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

REPLY BRIEF FOR APPELLANT, JOSHUA MARTIN

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TABLE OF CONTENTS

TABLE OF AUTHORITIES. 4

STATEMENT OF THE FACTS ON REPLY 7

STATEMENT OF THE ISSUES ON REPLY 9

SUMMARY OF THE ARGUMENT ON REPLY. 10

ARGUMENT ON REPLY 11

I. WHETHER 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. 11

II. WHETHER THE TRIAL COURT WAS WITHOUT JURISDICTION PURSUANT TO 4 M.R.S.A. SECTION 165, THE MAINE CONSITUTION, IT'S SEPARATION OF POWERS, OR OTHERWISE, TO ALTER/AMEND THE MAINE RULES OF CIVIL 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'S DUE PROCESS AND FAIR TRIAL RIGHTS UNDER THE UNITED STATES AND MAINE CONSITUTIONS 13

III. WHETHER THE COURT ERRED IN RESCINDING IT'S INITIAL ORDER WHICH GRANTED DEFENDANT'S MOTION TO SUPPRESS AND THEN DENYING DEFENDANT'S MOTION TO SUPPRESS 13

IV. WHETHER THE SEIZURE OF $2,862.00 FROM DEFENDANT'S WALLET AND ANY FORFEITURE WAS JUSTIFIED AND DID

THE FORFEITURE VIOLATE DEFENDANT'S EIGHTH AMENDMENT RIGHTS AGAINST EXCESSIVE FINES AND PENALTIES 18

CONCLUSION 20

CERTIFICATE OF SERVICE 22

TABLE OF AUTHORITIES

CASES

Alley v. Alley, 2004 Me. 8, 840 A.2d 107. 13

American Holdings v. Town of Naples, State of Maine Business and Consumer Court, Docket No.: BCD-CV-2014-43 (05/15/2015) 12

Austin v. U.S., 509 US 602 (1993) 20

Brendlin v. California, 551 US 249, 257-59, 263 (2007). 14

Chase v. Edgar, 259 A.2d 30 (Me. 1969) 13

Chadwick – De Ross, Inc. v. Martin Marietta Corp. 483 A.2d 711 (Me. 1984). 13

Commonwealth v. Mansur, 484 Mass. 172, 140 NE 3d 384 . . . . . 14, 15, 17

Franklin v. Foresite, Inc., 430 A.2d 218 (Me. 1981) 13

In re: Hannaford Bros. Co., Customer Data Sec. Breach Litig., 600 F. Supp. 2d 94, 97 (D. Me. 2009) 12

Rodriguez v. U.S. 575 U.S. 348 (2015) 15

Sprague v. Dugan, 268 A.2d 465 (Me. 1970) 13

State v. Di Pietro, 2009 Me. 12, ¶15, 964 A.2d 636, 641 . . . . . 10, 11, 16

State v. Derric McLain, 2025, Me. 87 . . . . . .*passim*

State v. Menard, 822 A.2d 1143 (Me. 2003) 16

State v. Sweatt, 427 A.2d 940 (Me. 1981) 18

State v. Wilcox, 2023 Me 10, 288 A.3d 1200 17

Timbs v. Indiana, 586 US 146 (2019) 20

U.S. v. Bajakajian, 524 US 321, 334 (1998) 20

STATUTES

4 M.R.S.A. §165. 9

29-A M.R.S.A. §2112-A(1)(C)(D). 17

15 M.R.S.A. §5826 20

15 M.R.S.A. §5826(4) 20

15 M.R.S.A. §§5821 20

Me. R. Crim. P. 41(i) 19

Me. R. Crim. P. 41(A)(d) 10

Me. R. Civ. P. 7(b)(5) 12

OTHER AUTHORITIES

Me. Const. Art. I, §6 . . . . . 13, 15

STATEMENT OF FACTS & PROCEDURAL HISTORY ON REPLY

Statement of the Facts

1. 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).
2. Officer Curtis testified, "he was currently not operating; he was parked, he was not operating erratically." (Hearing on Motion to Suppress Transcript pg. 21).
3. 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).
4. 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).
5. 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).

6. 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).
7. 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.

Procedural History

1. The Defendant Motion for Return of Seized Property was dated 06/06/2024. (App. Pg. 35).
2. The Defendant's Motion to Suppress was granted on 10/02/2024. (App. Pg. 9).
3. Defendant's Opposition to the State's Further Findings of Fact and Conclusions of Law and for Reconsideration was filed on 10/25/2024. (App. Pg. 10).
4. Motion to Suppress was vacated on 02/20/2025. (App. Pg. 11).
5. Defendant's Motion to Suppress was denied on 03/30/2025. (App. Pg. 13).

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 ON REPLY

1. The Court's first suppression order was dated 10/01/2024. (App. Pgs. 21-22), contained findings of fact and conclusions of law. The State's Motion for Further Findings of Fact and Conclusion of Law and for Reconsideration, cited Rule 41 A(d) – was a re-argument of prior presentation on Motion to Suppress; the request for reconsideration was a re-argument of prior presentation on Motion to Suppress and did not meet standards to reconsider and did not allege error, omission or new material that could not have previously been presented. *See State v. Di Pietro*, 2009 Me. 12, ¶15, 964 A.2d 636, 641.
2. Me.R. Crim. P. 41 A(d), does not permit Motions for Further Findings of Fact and Conclusions of Law and to Reconsider.
3. The decision on State v. *Derric McLain*, 2025, Me. 87, requires suppression of any statements by Defendant, including his identity, as it occurred in this case, as there were no *Miranda* warnings, and no express waiver on his ambiguous acts, warranting suppression.
4. As noted in the forfeiture hearing and Appellant's Motion for Return of Seized Property, the money in his vehicle was for the sale of a vehicle to his

father. This was unrebutted evidence. The State did not meet its burden of proof.

ARGUMENT ON REPLY

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.

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.

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. argument warranting reversal of the Trial Court's actions.

II. THE APPELLEE DID NOT REPLY TO ISSUE II AND HAS THEREFORE WAIVED THE ARGUMENT.

Since the State has not responded to Issue II, Appellee has waived the issue. Any point not argued on appeal is deemed waived. *See generally, Alley v. Alley*, 2004 Me. 8, 840 A.2d 107; *Chadwick – DeRoss, Inc. v. Martin Marietta Corp*., 483 A.2d 711 (Me. 1984); *Franklin v. Foresite, Inc*. 438 A.2d 218 (Me. 1981); *Sprague v. Dugan*, 268 A.2d 465 (Me. 1970); *Chase v. Edgar,* 259 A.2d 30 (Me. 1969).

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. *Miranda* and/or *McLain*

In *State v. Derric McLain*, 2025 Me. 87, ____ A.3d ____, the Maine Supreme Court held that Art. 1, §6 of the Maine Constitution, requires that custodial statements must be suppressed unless a defendant a) affirmatively

expressed that he wants to waive his privilege against self-incrimination, b) that his conduct indicates that he knowingly, intelligently and voluntarily waived his privilege against self-incrimination without ambiguity, c) interrogation must cease until officers obtain a clear and unambiguous waiver of the right to remain silent, d) if no clear and unambiguous waiver, officers must stop and clarify, or custodial statements must be suppressed under the Maine Constitution. *Id*. 2025 Me. 87 at pp. 38-39, ¶66.

As in *McLain*, Appellant Martin never waived his privilege against self-incrimination. *Id* at pg. 2, ¶2.

Also, Appellant Martin refused to provide the combination to the locked toolbox on the rear bed of the pick-up truck, stating it was not his truck, and that he had a reasonable expectation of privacy in his person despite his outstanding warrants. *Id* at pg. 7, ¶13, citing *Brendlin v. California*, 551 US 249, 257-59, 263 (2007).

In fact, Officer Curtis stated that Appellant Martin was not under the influence and there was nothing wrong here. (*See* Hearing Transcript on Motion to Suppress, pg. 21). There was no suspicion of criminal activity; at least the possible open container violation. The open container allegation was a civil infraction. *See Commonwealth v. Mansur*, 484 Mass. 172, 140 NE 3d

384 (Mass. 2000) – (open container statute is a civil violation, more like a vehicle infraction, rather than a criminal offense).

Further, the open container law may give a right to search for more alcohol, but only in the passenger's compartment of the vehicle. *Id*. Unlike the factors in *McLain*, there was no reasonable articulable suspicion of criminal activity, at best, this was a civil infraction, warranting suppression. Here, the "source/tip" information did not prove valid and the vehicle was not in a public way. *Id* at pg. 10, ¶18. Again, this case involved a hunch, not a reasonable suspicion, different than in *McLain*. *Id* at pg. 11, ¶19.

The duration and nature of the stop violated *Rodriguez* standards. *Id* at pg. 21, ¶12, citing *Rodriguez v. US,* 575 US 348, 350-52, (2015). The Trial Judge got it right when he originally granted the Motion to Suppress. There was no basis to reconsider. The second order denying the Motion to Suppress was in error.

And, as noted, in *McLain*, "In all criminal prosecutions … the accused shall not be compelled to furnish or give evidence against himself…" *Id* at pg. 18, ¶21, citing Me. Const. Art. I, §6. But the actions of police here required Appellant to give evidence against himself, without *Miranda* warnings, regarding his identity, contrary to *McLain. Id*. And, Appellant here was not

informed of his rights, a greater violation. *Id* at pg. 19, ¶33. Defendant's interactions with the police regarding his identity was "ambiguous" and made without Miranda, and without a clear and affirmative expression that he waived his privilege against self-incrimination. *Id* at pp. 38-39, ¶66. Suppression is required of all evidence, including statements.

B. Probable cause and reasonable articulable suspicion –

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.

As noted in *McLain*, the Fourth Amendment guards against investigative traffic stops. *McLain supra* at pg. 8, ¶15.

C.Locked Box –

Searches under the open container statute are limited to the passenger compartment of the vehicle, when the officer searches occupied motor vehicles. 29-A M.R.S.A. §2112-A(1)(C),(D), (passenger area, and public way definitions); *see Commonwealth v. Mansur*, 484 Mass. 172, 140 NE 3d 384 (Mass. 2020) (search limited to passenger compartment; by contrast, the passenger area does not include the truck or any area "not normally occupied by the driver or passenger."). As applied to this case, since the stop was for a vehicle under the open container statute, any search should have been limited to the passenger area and compartment, not the locked toolbox in the rear bed of the pick-up truck. *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*.

D. Dispatcher Altering Log

The State did not reply to this issue, and it waived. (*See* waiver citation, *supra*).

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

It is clear that the Defendant made many statements as part of the non-mirandized 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. *McLain, supra.*

Defendant petitioned for the return of the seizure of his property. The discovery of the $2,862.00 in his wallet was from the sale of a vehicle, and he sought the return of that seized property. (App. Pg. 36).

In *State v. Sweatt*, 427 A2d 940 (Me 1981), the Court stated,

"The burden is always on the government to show some nexus between the supposed evidence that has been suppressed and criminal activity before the supposed evidence may be detained. Such a nexus would be present where the suppressed evidence, though not contraband per se, is shown by the state to by instrumentality or fruit of a crime. But where the suppressed evidence is neither contraband by force of law nor stolen property nor evidence of a crime,

it must be returned to the movant absent an adverse claim of ownership." *Id* @ 950-51.

Pursuant to Me.R. Crim. P. 41(i), Defendant alleged his property was allegedly seized and confiscated, as an unlawful seizure.

The money came from a truck sale to his father for $5,702.00, of which $2,862.00 remained.

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).

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,
Counsel for Defendant/Appellant

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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 Reply 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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