type which has a mandatory requirement for a hearing. The underlying Motion to Suppress did require a mandatory hearing for the court to, "receive evidence on any issue of fact necessary to the decision of the motion." M.R.U. Crim. P. 41A(c). That happened on June 21, 2024, and was supplemented by copious written arguments. The record was complete, Martin argued no further fact finding was necessary, and Martin did not request a hearing.[9]

[9] Martin elsewhere erroneously argues to use the Rules of Civil Procedure as a basis to deny the motion (B. Br. 26-27). The same rule they attempt to cite provides a clear answer to this particular complaint: except as otherwise provided by law or these rules, after the opposition is filed the court may in its discretion rule on the motion without hearing. M.R. RCP. 7(b)(7).

## III. The motion court correctly granted the motion to reconsider.

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

### A. There was a reasonable articulable suspicion that an open container violation had occurred or was about to occur.

"Brief investigatory detentions are justified when they are based on specific and articulable facts, and can be solely for safety concerns[.]" *State v. Wilcox,* 2023 ME 10, ¶ 12, 288 A.3d 1200 (quoting *State v. Bragg,* 2012 ME 102, ¶ 10, 48 A.3d 769); *see also State v. Pinkham,* 565 A.2d 318, 319 (Me. 1989) ("Safety reasons alone can be sufficient if they are based upon specific and articulable facts." (quotation marks omitted)). "Brief investigatory detentions are also acceptable if they are based on specific facts that give rise to reasonable, articulable suspicion that either criminal conduct or a civil violation "has occurred, is occurring, or is about to occur."" *Wilcox,* 2023 ME at ¶ 13, 288 A.2d 1200 (quoting *State v. Sylvain*, 2003 ME 5, ¶ 11, 814 A.2d 984).

The call detail report comments admitted within a Defense exhibit show exactly what was known to the approaching officers. A silver chevy pickup had been seen coming through the drive-thru of the Burger King in Brewer with an

open container of Twisted Tea (an alcoholic beverage) with a straw in it, and one employee thought the driver smelled like alcohol when he later came inside. (M. Tr. 5-6), (Defendant's Supplemental Memorandum of Law in Support of Defendant's Motion to Suppress 2-4). The employees then saw the truck park out back with a passenger, and they thought they saw them. (M. Tr. 31). Dispatch indicated the employees thought the driver was intoxicated. (M. Tr. 16). Officers arrived within minutes and found the described vehicle in the location indicated by the caller. (M. Tr. 6). The motion court also found that the parking lot is only accessible via a public way. (A. 23).

No detention had yet occurred when Ofc. Freeman pulled behind the parked truck and attempted to begin a consensual encounter. (M. Tr. 7). Ofc. Curtis then saw the truck start to move back out towards the roadway and blocked its path, completing the seizure. (M. Tr. 7, 50). Based on the totality of the information known at the inception of the stop, it was objectively reasonable to believe that as soon as the vehicle began moving, Martin had nowhere to travel except back onto a public way, where he would be committing a violation. Likewise, it was reasonable for the officers to infer and suspect a civil violation had already occurred, as the open container arrived in the parking lot of an establishment that did not sell alcohol. Either would justify an investigatory detention.

### B. Officers were entitled to identify the occupants.

Police officers are entitled to require a suspect to disclose his name during the course of a *Terry* stop. *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177 (2004). Martin was immediately asked to identify himself, and lied about his identity. Ofc. Freeman immediately and continuously attempted to verify the identification that Martin gave, but was unable to do so, because the information provided by Martin was false. (M. Tr. 9-10). This continued until Ofc. Curtis began to put him in handcuffs and Martin finally provided his real name. (M. Tr. 35). This is an ordinary threshold matter for any *Terry* stop that must be accomplished, and any delay in its resolution is entirely attributable to Martin's falsehoods. See *State v. McLain*, 2025 ME 87, ¶24 fn.3, -- A.3d ---. At the point his true identity was revealed, the officers were unquestionably justified in further detaining him based on the preexisting arrest warrants.

### C. Martin was lawfully searched incident to arrest.

"Police may conduct a warrantless, pre-incarceration search of the person of one who has been validly arrested." *State v. Dubay*, 338 A.2d 797, 798 (Me. 1975). The officers were entitled to arrest Martin based on probable cause that he was failing to give his correct name, as well as upon the authority of the multiple warrants which Martin himself acknowledged. At that point, Officer

Curtis was entitled to search Martin's person, which revealed a significant quantity of methamphetamine.

### D. There was probable cause to search the vehicle and any containers capable of concealing drugs.

When officers have probable cause to believe a vehicle contains contraband, they may search the vehicle without a warrant. *United States v. Cruz-Rivera*, 14 F.4th 32, 43 (1st. Cir. 2021), *see also Carroll v. United States*, 267 U.S. 132 (1925). Officers may search any container within the vehicle capable of containing the contraband they have probable cause for, and Maine does not impose any stricter standard. *State v. Patten*, 457 A.2d 806, 811 (Me. 1983). This authorization extends to locked containers as well, if they are capable of containing the suspected contraband. *State v. Lux*, 1999 ME 136, ¶ 10, 740 A.2d 556.

Once Officer Curtis located drugs on Martin's person, he had probable cause to search the vehicle for additional drugs and drug-related evidence. Drugs can come in parcels of many shapes and sizes, and can easily fit into any locked toolbox, pelican case, or similar container, such as those described at the hearing. (M. Tr. 39-40). The officers were entitled to search the truck, as well as all locked containers within it which were capable of concealing drugs.

### E. Martin's self-identification does not implicate *Miranda*, and no other argument has been preserved.

Martin also appears to argue that his giving false names and that ultimately his real name somehow implicates *Miranda*. (Bl. Br. 45). Both are incorrect. This Court has held that even in a custodial situation, an officer can ask questions designed to identify or check the identification of a suspect. *State v. Griffin*, 2003 ME 13, ¶ 9, 814 A.2d 1003. No specific statements were alleged in the Defendant's Motion to Suppress. (A. 33). As the motion court pointed out, no alleged statements of the Defendant other than those regarding identification were addressed at the hearing. (A. 26). No other material statements of evidentiary value were ever identified.

The scope of the Court's review of the denial of a motion to suppress is limited to the record upon which the court decided the motion. *State v. Jandreau*, 2022 ME 59, ¶12, 288 A.3d 371. "An issue is raised and preserved if there was sufficient basis in the record to alert the court and any opposing party to the existence of that issue." *Id.* ¶22. It is not sufficient to raise an issue in the trial court if the issue is not further preserved through adequate development of the record on that issue. *Id.* 22, 27.

The only argument raised or developed at the hearing was that the Defendant's self-identification (both fictional and truthful) somehow

implicated *Miranda*. This was addressed by the motion court in its Additional Findings dated March 20, 2025. (A. 26). Now Martin conclusorily alleges other statements were made. (Bl. Br. 45). This paragraph first appears, verbatim, in the Defendant's Supplemental Memorandum of Law in Support of Defendant's Motion to Suppress. (Defendant's Supplemental Memorandum of Law in Support of Defendant's Motion to Suppress 8). Given the lack of development below, and the perfunctory way in which it was addressed on appeal, this claim is unpreserved.

## IV. The sentencing court's granting of the forfeiture was proper.

### A. There was sufficient evidence.

The burden of proof for granting a criminal forfeiture is to a preponderance of the evidence standard. 15 M.R.S. §§ 5826(4)(A) (1999). When sufficiency of the evidence is challenged, the evidence is viewed in the light most favorable to the State to determine whether there is competent evidence in the record to support a finding that the property is subject to forfeiture. *State v. Pierce*, 2006 ME 75, ¶ 21, 899 A.2d 801. The plain language of the statute does not limit the subject of the forfeiture be traceable to the specific drugs on the scene. *Id.* ¶ 23.

It must be acknowledged that this forfeiture proceeding did not occur as a standalone trial as contemplated by statute. Title 15 M.R.S. §§ 5826 only

provides a procedure for when the underlying criminal charge is being contested at trial. It does not provide any rules or guidance for a hybrid scenario like this case, where the substantive charges were all admitted. It was expressly agreed by the parties in the conditional plea that the forfeiture, "will be addressed as a part of the contested sentencing." (A. 27). Again, M.R.U. Crim. P. 1(c) appears to apply to this situation, allowing the court to proceed in any lawful manner not otherwise inconsistent with the Constitutions, the rules, or statutes.

The transcript of the proceeding makes it clear that both parties fully comingled the issue of forfeiture within the sentencing argument, consistent with the plea agreement. Both parties liberally cite to the recitation of facts that was admitted at the Rule 11 change of plea, as well as even the record of the motion to suppress hearing. This would unquestionably be proper in the context of a sentencing hearing, as the Maine Rules of Evidence do not apply to sentencing proceedings. M.R. Evid. 101(b)(6). This hybrid approach was never objected to at sentencing, nor is it even being objected to now. The State thus argues that every piece of information presented to and considered by the sentencing court during the sentencing procedure is properly evidence that could be considered for the forfeiture.

As articulated during the Rule 11 statement of facts, and again reiterated during the sentencing hearing, the sentencing court heard that Martin had 34 grams (over an ounce) of methamphetamine and four grams of fentanyl on his person, along with $2,862 cash. (S. Tr. 4). In Martin's truck, there was a block of 113 grams of fentanyl, a bag of 334 grams of methamphetamine, a 20-gram chunk of cocaine, another bag of approximately 3 grams of fentanyl, a scale with residue, hundreds of clean ticket bags, precut tin folds, another $227 cash wrapped in electrical tape, and $11 cash inside a drug ledger. (S. Tr. 5). Martin's father acknowledged knowing that Martin used drugs, and that they were expensive. (S. Tr. 40). He also conceded he had no idea what Martin used, or intended to use, the money he says he paid him. (S. Tr. 41).

Martin's argument centers squarely on the notion that the cash was not proven to be the proceeds of scheduled drugs, but appears to overlook that the forfeiture standards include cash that is intended to be furnished for drugs, or to facilitate other drug offenses. Given the admission to drug trafficking, the scale of the drugs involved (over 18 times the 6 gram aggravated threshold for fentanyl, and over 3 times the 100 gram aggravated threshold for methamphetamine), the ledger, and the items associated with resale, there was competent evidence in the record of this hybrid proceeding to support a finding that the property was subject to forfeiture.

### B. This criminal forfeiture was not grossly disproportionate to the gravity of the offense.

The State agrees that criminal forfeitures are circumscribed by the Eighth Amendment to the United States Constitution's excessive fines clause. To determine whether a forfeiture is grossly disproportionate, a court should consider, "(1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant." *United States v. Levesque,* 546 F.3d 78, 83 (1st. Cir. 2008) (citing *United States v Heldeman*, 402 F.3d 220, 223 (1st. Cir. 2005)). The Court should also consider whether the forfeiture would deprive the defendant of their livelihood. *Id.*

Martin did not raise or preserve this argument at all in the proceedings below. To that end, none of these factors are discussed or addressed in the record and preserved for review. Without the benefit of a record on the topic, the State argues this particular argument has been waived.

The Court is left to infer or speculate the harm that could be caused by the large quantities of drugs seized here, but given that the Legislature deemed trafficking quantities of fentanyl greater than 6 grams or methamphetamine greater than 100 grams to be significant enough to merit a minimum of four

years in prison, it seems reasonable to infer it to be grave. Nonetheless, it can at least be drawn from the record that Martin is exactly the kind of individual targeted by the Aggravated Trafficking statutes he pled guilty to, which in turn are targeted by the criminal forfeiture provisions. The punishment possibilities are defined by statute. *See* 17-A M.R.S. §§ 1604(1)(A) (2019), 17-A M.R.S. §§ 1125(1)(A) (2019), and 17-A M.R.S. §§ 1704(1) (2019). As to the final consideration, Martin's own statements at sentencing indicate he is gainfully employed by someone with a substantial contract, which cuts against any argument this forfeiture would rob him of a livelihood. (S. Tr. 49). Additionally, unlike the case in *Levesque*, we are dealing with property already seized and held by the state, as opposed to seeking an order to justify seizing funds in the future. *See United States v. Levesque,* 546 F.3d 78, 85 (1st. Cir. 2008).

## CONCLUSION

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

Respectfully submitted,

AARON M. FREY
Attorney General

/s/ JASON HORN
_____

Jason Horn, Esq.
Assistant Attorney General
Criminal Division
Maine Bar No.: 6408
6 State House Station
Augusta, Maine 04333
(207) 446-1596

Dated: October 6, 2025

Katie Sibley
John P. Risler
Assistant Attorneys General
Of Counsel

## CERTIFICATE OF SERVICE

I, Jason Horn, Assistant Attorney General, certify that I have sent a native PDF and mailed two copies of the foregoing "BRIEF OF APPELLEE" to Belony's attorney of record, Laurence Willey Jr., Esq.

Dated: October 2, 2025

/ s / JASON HORN
_____

Jason Horn, Esq.
Assistant Attorney General
Criminal Division
Maine Bar No.: 6408
6 State House Station
Augusta, Maine 04333
(207) 446-1596