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

LAW COURT DOCKET NO. Som-23-261

DALVIN PEGUERO,

Appellant

v.

STATE OF MAINE,

Appellee

ON APPEAL from the Somerset County
Unified Criminal Docket

APPELLANT'S BRIEF

James M. Mason
Maine Bar No. 4206

HANDELMAN & MASON LLC
Attorneys for Petitioner-Appellant
16 Union Street
Brunswick, ME 04011
(207) 721-9200

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

RULES

STATUTES

TREATISES

INTRODUCTION

In the dark hours of September 1, 2022, law enforcement swept onto the property of Anthony Merrow in Cambridge. Based on evidence they received from confidential sources, they had obtained a warrant to search Mr. Merrow's person, home, and vehicles. The warrant did not, however, make a "special designation" of the two campers also located on the property and when drug agents searched them, they impermissibly exceeded the scope of that warrant.

Dalvin Peguero was swept up in the same net when he left the property with Mr. Merrow as a passenger in Mr. Merrow's truck in the moments before the raid. When the vehicle was stopped by law enforcement in execution of the warrant, Mr. Merrow, who had a small quantity of drugs in his pocket, blamed Mr. Peguero the box of drugs that was shortly found under Mr. Merrow's clothes in the back seat of his truck. Mr. Peguero was soon after charged with aggravated drug trafficking.

At trial, the State was allowed to present evidence of alleged drug activity attributed to Younary Arias de Jesus, was also arrested on September 1, 2022, after he fled one of the campers when law enforcement arrived. This previous activity, however, took place in Hartford, not Cambridge, and was

three to four months before Mr. Peguero arrived in Maine. This prejudicial effect of this evidence far exceeded any probative value, but the Trial Court allowed it in over objections.

With this evidence, Mr. Peguero was convicted by a jury in less than five minutes – a period so short as to make meaningful deliberation impossible.

STATEMENT OF THE FACTS

Dalvin Peguero was twenty-two years old when he left the Dominican Republic.[1] He did not speak English, and still only has a minimal understanding of the language. He grew up in poverty, and with the death of his father, felt the burden to support his family. He came up through Florida and made his way north, with hopes of working jobs in construction so he could send money to his family. He eventually ended up in Massachusetts, where presumably he met Younary Arias de Jesus.

Mr. Arias de Jesus[2] has not yet gone to trial, but if the State's evidence presented at Mr. Peguero's trial is to be believed, he is part of an organization

---

[1] Mr. Peguero did not testify at trial so information about Mr. Peguero's background is drawn from Defendant's Sentencing Memorandum.

[2] During the trial, Younary Arias de Jesus was referred to interchangeably as "Mr. Arias," "Mr. de Jesus," and "Mr. Arias de Jesus." As the latter appears to be his full last name, this is how he will be referred to in this brief.

bringing up a significant quantity of drugs to Maine. According to the State, Mr. Arias de Jesus and others used various Facebook accounts under fictitious names to connect with buyers and distributors. Trial Transcript ("Tr.") 40-42. Maine Drug Enforcement Agency ("MDEA") agents testified they had spoken with confidential informants who had interacted with the accounts on "many" occasions to acquire illegal drugs. Id.

Several of the locations where the drugs were sold are properties owned by Anthony Merrow. Mr. Merrow testified Mr. Arias de Jesus had previously come to his property in Hartland and while there, Mr. Merrow witnessed the sale of illegal drugs. Tr. 226-227. He also testified he purchased illegal drugs from Mr. Arias de Jesus for his personal use. Tr. 227. Mr. Merrow said he took Mr. Arias de Jesus and another individual, not Mr. Peguero, back to Massachusetts when they had finished selling drugs out of his Hartland property on at least one prior occasion. Tr. 232-33.

Law enforcement became aware of the alleged illegal activity on Mr. Merrow's property. As early as February 2022, confidential informants had reported buying heroin and fentanyl from a "Mexican cartel" from Massachusetts through fake Facebook profiles. Appendix ("App.") 37. One source reported buying heroin from a "Dominican-speaking male" on a property later determined to be Mr. Merrow's Hartland residence. App. 37-38.

On June 16, 2022, MDEA agents conducted a wire buy on the property using a confidential informant. App. 38. The confidential informant was observed on the property and was able to purchase "5 sticks" of fentanyl – approximately 50g. App. 38-39.

On September 1, 2022, law enforcement received information that someone using the Facebook accounts had reached out to a cooperating defendant to let them know they were in the area and had drugs to sell. App. 39. The Facebook account gave map coordinates corresponding to a property in Cambridge law enforcement determined to be owned by Mr. Merrow. Id. They established surveillance of the property and observed a vehicle from a known drug user leaving the property. App. 39-40. This vehicle was pulled over for an expired inspection sticker and approximately 217g of suspected fentanyl was found taped under the hood of the vehicle. App. 40.

Based on this information, law enforcement applied for and received a search warrant for 614 Dexter Road in Cambridge, which authorized the search of Mr. Merrow, his "building," and his "vehicle." App. 34-43. The residence on the Cambridge property was a mobile home trailer. There were two "tow-along" campers[3] – living spaces that were towed behind a vehicle –

[3] In pleadings and testimony throughout the case, the parties and witness alternatively referred to the campers as both "campers" and "trailers." To

near the residence. Motion to Suppress Hearing, February 10, 2023, Transcript ("MTS Tr.") 21-22. One camper was white and orange stripe and was left of the driveway in the front yard. Tr. 46-47, MTS Tr. 21. It was approximately 10-20 yards from the trailer. MTS Tr. 18. The other camper was white with a green stripe and was located slightly closer to the trailer than the one with the orange stripe. Id

Mr. Merrow was seen driving away from the property in his registered truck. Tr. 136. His vehicle was pulled over and he and the passenger, Dalvin Peguero, were removed from the vehicle by Special Agent Stephen Morrell. Tr. 137. Mr. Peguero did not speak English and didn't communicate with the officer who got him out of the truck. Tr. 138. Mr. Merrow, on the other hand, quickly admitted to having drugs on his person and produced a small amount of methamphetamine from his pocket. Tr. 139. He also indicated there was a box of something in his backseat. Tr. 139-41. Special Agent Morrell testified to having found a small speaker box under a pile of clothes in the back of Mr. Merrow's truck. Tr. 140. Special Agent Merrow reported finding "7 stickers or fingers" of powdered drugs in the box, later determined to be approximately 74.8 g of fentanyl. Tr. 141-42, App. 43. Nothing was found on Mr. Peguero.

---

avoid confusion herein, the mobile home will be referred to as a "trailer" and the campers will be referred to as "campers."

Back at Mr. Merrow's property, law enforcement moved in force to secure the premises with multiple teams of agents and an armored truck. Tr. 266-69. Trooper Garrett Booth of the Maine State Police observed a male running from a white camper with a green stripe. Tr. 269. Trooper Booth ordered him to stop, and he did. Tr. 269-70. The male was later identified to be Younary Arias de Jesus. Tr. 344.

A search of the camper Mr. Arias de Jesus fled from revealed drugs hidden in multiple locations. 99 sticks of suspected fentanyl were found in a bag of rice in the kitchen area. Tr. 306-07. An additional package of rice contained 21 more sticks of fentanyl. Id. Agents also found $13,050 in cash in the camper. Tr. 63-64. A search of Mr. Merrow's residence found an additional stick, hidden under clothes, as was the case in his truck. Tr. 311.

Laboratory tests revealed the drugs found in Mr. Merrow's truck to weigh 68.61g and to contain a mixture of fentanyl and caffeine. Tr. 414-15. Overall, 137 packets or sticks were found related to this case, for a total weight of 1.33 kilograms. Tr. 403, 415-16. Laboratory tests of 9 of those packets tested contained at least some fentanyl. Tr. 425.

Mr. Peguero and Mr. Arias de Jesus were arrested and charged with drug trafficking. On November 12, 2023, Mr. Peguero was indicted on

Aggravated Trafficking of Scheduled Drugs under 17-A M.R.S. § 1105-A(1)(M) and Criminal Forfeiture under 15 M.R.S. § 5826.

On March 13, 2023, the Trial Court denied a motion to sever the trials of Mr. Peguero and Mr. Arias. App. 4, 19-20. However, upon a subsequently renewed motion by Mr. Peguero and hearing more information about the postures of both defenses, the Trial Court granted the motion to sever on June 4, 2023. App. 19-20.

A three-day trial was held starting on June 12, 2023. On June 14, 2023, after deliberating for less than five minutes, the jury found Mr. Peguero guilty. At a sentencing held on June 29, 2023, the Trial Court sentenced Mr. Peguero to 10 years and a $400 fine and ordered the forfeiture of the cash. App. 21-23.

This timely appeal ensued.

ISSUES ON APPEAL

I. Mr. Peguero arrived in Maine for the first time on September 1, 2022. Did the Trial Court improperly allow the testimony of alleged drug activity both months prior and in a different town when there was no evidence Mr. Peguero was involved in any way in that activity?

II. Should the Suppression Court have suppressed evidence collected in unattached, separate camper dwellings under a warrant that failed to specify those dwellings were to be searched?

III. The jury returned a verdict in less than four minutes. Was the Trial Court's determination there was sufficient time for the jury to deliberate meaningfully reversible error?

IV. Was there sufficient evidence to find beyond a reasonable doubt Mr. Peguero either possessed the drugs found in Anthony Merrow's vehicle or campers or acted as an accomplice to someone who did?

ARGUMENT

I. The Trial Court improperly allowed the State to use evidence of Mr. Arias de Jesus's alleged drug activity months before Dalvin Peguero arrived in Maine.

The State sought to offer evidence Mr. Arias de Jesus had been involved in bringing drugs to the State of Maine in the months before September 2022 and was selling them at the properties of Mr. Merrow. There was no evidence, however, that Mr. Peguero had ever visited the State of Maine before then or was otherwise part of any course of conduct relating to Mr. Arias de Jesus's alleged earlier activities. The prejudicial effect of such testimony substantially outweighed any remote probative value as to Mr. Peguero and should have been excluded by the Trial Court.

A. Standard of review

A court may exclude evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." M.R. Evid. 403. This Court reviews a trial court's decision to admit evidence under M.R. Evid. 403 for an abuse of discretion. *See State v. Pillsbury*, 2017 ME 92, ¶ 22, 161 A.3d 690, 694.

B. Procedural history of this issue

Mr. Peguero made multiple attempts in the case against him to preclude prejudicial evidence related solely to Mr. Arias de Jesus aside from seeking relief from prejudicial joinder. Mr. Peguero filed two separate written motions

asking for evidence related only to Mr. Arias de Jesus to be excluded from the State's case against Mr. Peguero. App. 44-46, 47-51. The first motion, Defendant's First Motion in Limine, App. 44-46, concerned a video taken during a purported drug by taking place months before Mr. Peguero arrived in the State of Maine. The Trial Court granted the motion on June 4, 2023. App. 19. The second motion, a "Motion to Preclude State From Offering Evidence in its Case-in Chief Regarding Dominican Drug Enterprise," was addressed during a pretrial hearing, but left undecided until trial. Transcript of Motion Hearings, June 7, 2023, p.9-19.

At trial, the State wanted Mr. Merrow to testify he had been allowing Mr. Arias de Jesus to sell drugs at his property for months. In the face of Mr. Peguero's objections, the Court allowed the State to conduct voir dire of Mr. Merrow outside the jury's presence. App. 52-61. During voir dire, Mr. Merrow testified he had learned through his son people were selling drugs out of a trailer on his property in Hartland. App. 54. He said that different people came to the property, generally two at a time. Id. They were Spanish-speaking, and he had difficulty communicating with them. App. 54-55. He eventually moved the trailer to a different property he owned in Cambridge. App. 55. He let them continue to sell drugs from that property in exchange for free drugs for

himself. Id. There was no testimony of Mr. Peguero visiting either property until the September 1, 2022, visit to the Cambridge property.

Mr. Peguero again asked that "the State be limited to questioning [about] anything that occurred after – on or after September 1." App. 58. The State said it should be able to argue Mr. Peguero's "accomplice liability for that which an ongoing it trafficking that is being conducted by the codefendant on the one hand, Mr. Arias [de Jesus] and then on another level which I think the law also supports, is the fact that he was an accomplice to the unknown, unnamed individual that is otherwise directing Mr. Arias." Id.

The Trial Court determined activities of purported drug trafficking occurring earlier in Hartland month prior could be used to support "the State's theory of accomplice liability with respect to Mr. Peguero." App. 59. Both Mr. Peguero and the State asked for clarification of the State's rulings, with the State suggesting the Court's ruling only limited it from talking about a larger organization. Id. Conversely, Mr. Peguero was more specific in renewing objections:

> I am just going to renew my objection to the record to anything that doesn't directly involved [sic] Mr. Merrow, something he saw my client do. I don't believe there is any nexus between my client and any of this sort of accomplice liability stuff.

App. 60. Mr. Peguero further clarified the objection is not related to potential accomplice liability testimony when Mr. Peguero was present, but rather the State's attempts to bring in testimony about what had occurred in the months prior:

> I guess just to be clear, my objection for the record is that he shouldn't be allowed to testify about [Arias] de Jesus with somebody other than my client. He can say that Peguero was assisting [Arias] de Jesus if he is able to say that. I don't know how my client can assist somebody if he is not with them.

App. 60. The Court's further discussion of the point did not fully address Mr. Peguero's concerns, instead making sure the State did not talk about "cartels" or "gangs." App. 60-61.

Later, in front of the jury. Mr. Merrow said he had had contact with Mr. Arias de Jesus in Hartland, and Mr. Arias de Jesus had been selling drugs out of Mr. Merrow's camp. Tr. 227. This was months before September 1, 2022. He reported having contact with people in Massachusetts directing him to assist Mr. Arias de Jesus and others, none of whom Mr. Peguero. Tr. 231-32, 250-51. He had taken them back to Massachusetts. Tr. 232-33. He later confirmed on cross-examination he had never seen Mr. Peguero before September 1, 2022. Tr. 244-45.

C. It was unfairly prejudicial to allow testimony about the months-earlier alleged drug transactions by Mr. Arias de Jesus in a trial against Mr. Peguero.

The State could present testimony about whether Mr. Peguero was an accomplice to the alleged criminal activities of Mr. Arias de Jesus on September 1, 2022. It is well settled that "[a] person may be guilty of a crime if he personally does the acts that constitute the crime or if he is an accomplice of another person who actually commits the crime." *State v. Hurd,* 2010 ME 118, ¶ 29, 8 A.3d 651. A person is guilty as an accomplice, "if [w]ith the intent of promoting or facilitating the commission of the crime, [he] solicits such other person to commit the crime, or aids or agrees to aid or attempts to aid such other person in planning or committing the crime. A person is an accomplice under this subsection to any crime the commission of which was a reasonably foreseeable consequence of [his] conduct." 17–A M.R.S. § 57(3)(A).

Mr. Peguero, however, was not charged with any criminal activity taking place in Hartland in the months before his arrival. There was no evidence or charges accusing him of being part of a criminal conspiracy involving these events. He was not charged with a new state analog to the federal law involving ongoing criminal drug enterprises. *Cf.* 21 U.S. C. § 848. All the evidence was he wasn't even in Maine at the time. Mr. Peguero was charged with trafficking on a single day, September 1, 2022, in Cambridge. App. 24.

The only possible purpose for the evidence to be offered is to suggest to the jury, without using any of these words, that Mr. Peguero was part of a vast out-of-state Dominican-lead, drug trafficking cartel being coordinated through Internet-based communication and coordinated by an unknown leader, and so, Mr. Peguero must have been involved in the sale of drugs on this occasion. The prejudicial effect wasn't a by-product of this evidence being offered; it was the intended effect.

To the extent this purpose has a probative value, its purpose is far outweighed by the prejudicial effect it caused.

> "Prejudice, in this context, means more than simply damage to the opponent's cause.... [It] is an undue tendency to move the tribunal to decide on an improper basis...." *State v. Brine*, 1998 ME 191, ¶ 9, 716 A.2d 208 (quotation marks omitted). Prejudicial evidence is inherently inflammatory evidence that is likely to arouse the passion of the fact-finder. Compare *State v. Thongsavanh*, 2004 ME 126, ¶ 3, 861 A.2d 39 (concluding that evidence of a defendant's sacrilegious T-shirt was inflammatory), with *State v. Patton*, 2012 ME 101, ¶ 32, 50 A.3d 544 (concluding that evidence of condoms, lubricant, lingerie, and a sexually assaulted victim's age was not inflammatory), and *State v. Hayes*, 675 A.2d 106, 109–10 (Me. 1996 (concluding that evidence of a defendant's association with narcotics was not inflammatory).

State v. Hassan, 2013 ME 98, ¶ 26, 82 A.3d 86, 93. Even the Trial Court's rationale for allowing it does not suggest there is a connection between the events earlier in the year in Hartland and those on September 1, and therefore any reason to bring it into evidence:

> I think that's going to be a classic jury question is there accomplice liability here or putting aside whether or not the jury believes Mr. Merrow, he said Mr. Peguero had drugs and got rid of the prior to the time the police stopped him.

App. 60.

> As far as I am concerned, we have two people, on[e] person on trial today that's charged with trafficking, and the State's theory it is accomplice liability or perhaps something else, that's the focus. I don't want the jury to focus on groups, or organizations, or Cartels or gangs.

Id.

> Well, if it involves Mr. [Arias] de Jesus or Mr. Peguero, yes, but I don't know because no one has flushed out if we are talking about Arias de Jesus or he is just one of many two-man teams, we are getting into that involved Mr. Arias de Jesus **and** Mr. Peguero.

Id. (emphasis added). The Court's error in allowing this evidence is not heeding its concerns. Had the State been properly limited to the evidence involving Mr. Arias de Jesus **and** Mr. Peguero together, namely evidence related to September 1, 2022, there would be no error. By allowing evidence concerning only Mr. Arias de Jesus in the months before Mr. Peguero arrived in the state, the Court allowed the jury evidence of a "vast" drug conspiracy and to be inflamed enough to conclude Mr. Peguero must be involved in such a conspiracy and he, therefore, could be guilty of trafficking on that basis alone. Allowing such evidence is a reversible error.

II. The Search Warrant did not cover the two campers on the Cambridge property and the evidence obtained from the illegal search of them should have been excluded.

The warrant issued by District Court (*Sylvian, J.*) allowed for a search of the Cambridge property of Mr. Merrow, including his "building," "vehicle," and "person." App. 30-42. It does not include the two campers located on the property. Officers exceeded the scope of the warrant when they searched those campers without obtaining a second warrant. Evidence obtained in that illegal search should have been suppressed.

A. Standard of Review

This Court's review of the denial of a motion to suppress is limited to the record on which the court made its ruling. *State v. Tribou*, 488 A.2d 472, 475 (Me. 1985) ("Only evidence presented to the motion Justice is considered in deciding whether the record supports the motion Justice's determination.") "A decision as to the constitutional adequacy of a search warrant is a matter of law." *State v. Lehman*, 1999 ME 124, ¶ 7, 736 A.2d 256, 259–60 (*quoting State v. Pelletier*, 673 A.2d 1327, 1329 (Me.1996) (footnote omitted). "The issue of whether the search warrant lacks the required specificity as to the place and items to be searched is an issue of constitutional adequacy that [this Court] review[s] *de novo*." *Id.*

B. Procedural history of this issue

Mr. Peguero filed a motion to suppress on November 23, 2023. App. 26. In the motion, Mr. Peguero argued two grounds for the suppression of evidence: (1) the warrant obtained by law enforcement did not specifically authorize them to search the two campers on Mr. Merrow's Cambridge property, and (2) law enforcement lacked probable cause to arrest Mr. Peguero.

A hearing was held by the Suppression Court (*Mullen, J.*) on February 10, 2023. Before the hearing, the parties stipulated that if called to the hearing, Mr. Merrow would say he told Special Agent Stephen Morrell that the drugs found in Mr. Merrow's truck belonged to Mr. Peguero. MTS Tr. 6-7, 25. At the hearing, the State called federal Drug Enforcement Agency Special Agent Nicholas Rich who described for the Suppression Court the layout of the property and the location of the campers as they relate to Mr. Merrow's mobile home trailer. Id. 18-20. He also testified the green and white camper had been previously seen at Mr. Merrow's property in Hartland. Id. 22. S.A. Rich further testified that he learned neither Mr. Peguero nor Mr. Arias de Jesus spoke any English and there was not an interpreter on the scene. Id. 28-29. During closing arguments, Mr. Peguero raised the issue with unwarned statements and Mr. Peguero's lack of English. Id. 35-36.

The Suppression Court denied Mr. Peguero's motion to suppress the physical evidence discovered by law enforcement during the execution of the warrant, concluding the campers "were clearly included in the description of the property that officers were authorized to search." App. 13 Even if they were not, the Suppression Court found the campers "are still within the scope of the warrant as appurtenant structures." Id. 13-14. The Suppression Court also found there was sufficient probable cause to arrest Mr. Peguero.[4] Id. 14-15. The Suppression Court did grant the motion to suppress any statements made by Mr. Peguero while in custody given the language barriers and the State's failure to put on evidence Mr. Peguero knowingly, intentionally, and voluntarily waived his right to silence. Id. 15.

C. The warrant failed to identify the campers with sufficient specificity.

The Fourth Amendment to the United States Constitution and Article I, section 5, of the Maine Constitution protects against unreasonable searches and seizures. U.S. CONST. amend. IV.; ME. CONST. art. 1, § 5. The Fourth Amendment requires that a search warrant "particularly describ[e]" the place to be searched and the persons or things to be seized, and article I, section 5, of the Maine Constitution requires that a warrant make a "special designation"

[4] This decision as to probable cause is not being appealed.

of the place to be searched and the persons or things to be seized. U.S. CONST. amend. IV.; ME. CONST. art. 1, § 5. Rule 41(c) of the Maine Rules of Criminal Procedure requires that "the affidavit…specifically designate the…place to be searched…." The place to be searched must be designated with specificity to discourage general searches and prevent the seizure of property that falls outside the authorization of the warrant. *See State v. Lehman*, 736 A.2d at 260. A warrant adequately identifies the place to be searched if "the officers thereby are enabled to ascertain and identify the place intended by reasonable effort." *State v. Moulton*, 481 A.2d 155, 165 (Me. 1984), aff'd, 474 U.S. 159 (1985) (*quoting State v. Brochu*, 237 A.2d 418, 422–23 (Me. 1967)).

At the motion to suppress hearing, Special Agent Nick Rich testified the actual Cambridge residence was a mobile home. Transcript of the Hearing on Motion to Suppress, February 10, 2023 ("Tr. MTS") 17-19. SA Rich spoke to Mr. Merrow who said Mr. Peguero and Mr. Arias de Jesus were staying in one of the two campers that are located near the main residence, a white trailer with green trim located some ten yards from Mr. Merrow's residence, the mobile home. Tr. MTS 20-21. The two smaller campers on the property were unattached to the main residence and stationery and were separate free-standing structures, that were either occupied or capable of being occupied as residences. Tr. MTS 18, 20.

While the campers are mentioned in the description of the property, they are not described as being *part* of the property. The property to be searched is described as:

> 614 Dexter Road. More specifically, this building sits on the Dexter Road in Cambridge, approximately 1.15 miles southwest from the Dexter Road Bailey Hill Road intersection, and approximately 1. 10 miles Northeast from the Dexter Road Andrew Ham Rd/Goose Flat Rd intersection. This is a single wide, multicolored trailer with two campers in the front of the property.

App. 34. The description uses the phrase "more specifically" to talk about the "building" later referring to it as a "single wide, multicolored trailer" and using the "two campers" as a descriptor for identifying the campers, rather than describing them "as part" of the property. This is further bolstered when examining the check boxes of places to be searched and the omission of the "other." App. 35.

Compare this with the case cited by the Suppression Court (*Mullen, J.*) – *State v. Peakes,* 440 A.2d 350 (Me. 1982). App. 13. In *Peakes*, this Court upheld a search based on a warrant that listed property to be searched only as "Property of G. Bradford Peakes and Barbara A. Peakes." The Court noted this would not be sufficient to meet the particularity requirement of Article 1, Section 5 without the additional description in the affidavit describing the structures on the property as "the structures thereon consisting of a house,

attached greenhouse and barn." *Id.* at 353. "[T]he description in the affidavit provides the necessary reasonable certainty required under our previous interpretations of Article I, s 5 of the Maine Constitution and the Fourth Amendment to the United States Constitution." *Id.* There is no such reference in the affidavit that rescues the warrant at issue here. There is no further reference to the campers on the Cambridge property after the initial description.

This is not a case where the warrant contained an obvious error that failed to undermine confidence in the specificity of the property to be searched. *See State v. Wilcox*, 2004 ME 7, ¶ 8, 840 A.2d 711, 713 (omission of the town name after the street address not fatal when it is not likely to lead to confusion); *State v. Johnson*, 2009 ME 6, ¶ 18, 962 A.2d 973 (search of a third floor permitted when building described as a "two and one story wood frame structure"). Nor is a case where the outbuilding to be searched was an appurtenant structure to the dwelling. *See State v. Brochu,* 237 A.2d 418, 420, 423 (Me. 1967) (search of the detached garage did not exceed the scope of the warrant for "the premises known as the dwelling of Armand A. Brochu located at 20 Forest Street"). These were independent structures being used as independent residences and as such, needed to be described with

particularity. The warrant's failure to do so should have led the Suppression Court to exclude any evidence found within.

III. The jury did not adequately or meaningfully deliberate before issuing a verdict in less than five minutes.

The jury was out for less than five minutes before coming back with a guilty verdict. Three minutes is a generous estimate of the time they considered Mr. Peguero's fate. The Trial Transcript notes the court recessed for deliberations at 11:59 am. Tr. 504. The Trial Court began informing the parties of the verdict at 12:04. Tr. 505. It is not clear how long it took the jury to leave the courtroom and assemble in the jury room to deliberate. It is possible they did not even have time to sit down before coming to a guilty verdict. Five minutes to do all this and come to a verdict.

The speed of the verdict was something the Trial Court felt it must address at the time of sentencing. Before starting its sentencing analysis, the Trial Court addressed the issue:

> Before I get to the sentence and why I'm going to do what I'm going to do, I wanted to put on the record something. A --- a -- as it was mentioned in closing by the State, the jury was out in less than five minutes in this case. And at least at first blush, it might cause some people to question the process. And -- and I just want to put on the record that I -- I did some research on that. And of course, we tell juries, and I told the jury in this case, quote, "You should not be concerned about how long it takes to reach a verdict. Some verdicts can be returned quickly. Others take longer. The length of deliberations depends on how difficult you

> find the determination of credibility and the determination of the facts to be."
>
> In this case, I don't think it's disputed that the exhibits, and actually, the two copies of the jury instructions that I was going to send in along with the exhibits, never got into the jury before they knocked on the door and said they had a verdict. However, the -- the law that I have researched convinces me, and I've concluded that this [Law Court] support[s] that juries don't have to spend any set minimum amount of time deliberating before announcing a verdict.
>
> And a short deliberation after even a quote, unquote, "long trial" according to the law of court, doesn't suggest improper jury conduct. I never told the jury that they had to wait to get the exhibits and the instructions before deliberating. There was certainly no evidence that expressed or implied the Court or anyone else gave the jury the thought process or pressured them to return a verdict quickly. That didn't happen.

Sentencing Transcript, June 29, 2023, ("S.Tr.") 30-31. Further, the Trial Court explained it had conducted research and felt this Court and others had countenanced convictions following speedy deliberations. On its own accord, the Trial Court denied the possibility of any motion based on the speed of the jury's verdict.

A. Standard of Review

A claim the jury failed to take seriously its mandate to deliberate is in essence a claim of jury misconduct. "A claim of jury misconduct must be based on a showing of bias, passion or prejudice which affected the deliberations." *Cuthbertson v. Clark Equip. Co.*, 448 A.2d 315, 318 (Me. 1982) (*citing Chenell v.*

Westbrook College, Me., 324 A.2d 735, 737 (1974)). Typically, such a claim is raised in the lower court on a motion for a new trial, and a trial court's denial of that motion "is reversible only where there has been a 'clear and manifest' abuse of discretion." *Cuthbertson* at 318 (*citing Binette v. Deane, Me., 391 A.2d 811, 813 (1978)*.)

B. The Jury's failure to meaningfully deliberate was jury misconduct.

It is not likely possible for a jury to deliberate for a shorter time. If they voted directly from their seats in the jury box upon their receipt of the case, it could have taken less time than what happened here, but likely in no other scenario would it have been possible. Mr. Peguero's fate must have been sealed with a single vote taken as the jurors walked to the table which they were supposed to deliberate. This cannot be how we wish to send someone to prison for a decade.

As the Trial Court noted, in *Folsom v. Great Atlantic & Pacific Tea Co.*, this Court, in upholding a thirty-five-minute deliberation said, "standing alone the period of time taken by a jury to complete its deliberations is not enough to support a finding of misconduct necessitating a new trial." 521 A.2d 678, 679 (Me. 1987) (*citing Cuthbertson v. Clark Equipment Co.*, 448 A.2d 315, 318 (Me.1982) ("The fact that the jury spent no more than sixteen minutes to

complete its deliberations in this case is not, standing alone, enough to support a finding of misconduct necessitating a new trial."); *State v. Cheney*, 2012 ME 119, FN 3, 55 A.3d 473, 479 ("Jurors need not spend any set minimum amount of time deliberating before announcing a verdict, and a short deliberation after a long trial does not suggest improper jury conduct"); *see also Ogden v. Libby*, 159 Me. 485, 489, 195 A.2d 414, 416 (1963) ("A further claim of error by the defendants that the jury reached a verdict in forty-five minutes is without merit. There is not the slightest inference from this fact that the jury was influenced by prejudice, bias, passion or mistake."). In practical terms, this Court, like others around the country, has never found a period of deliberation too short the idea a jury engaged in reasoned deliberations.[5]

This Court has not yet had to deal with such a short period – one where deliberation would have been practically impossible. Counsel is cognizant of

---

[5] Counsel is also aware of the mountain of case law from around the country upholding very short periods of deliberation. *See* "Effect on verdict in criminal case of haste or shortness of time in which jury reached it." 91 A.L.R.2d 1238 (originally published in 1963). Counsel can find no cases upholding a three-minute decision by a jury, however. At least one court has upheld a four-minute deliberation. *See United States v. Young*, 301 F.2d 298 (6th Cir. 1962). Two others have found five minutes is enough. *State v. Turner*, 165 La. 657, 115 So. 814 (1928); *Turner v. State*, 74 S.W. 777 (Tex. Crim. 1903).

the Court's previous statements juries "need not spend any set minimum amount of time deliberating," *see Cheney*, which could be read to preclude this argument. However, such a narrow reading and application, in this case, would obviate the meaning of the word "deliberate." When used as a verb, it is defined as "to think about or discuss issues and decisions carefully." Merriam-Webster's Online Dictionary, https://www.merriam-webster.com/dictionary/deliberate (last visited Nov. 11, 2023). Neither careful thinking nor careful discussion is possible in less than five minutes – especially when it includes the walk from the courtroom to the jury room. To uphold a three-minute deliberation to be considered "sufficient," this Court must take the position group deliberation is simply not necessary for a verdict to be valid.

A three-minute deliberation in a drug trafficking case with a dark-skinned, Spanish-speaking Dominican defendant must give everyone involved in the criminal justice system pause. This Court recently noted the impact bias could play in jury decisions.

> Over the past decade, legal scholarship has recognized the role that implicit or unconscious racial biases and in-group favoritism play in the administration of justice. See, e.g., Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 Harv. L. & Pol'y Rev. 149, 152 (2010) ("Lawyers, judges, and other legal professionals

> need to heighten their awareness and understanding of implicit bias, its role in our civil and criminal justice system, and in particular, the problems that it creates with regard to juries."); Robert J. Smith et al., *Implicit White Favoritism in the Criminal Justice System*, 66 Ala. L. Rev. 871, 895 (2014) ("At the core of research on implicit in-group favoritism is the principle that people automatically associate the in-group, or 'us,' with positive characteristics, and the out-group, or 'them,' with negative characteristics.")

State v. Fleming, 2020 ME 120, ¶ 21, 239 A.3d 648, 655. There is no direct evidence of racial bias or undue passion in the jury's hasty decision, and yet the underlying concern remains.

A decision without deliberation cannot be the basis of our faith in the justice system, and Mr. Peguero's conviction should be overturned.

IV. The State failed to prove beyond a reasonable doubt that Dalvin Peguero possessed scheduled drugs or acted as an accomplice to someone engaged in the sale of those drugs.

The State's case was centered on the allegations Mr. Aguero de Jesus was repeatedly bringing illegal drugs into Maine from Massachusetts. They introduced evidence he had repeatedly come up with individuals to sell drugs at the properties of Anthony Merrow. There was no evidence Mr. Peguero had ever visited the state except on this trip during which he was arrested, and aside from Mr. Merrow's improbable story of why he left the property that day with 76g of drugs in his car, there was no evidence at all that Mr. Peguero had taken any steps in furtherance of the crime of drug trafficking. For the State to

convict him of trafficking scheduled drugs found on Mr. Merrow's property or in Mr. Merrow's vehicle, the jury must determine there was proof beyond a reasonable doubt he constructively possessed those drugs or had acted as an accomplice to someone to either possess or sell those drugs. The evidence did not support this conclusion, and therefore the Trial Court should have granted Mr. Peguero's motion for Judgment of Acquittal, and this Court should overturn his conviction by the jury.

A. Standard of Review

When there is a challenge to the sufficiency of the evidence, this Court must "view the evidence in the light most favorable to the State to determine whether the factfinder could rationally find every element of the offense beyond a reasonable doubt." *State v. Woodard*, 2013 ME 36, ¶ 19, 68 A.3d 1250, 1257 (*quoting State v. Haag,* 2012 ME 94, ¶ 17, 48 A.3d 207). "A factfinder may draw all reasonable inferences from the circumstantial evidence, and it is not necessary for the factfinder to eliminate any possible alternative explanation of the evidence...." *State v. Woodard*, 2013 ME at ¶ 23, (*quoting State v. Deering,* 1998 ME 23, ¶ 13, 706 A.2d 582).

For a jury to "convict a defendant of a criminal offense, the evidence must be sufficient to give [the jury] a conscientious belief that the charge is almost certainly true." *Id.* A finding of fact is erroneous when: "(1) no

competent evidence supporting the finding exists in the record; (2) the fact-finder clearly misapprehended the meaning of the evidence; or (3) the force and effect of the evidence, taken as a whole, rationally persuades [the Court] to a certainty that the finding is so against the great preponderance of the believable evidence that it does not represent the truth and right of the case." *Wells v. Powers*, 2005 ME 62, ¶ 2, 873 A.2d 361. "The State always has the burden to prove each element of the offense charged beyond a reasonable doubt." Alexander, *Maine Jury Instruction Manual*, § 6-7 at 6-13 (2015 ed.).

B. There was insufficient evidence Mr. Peguero constructively possessed the drugs found in Mr. Merrow's camper or vehicle.

Mr. Peguero was not found in actual possession of the drugs found in Mr. Merrow's home or vehicle. Nonetheless, he can still be convicted of trafficking those drugs if the evidence supports that he constructively possessed them. This court has upheld convictions based on such a theory. *See generally State v. Anderson*, 2016 ME 183, ¶ 25, 152 A.3d 623; *State v. Ellis*, 502 A.2d 1037, 1040 (Me. 1985); *State v. Lambert*, 363 A.2d 707, 711 (Me. 1976). Constructive possession can only be established, though, by the State proving the defendant had "dominion and control" over particular property or goods. *State v. Ketchum*, 1997 ME 93, ¶ 13, 694 A.2d 916 (quotation marks omitted).

1. Drugs found in Mr. Merrow's vehicle.

Mr. Peguero was charged with constructively possessing 76g of fentanyl found in Mr. Merrow's vehicle. Mr. Merrow said that Mr. Peguero got into his phone and "grabbed" Mr. Merrow's phone and put an address in Blue Hill into the phone and said he shook his head yes, suggesting he would take Mr. Peguero there. Tr. D1 236-37. According to Mr. Merrow, Mr. Peguero then got out of the truck and "went towards the camper and I turned my head away and he came back, you know, real quick with an object in his hand." Tr. D1 239. Mr. Merrow described the object as "like a small radio, it was a small square, like a square radio." Id. He said Mr. Peguero "reached up back of my truck where I have a bunch of clothing all piled up on the back seat and he reached underneath and set it underneath the clothing." Id. Despite supposedly not knowing what was in the box, Mr. Merrow immediately told Special Agent Stephen Morrell where it was and who had put it there, Tr. D1 139-40.

The evidence of the possession of these drugs is completely substantiated by the one person who did have dominion and control over the vehicle – Anthony Merrow. The Court has stuck with its rule that "that a conviction may be sustained in a criminal case on the uncorroborated

evidence of an accomplice" but with the caveat "such testimony is always received with caution." *State v. Jewell*, 285 A.2d 847, 851 (Me. 1972)

> Ordinarily the problem of the credibility of an accomplice arises where he testifies for the State. Such testimony has inherent weaknesses because of its proclivity for untrustworthiness. Accomplices confessing their criminal activity with a defendant oftentimes are influenced in their testimony by such motives as malice toward the accused, fear, threats, promises or hopes of leniency or benefits from the prosecution.

Id. While Mr. Peguero does not concede he was any sort of accomplice to Mr. Merrow, *see section C infra,* the same concerns are at play here.

Mr. Merrow attributed the drugs found in his car to a passenger who did not have the English language skills to understand he was being blamed. Mr. Merrow's story is rife with incongruities, such as saying Mr. Peguero used his phone for the address, despite the fact Mr. Peguero had his phone in the truck with him, presumably set up to be read in Spanish. Tr. D1 150-51. He further said that Mr. Peguero asked him to go to an address in Blue Hill to sell drugs, despite not knowing where the address was, and whether Mr. Peguero possessed any drugs to sell.

While credibility is normally the concern of the jury, in the face of such uncertainties, the Court in response to Mr. Peguero's Rule 29 motion should have found there was insufficient evidence to support guilt beyond reasonable doubt for the charge of trafficking.

2. Drugs found in Mr. Merrow's camper.

The drugs found in the camper are even more tenuously connected to Mr. Peguero. There was *no* evidence Mr. Peguero had possessed any of those drugs, either to bring them into the camper, to hide them in the various locations where they were found, or to control them for distribution. Mr. Merrow was unaware anyone was even in the camper, despite being out washing his truck for two hours, until he said Mr. Peguero had come out and asked for a ride to Blue Hill. Tr. D1 234-35.

Taken as a whole, the State's evidence was insufficient to put the drugs under Mr. Peguero's "dominion and control."

3. Proximity to the drugs recovered is insufficient to support the element of possession.

This Court has shown in the past an unwillingness to rest solely on proximity at the time of arrest to establish the element of possession. Compare this case to *State v. Ketchum*, 1997 ME 93, 694 A.2d 916, where the Court ruled that the evidence of constructive possession of stolen property was insufficient to support a conviction of theft of that property. In *Ketchum*, the defendant was not only present in a vehicle in which stolen property was located but more stolen property was discovered in the residence in which he resided. Ketchum rented a room on the second floor and stolen property was

discovered in the living room of the first floor. Concerning the evidence found in the vehicle in which Ketchum was located, this Court held:

> [t]he evidence pertaining to Ketchum's constructive possession of the stolen property is insufficient. Ketchum's mere presence in Curtis's vehicle, where some of the stolen items were found, is insufficient evidence to establish Ketchum's constructive possession of those items... In this case, Ketchum was present in the vehicle but was not occupying the seat where the figurines were found and there was no evidence of any furtive, suspicious movement on his part at or just prior to the time of the stop.

Id. at ¶13.

Similarly, in *State v. Cook*, 2010 ME 81, 142 A.3d 313, this Court vacated a conviction because the State "presented no evidence showing that Cook had been present at the camp during the theft, nor did the State present any evidence that *on this occasion* Cook had assisted in the commission of the crime or even knew that this specific camp had been burglarized" even though Cook had been convicted of other crimes surrounding this incident. *Id.* ¶ 14 (emphasis in original). In *State v. Gray*, 2000 ME 145, 755 A.2d 540, the Court determined the fact a car was stolen 1.5 miles from where a co-defendant was arrested and recovered 1 mile from where Gray was arrested is insufficient to support a conviction that Gray stole the vehicle, either directly or as an accomplice. *Id* ¶ 27.

There needs to be a clear line between the evidence found and possession/ownership to support constructive possession. *See State v. Ellis*, 502 A.2d at 1040 (possession can be inferred as the defendant had previously lived in, and currently owned the house, where drugs were found in the dresser and closet that could have been his); *State v. Lambert*, 363 A.2d at 711 (Me. 1976) (constructive possession of drugs shown by defendant's knowledge of their presence coupled with his ability to maintain control over them or reduce them to his physical possession).

The State asked the jury to rely on its suspicions that Mr. Peguero has some possessive control over the drugs found, but the State's reliance on what it suspected the evidence suggested is not actual proof of possession. A "mere suspicion of guilt, however strong, is not sufficient to authorize a criminal conviction." *State v. Mosher*, 270 A.2d 451, 455 (Me. 1970) (*quoting State v. Schleicher*, 438 S.W.2d 258, 261 (Mo. 1969)). This level of dominion and control is not present in this case, and therefore the jury's conclusion Mr. Peguero possessed the drugs recovered in Mr. Merrow's property and vehicle must be set aside.

C. There was insufficient evidence Mr. Peguero was an accomplice to the acts of Mr. Arias de Jesus or Mr. Merrow.

The State offered the alternative theory Mr. Peguero was acting as an accomplice to Mr. Arias de Jesus, or perhaps even Mr. Merrow. However, they failed to offer any evidence of how he acted as such.

"A person may be guilty of a crime if he personally does the acts that constitute the crime or if he is an accomplice of another person who actually commits the crime." *State v. Hurd,* 2010 ME 118, ¶ 29, 8 A.3d 651. A person is guilty as an accomplice, if:

> [w]ith the intent of promoting or facilitating the commission of the crime, [he] solicits such other person to commit the crime, or aids or agrees to aid or attempts to aid such other person in planning or committing the crime. A person is an accomplice under this subsection to any crime the commission of which was a reasonably foreseeable consequence of [his] conduct.

17–A M.R.S. § 57(3)(A). This Court has interpreted § 57(3)(A) to provide two different bases for accomplice liability. *See State v. Linscott,* 520 A.2d 1067, 1069 (Me.1987) (stating that the two sentences of section 57(3)(A) are "to be read independently of [each other]"). "First, under sentence one, an accomplice could be liable for any primary crime committed by the principal if it was established that the alleged accomplice intended to promote or facilitate the commission of that crime." *State v. Armstrong,* 503 A.2d 701, 703 (Me.1986). Although neither "mere presence" at the scene of a crime, *State v.*

Libby, 435 A.2d 1075, 1077 (Me.1981), "nor passive acquiescence alone will suffice," *State v. Flint H.,* 544 A.2d 739, 741 (Me.1988), once presence at the scene is proven, any conduct by the defendant, however "slight [ ]," that "promot[es] or facilitat[es]" the commission of the crime will be enough to sustain a conviction based on accomplice liability. *State v. Chapman*, 2014 ME 69, ¶¶ 10-11, 92 A.3d 358, 362 (*citing Libby,* 435 A.2d at 1077).

The State failed to offer any evidence of what steps Mr. Peguero took to promote or facilitate the sale of drugs by Mr. Arias de Jesus. There was no testimony Mr. Peguero arranged for any sales. No evidence he made any deliveries or interacted with any people doing work for Mr. Arias de Jesus or others. No evidence he made any calls, sent any texts or even interacted on the suspected Facebook pages. The State essentially relied on his presence to be enough to make the connection for the jury. This was made clear by the State's statements in closing misstating accomplice liability law: "Even simply knowing what is going on and then remaining with them, just for the purpose of giving them advice, or encouragement or moral support in the continued commission of this offense, is enough to be an accomplice." Tr. 451-452. Encouragement or moral support is not promotion or facilitation. "There has to be some evidence that the defendant was present and **aided** in the

commission of the crime." *State v. Perry*, 2006 ME 76, ¶ 16, 899 A.2d 806, 813 (emphasis added). None existed here.

CONCLUSION

For the reasons stated above, Mr. Peguero's conviction should be vacated and the case against him should either be dismissed or returned for a new trial.

Respectfully submitted, this 22nd day of November 2023.

_____

Appellant Dalvin Peguero
By: James Mason, Bar # 4206
HANDELMAN & MASON LLC
16 Union Street
Brunswick, Maine 04011
(207) 721-9200
james@handelmanmason.com

CERTIFICATE OF SERVICE

As required by the Maine Appellate Rules of Procedure, I sent a native PDF version of this brief to the Clerk of this Court and the parties' counsel at the email addresses provided in the Board of Bar Overseers' Attorney Directory. I delivered 10 paper copies of this brief to this Court's Clerk's office via U.S. Mail, and I sent 2 copies to opposing counsel at the addresses provided by that same Directory.

CERTIFICATE OF COMPLIANCE

I hereby certify I will file the paper copies as required by M.R.App.P. 7A(i). I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

Dated: November 22, 2023

_____

HANDELMAN & MASON LLC
By: James Mason, Bar # 4206