

STATE OF MAINE

**SUPREME JUDICIAL COURT
Sitting as the Law Court**

STATE OF MAINE

No. PEN-21-256

v.

DERRIC MCLAIN

On Appeal From the Penobscot Unified Criminal Docket, Bangor

Brief of Appellant,
Derric McLain

Hunter J. Tzovarras
Bar No. 004429

88 Hammond Street, Ste 321 Bangor, Maine 04401
(207) 941-8443
hunter@bangorlegal.com

TABLE OF CONTENTS

PROCEDURAL HISTORY	1
STATEMENT OF FACTS	2
1. The Interrogation and Miranda Waiver.	2
2. The Vehicle Stop.	3
ISSUES ON APPEAL	5
SUMMARY OF ARGUMENTS	6
1. Derric invoked his right to counsel.	6
2. The officers prolonged the stop longer than necessary for the reasonable suspicion of the loud exhaust supporting the stop.	7
LAW & ARGUMENT	9
1. Derric never waived his Miranda rights and invoked his right to counsel.	9
2. Derric was subject to a de facto arrest lacking probable cause.	16
a. The loud exhaust.	16
b. The was no reasonable suspicion to stop the car for drug activity.	19
CONCLUSION	21
CERTIFICATE OF SERVICE	22

TABLE OF AUTHORITY

Davis v. United States, 512 US 452 (1994)	12
Edwards v. Arizona, 451 U.S. 471 (1981)	10
Florida v. Royer, 460 U.S. 491 (1983)	18
Illinois v. Caballes, 543 U.S. 405 (2005)	18
Miranda v. Arizona, 384 U.S. 436 (1966)	10
Terry v. Ohio, 392 U.S. 1 (1968)	19
State v. Blier, 2017 ME 103	17
State v. Connor, 2009 ME 91	17, 19
State v. Coombs, 704 A.2d 387 (Me. 1998)	9
State v. Holloway, 760 A. 2d 223 (Me. 2000)	10, 11
State v. Lockhart, 830 A.2d 433 (Me. 2003)	11, 13
State v. Sylvain, 814 A. 2d 984 (Me. 2003)	16
State v. White, 70 A.3d 1226 (Me. 2013)	17
United States v. Sokolow, 490 U.S. 1 (1989)	17
Whren v. United States, 517 U.S. 806 (1996)	16

I. PROCEDURAL HISTORY

On June 12, 2020, Derric McLain was charged with aggravated trafficking in a scheduled drug. On February 19, 2021, the court held a hearing on the motion to suppress on the two issues raised in this appeal: (1) the legality of the June 12, 2020 highway stop, and (2) Mr. McLain's waiver of Miranda rights during the interrogation. The court issued a written decision on April 1, 2021 denying the motion to suppress.

A jury trial was held on June 2-3, 2021. During the trial, the State admitted Mr. McLain's statements made during the June 12, 2020 interrogation and the evidence found as a result of the stop. The jury returned a guilty verdict. Sentencing was held on July 28, 2021 and the court sentenced Mr. McLain to 15 years to the Department of Corrections all but 8 years to serve and 4 years of probation. A notice of appeal was filed on August 5, 2021.

II. STATEMENT OF FACTS

1. The Interrogation and Miranda Waiver.

Derric McClain is arrested for trafficking in scheduled drugs on June 12, 2020. That same day, after being taken to the jail, the MDEA agents meet with Derric to interrogate him. The interrogation takes place inside the jail by the arresting agent, and a second agent. (Motion to Suppress Tr. 73-74.)

The agents read Derric his *Miranda* rights. (*Id.* at 76.). The agent tells Derric he has a right to a lawyer before or during any questioning, and that a lawyer will be provided to him if he can't afford one.

After completing the reading rights, the agent asks Derric if he wishes to answer questions.

Derric says: "depends on the questions." (Motion to Suppress State Ex. 1: Audio Recording); (Tr. at 76-77).

The officer says, "yes or no, do you want to answer questions?". (Tr. 77) (Ex.1)

Derric asks if there is a lawyer here. (Tr. 77) (Ex.1).

Both agents tell him no. (Tr. 77) (Ex.1).

The agents do not inquire any further about his request for a lawyer, and proceed to interrogate Derric for approximately 8 minutes without a lawyer. (Tr. 77-78).

2. The Vehicle Stop.

MDEA Agent McLaughlin received information that Calvin Vandyme was renting cars, driving out of state, and returning them the next day with lots of miles put on. This information came from a Confidential Informant working with MDEA. (Tr. at 11.)

On June 12, 2020, MDEA receives information from the informant that Calvin rented a vehicle the day before. (*Id.* at 12). Calvin is a known drug user and known to associate with drug traffickers (*Id.*). MDEA learns Calvin returned the vehicle on the 12th. (*Id.* at 14). The rental agency tells MDEA Calvin recently returned the vehicle that day and was with another male named Chris. (*Id.* at 14-15). Agent McLaughlin believes the person "Chris" is a known drug trafficker. (*Id.* at 15).

The Informant has no information about Calvin or the rented vehicle being involved in out of state drug purchases. (Tr. 21-22. Agent McLaughlin infers there is out-of-state drug

activity going on based on her training and experience. (Tr. 21-22).

Agent McLaughlin contacts Trooper Fiske to stop Calvin's car on its ride back up I-95. (*Id.* at 35). The Trooper is given the description of the vehicle and waits on the side I-95 for it. The Trooper notices the car he's looking for and hears a loud exhaust when it passes by him. (*Id.* at 37). The Trooper pulls the car over and tells the driver, Calvin, the reason for the stop is the loud exhaust. (*Id.* at 38-39). The passenger identifies himself as Kyle Bouchard.¹

The Trooper attempts to waste time until Agent McLaughlin can arrive. (*Id.* 39-40). The Trooper gets the driver's license, runs a license check in his cruiser, waits in his cruiser for a few minutes; he then does an exterior inspection of the car that all lasts about 15 minutes. The Trooper acknowledges he has no intention of writing a ticket for loud exhaust. (*Id.* 49-50). Agent McLaughlin arrives about 6 minutes after the Trooper is done with the inspection. (*Id.* at 39, 56-59).

¹ The passenger is later identified as the Appellant, Derric McLain.

The stop lasts approximately 22 minutes before Agent McLaughlin arrives.² (*Id.* 58-59). Soon after, it is agreed the agents developed probable cause to search the car and Derric.

² The Defendant does not contest that soon after Agent McLaughlin arrives the officers develop probable cause to search the vehicle and arrest Mr. McLain.

III. ISSUES ON APPEAL

1. Did the trial court err in finding Derric failed to invoke his right to counsel, even ambiguously, when immediately following the reading of *Miranda* rights, he asked the agents if a lawyer was present?

2. Did the trial court err in finding the the officers had a reasonable suspicion to stop the car for drug activity based on information a known drug user was renting cars, placing many miles on them, and returning them the next day?

3. Did the trial court err in finding the stop of the car was not a de facto arrest when the officer delayed the stop by approximately 20 minutes to allow an MDEA agent to arrive?

IV. SUMMARY OF ARGUMENTS

1. Derric invoked his right to counsel.

Derric McLain invoked, even ambiguously, his right to counsel after the agents read him *Miranda* warnings at the jail. The agents told Derric he had a right to a lawyer before or during questioning, and one would be provided to him if he could not afford it. After being told this, Derric asked if there is a lawyer here. He was told no, and the agents proceeded to interrogate him.

This Court has held an ambiguous invocation of the right to counsel before a valid *Miranda* waiver requires ceasing the interrogation. The agents did not follow that rule in this case, and trial court did not apply that standard. Therefore, the Court should reverse the ruling.

2. The officers prolonged the stop longer than necessary for the reasonable suspicion of the loud exhaust supporting the stop.

The only supportable reason for the stop of the car was the loud exhaust. The Trooper had no intention of writing a ticket for the loud exhaust. Instead, he delayed the stop for 20

minutes until the MDEA agent arrived. This is a de facto arrest unsupported by probable cause.

The officers lacked a reasonable suspicion or probable cause to detain the car and occupants based on drug activity. At best, the officers had a mere hunch the car would contain drugs. The only information known to the officers at the time was the driver (a known drug user) regularly rented vehicles, placed lots of miles on them, and returned them the next day. The officers had no information the driver was picking up drugs; no information as to where the rented vehicles were going; no information as to why he was renting vehicles; and no information drugs would be found in his personal vehicle stopped (not the rented vehicle already returned). This is a mere hunch and did not support the stop and detention.

V. LAW & ARGUMENT

The Court should suppress the search of the car Derric McLain was a passenger in on June 12, 2020 because it was the result of a de facto arrest lacking probable cause to extend and detain Derric following a traffic stop for a loud exhaust, and suppress all statements Derric made to law enforcement because he did not waive his *Miranda* rights and made request for counsel that was ignored.

1. Derric never waived his Miranda rights and invoked his right to counsel.

The trial court erred in not suppressing Derric's statements to law enforcement because prior to making a valid waiver Derric invoked his right to counsel.

“The State bears the burden of establishing a knowing, intelligent, and voluntary waiver of Miranda rights by a preponderance of the evidence.” *State v. Coombs*, 704 A.2d 387,391-92 (Me. 1998).

"We have previously held that a suppression judge's findings regarding Miranda issues are reviewed for clear error. Whether a defendant has validly waived her Miranda rights depends on

the factual circumstances of the interrogation. Although the trial court's resolution of those factual issues is reviewed for clear error, the ultimate issue of waiver has a uniquely legal dimension, which merits independent appellate review." *Coombs*, 704 A. 2d at 391. "[T]he legal determination merits de novo review...." *State v. Holloway*, 760 A. 2d 223, 228 (Me. 2000).

It is well-known that under *Miranda v. Arizona*, 384 U.S. 436 (1966), a suspect must be informed of his rights while in custody and before any questioning. The Court adopted this procedure in order to protect a suspect's Fifth Amendment right from the "inherently compelling pressures" of custodial interrogation. *Id.* at 467.

The Court, in *Edwards v. Arizona*, 451 U.S. 471, 484-485 (1981), established a per se rule that once a suspect is in custody and invokes the right to counsel, law enforcement may not further interrogate the suspect until counsel has been made available, unless the accused initiates further questioning.

The trial court applied the wrong standard in determining whether Derric invoked his rights to counsel. The trial court did

not apply the standard set forth by this Court when a suspect in custody makes a pre-waiver invocation of his right to counsel.

This Court has made clear that even an ambiguous invocation of the right to counsel pre-waiver requires ceasing the interrogation. “When an individual has not yet made a valid waiver of the Miranda rights and invokes, even ambiguously, the right to remain silent or the right to an attorney, he or she has invoked the Miranda rights.” *State v. Lockhart*, 830 A.2d 433, 443 (Me. 2003). Before an in-custody suspect waives his rights under Miranda even an ambiguous assertion of the right to counsel is sufficient to invoke and terminate the interrogation. *State v. Holloway*, 760 A.2d 223, 228 (Me. 2000).

Derric invoked, at least ambiguously, his right to counsel before waiving his Miranda rights.³

³ The standard after a valid waiver is different. *See Davis v. United States*, 512 U.S. 452, 459-62, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994) (once a suspect has knowingly and voluntarily waived the right to an attorney following a Miranda warning, police need only cease all questioning if the suspect subsequently unambiguously invokes the right, however, when invocation is ambiguous, police may inquire further to clarify whether the suspect is in fact invoking the right to an attorney).

"[T]o constitute a valid waiver, a defendant's conduct must amount to an intentional relinquishment or abandonment of a known right or privilege." *State v. Knights*, 482 A.2d at 440. An explicit oral or written statement is not an essential component of a valid waiver of Miranda rights. *State v. DeLong*, 505 A.2d at 808 (citing *North Carolina v. Butler*, 441 U.S. 369, 373, 375-76, 99 S.Ct. 1755, 1757, 1758-59, 60 L.Ed.2d 286 (1979)). The State bears the burden of establishing a knowing, intelligent, and voluntary waiver of Miranda rights by a preponderance of the evidence. *Coombs*, 704 A.2d 392.

After being read his rights, and before answering any questions, or agreeing to such, Derric asks if there is a lawyer here. By asking this question Derric was not relinquishing or abandoning his right to counsel, but rather invoking.

Asking if there is a lawyer present is a non-ambiguous invocation to the right to counsel. "Invocation of the Miranda right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney. *Davis v. United States*, 512 US 452, 459 (1994). The only way to construe the inquiry about a

lawyer being present is that Derric wishes to have a lawyer before or during questioning.

The officers tell Derric he has the right to a lawyer before questioning, and one can be provided to him. He then asks if there is a lawyer here. The only logical reason he would be making such an inquiry was to consult with, or have present, a lawyer before questioning—as the officers just told him was his right. This is an unambiguous invocation to the right to counsel and all questioning should have ceased.

At the very least, the inquiry as to whether there is a lawyer here is an ambiguous invocation to the right to counsel. The request is made in direct response to his rights to counsel and whether he wishes to answer questions. After telling Derric there is no lawyer present, the officers proceeded forward with interrogation. The officers should have ceased interrogation.

The Court in *Lockhart* provide a correct example of the correct procedure for such an ambiguous invocation:

Before the taping began, Lockhart told the detective, "It's very obvious I did this, I will readily admit to that, but should I talk to a lawyer?" The detective responded that he could not make that decision, but he would read Lockhart the Miranda rights again and Lockhart could decide. As Detective Pickering read each of the Miranda

rights out loud, Lockhart demonstrated his understanding of the rights by rephrasing them in his own words. Detective Pickering then asked Lockhart, "Now, having all those rights which I just explained to you in mind, do you wish to answer questions at this time?" Lockhart answered, "I will try to."

State v. Lockhart, 830 A. 2d 433, 440 (Me. 2003)

Detective Pickering properly responded that he could not decide whether Lockhart needed a lawyer, and then administered the Miranda warnings and asked Lockhart to demonstrate his understanding of each right. Pickering then asked Lockhart: "Now, having all those rights which I just explained to you in mind, do you wish to answer questions at this time?" and Lockhart answered: "I will try to." Lockhart's question as to whether Detective Pickering thought he needed a lawyer was just that, a question, and the detective properly answered it. Neither the question, nor the exchange between the detective and Lockhart that followed, served to invoke Lockhart's right to an attorney.

Id. 444.

The circumstances of this case are different from *Lockhart* because Derric was not asking the officers for advise on whether he needed a lawyer, but asking if there was one present. In *Lockhart*, the suspect asked if he needed a lawyer before Miranda was read. The detective answers that question by telling him he could not decide that for him. The detective then read Miranda and left it to Lockhart to decide after being

informed of his right. Lockhart decided he would answer questions.

In this case, Derric was made aware of his right, including his right to counsel before or during any questioning. Immediately afterwards, Derric asks if there was a lawyer present. This question is different in nature than the question in Lockhart as to "whether he needs a lawyer?" Unlike in *Lockhart*, Derric is not asking the detectives for advice, but asking if a lawyer is present. The detective tell him no and make no further inquiry into whether he wishes to proceed without a lawyer.

The circumstances of this case subvert the purpose of *Miranda* and protecting against the inherently compelling nature of in-custody interrogation. The advisement of rights is meaningless if a suspect inquires as to the right of counsel and is simply told no counsel is present. The officers should have at a minimum inquired further as to whether Derric wished to proceed without counsel. Proceeding without inquiry furthered the inherently compelling pressure of custodial interrogation.

Based on the above, the Court should find Derric invoked, even ambiguously, his right to counsel pre-waiver, and interrogation should have ceased. Therefore, all statements made by Derric should be suppressed.

2. **Derric was subject to a de facto arrest lacking probable cause.**

Trooper Fiske extended the traffic stop longer than necessary and subjected Derric to a de facto arrest.

The Court reviews the lower court's factual findings for clear error and conclusions of law de novo. "A challenge to the application of constitutional protections to historical facts is a matter of law that we review de novo." *State v. Sylvain*, 814 A. 2d 984, 987 (Me. 2003).

a. **The loud exhaust.**

The only legitimate basis for the stop was the loud exhaust from the car. While Trooper Fiske's true purpose in stopping the car was for the drug investigation, a pretext stop for the exhaust supports the stop and brief detention. *See Whren v. United States*, 517 U.S. 806 (1996). However, the Trooper delayed the stop until the MDEA agent could arrive twenty

minutes later and had no intention of writing a ticket for the loud exhaust.

"A stop is justified when an officer's assessment of the existence of specific and articulable facts indicating a possible violation of law or a public safety risk is objectively reasonable considering the totality of the circumstances." *State v. Connor*, 2009 ME 91, ¶ 10, 977 A.2d 1003, see also *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

"When an investigating officer's actions during the stop exceed what is necessary to dispel the suspicion that justified the stop, the detention may amount to an arrest and is lawful only if it is supported by probable cause." *State v. Blier*, 2017 ME 103 ¶ 8. "During an investigative detention, an officer may take action reasonable related in scope to the circumstances which justified the detention, but such a detention may rise to the level of a de facto arrest when an officer takes actions during the detention that exceed what is necessary to dispel the suspicion that led to the detention." *State v. White*, 70 A.3d 1226, 1230-31 (Me. 2013).

"It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." *Florida v. Royer*, 460 U.S. 491, 500 (1983).

While the Appellant recognizes the Trooper had a valid reason to stop the car for a loud exhaust that purpose was extended longer than necessary. Indeed, it was intentionally extended until the MDEA agent arrived.

"A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete the mission." *Illinois v. Caballes*, 543 U.S. 405, 407-8 (2005).

Over a twenty minute period, Trooper Fisk had no intention of issuing a ticket for the exhaust violation, and did nothing to complete that mission. He admittedly was holding the car and occupants for Agent McLaughlin to arrive.

b. The was no reasonable suspicion to stop the car for drug activity.

The trial court found Trooper Fiske's twenty minute detention was supported not by the loud exhaust, but based on the officers' reasonable and articulable suspicion of drug activity. The court erred in finding such a basis to support the stop and detention.

"A stop is justified when an officer's assessment of the existence of specific and articulable facts indicating a possible violation of law or a public safety risk is objectively reasonable considering the totality of the circumstances." *State v. Connor*, 2009 ME 91, ¶ 10, 977 A.2d 1003.

Officers may not justify investigatory stops based on mere "inarticulate hunches." *Terry*, 392 U.S. at 22. This is a mere hunch case.

The officers lacked reasonable suspicion the car or occupants were engaged in illegal drug activity. The only information known to the officers at the time was the driver, a known drug user, was renting vehicles for a day, putting several hundred miles on them, and returning them. The officers had no information the driver was selling or picking up drugs with

the vehicles, or was on a drug run. There was no information the driver was involved in drug trafficking.⁴

Moreover, the officers did not know whether the driver had a legitimate purpose for renting the vehicles and placing lots of miles on them. The agents did not know if Calvin worked or worked out of state. (Tr. 22). The agents had no information where the rented vehicles were traveling, or where the vehicles stopped (if anywhere).

Any inference that Calvin was transporting drugs is even further attenuated by the fact he was stopped in his personal vehicle and not the rented vehicle that raised the agents' hunch of illegal activity. The agents had no information that Calvin was transporting drugs in the rented vehicles and then transferring the illegal drugs into his personal vehicle.

Upholding the trial court's finding of reasonable suspicion in this case will allow law enforcement officers to stop any vehicle driven by known drug users based on a hunch they are transporting drugs.

⁴ On the day of the stop, the agents believed a known drug trafficker Chris was with the driver when he dropped off the rental car. This suspicion was quickly dispelled during the stop. Moreover, the agents had no basis to believe the driver was transporting drugs for "Chris".

Therefore the Court should suppress the detention and subsequent search of the car and Mr. McLain.

VI. CONCLUSION

For all the reasons set forth above, it is respectfully requested the Court (1) suppress Mr. McLain's statements to law enforcement, and (2) suppress the search of the vehicle and Mr. McLain.

Dated: December 11, 2021

Respectfully Submitted,

Hunter J. Tzovarras
Bar No. 004429
88 Hammond Street, Ste 321
Bangor, Maine 04401
(207) 941-8443
hunter@bangorlegal.com

CERTIFICATE OF SERVICE

I hereby certify the above brief was sent on December ____, 2021 to AAG Jason Horn, 97 Hammond Street, Bangor, ME 04401.

Hunter J. Tzovarras
Bar. No. 004429

STATE OF MAINE

**SUPREME JUDICIAL COURT
Sitting as the Law Court**

STATE OF MAINE

No. PEN-21-256

v.

DERRIC MCLAIN

On Appeal From the Penobscot Unified Criminal Docket, Bangor

APPENDIX

Hunter J. Tzovarras
Bar No. 004429

88 Hammond Street, Ste 321 Bangor, Maine 04401
(207) 941-8443
hunter@bangorlegal.com

TABLE OF CONTENTS

DOCKET RECORD	1
ORDER ON MOTION TO SUPPRESS	10
INDICTMENT	20
MOTION TO SUPPRESS	21

DOCKET RECORD

DOB: [REDACTED]/1984

Attorney: HUNTER TZOVARRAS
PELLETIER FAIRCLOTH BRACCIO LLC
88 HAMMOND STREET, SUITE 321

State's Attorney: MARIANNE LYNCH

Pro Se. BANGOR ME 04401
APPOINTED 05/21/2021

Filing Document: CRIMINAL COMPLAINT
Filing Date: 06/15/2020

Major Case Type: FELONY (CLASS A,B,C)

Charge(s)

1	AGGRAVATED TRAFFICKING OF SCHEDULED DRUGS	06/12/2020	EDINBURG
Seq 13783	17-A 1105-A(1)(M) Class A		
2	VIOLATING CONDITION OF RELEASE	06/12/2020	EDINBURG
Seq 9632	15 1092(1)(A) Class E		

Docket Events:

06/15/2020 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 06/15/2020

06/15/2020 Charge(s): 1,2

HEARING - INITIAL APPEARANCE SCHEDULE OTHER COURT ON 06/15/2020 at 01:00 p.m. in Room No. 11

BANSC

06/16/2020 Charge(s): 1,2

HEARING - INITIAL APPEARANCE HELD ON 06/15/2020

ANN MURRAY , JUSTICE

Reporter: MAUREEN WHITEHOUSE

Defendant Present in Court

LOD: Z SMITH ADA: JASON HORN

06/16/2020 Charge(s): 1,2

PLEA - NO ANSWER ENTERED BY DEFENDANT ON 06/15/2020

06/16/2020 BAIL BOND - \$22,000.00 SURETY BAIL BOND SET BY COURT ON 06/15/2020

ANN MURRAY , JUSTICE

\$22,000 SINGLE SURETY OR \$5,000 CASH BAIL WITH CONDITIONS: NO USE OR POSSESSION OF ALCOHOL, MARIJUANA, OR ILLEGAL DRUGS, SUBMIT TO RANDOM SEARCH AND TESTING; COMPLY WITH THE FOLLOWING CURFEW: 7PM TO 6AM, RESIDE AT 524 CENTRAL ST, MILLINOCKET.

06/16/2020 BAIL BOND - SURETY BAIL BOND COMMITMENT ISSUED ON 06/15/2020

06/16/2020 ORDER - COURT ORDER ENTERED ON 06/15/2020

ANN MURRAY , JUSTICE

BASED UPON THE INFORMATION CONTAINED IN THE DEFENDANT'S FINANCIAL AFFIDAVIT, MOTION FOR ASSIGNMENT OF COUNSEL IS GRANTED (WITHOUT A FORMAL MOTIONS). ATTY BETH SEANEY IS APPOINTED TO REPRESENT THE DEFENDANT.

06/16/2020 Party(s): DERRIC MCLAIN

ATTORNEY - APPOINTED ORDERED ON 06/15/2020

Attorney: BETH SEANEY

06/16/2020 Charge(s): 1,2

HEARING - DISPOSITIONAL CONFERENCE SCHEDULE OTHER COURT ON 08/10/2020 at 08:30 a.m.

BANSC

06/16/2020 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 06/16/2020

06/19/2020 BAIL BOND - \$22,000.00 SURETY BAIL BOND FILED ON 06/18/2020

Bail Amt: \$22,000 Surety Type: SINGLE Surety Value: \$38,100
County: PENOBSBOT County Book ID: 15571 Book Page: 221
Date Bailed: 06/18/2020 Prvdr Name: MISHA SPEED
Lien Issued: 06/18/2020 Rtrn Name: MISHA SPEED
Lien Discharged: 07/28/2021

07/01/2020 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 06/26/2020

Attorney: BETH SEANEY

07/07/2020 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 07/02/2020

WILLIAM R ANDERSON , JUSTICE

07/07/2020 ORDER - COURT ORDER ENTERED ON 07/02/2020

WILLIAM R ANDERSON , JUSTICE

BASED UPON THE INFORMATION CONTAINED IN THE DEFENDANT'S FINANCIAL AFFIDAVIT, MOTION FOR ASSIGNMENT OF COUNSEL IS GRANTED (WITHOUT A FORMAL MOTION). ATTY DAVID BATE IS APPOINTED TO REPRESENT THE DEFENDANT.

07/07/2020 Party(s): DERRIC MCLAIN
ATTORNEY - WITHDRAWN ORDERED ON 07/02/2020

Attorney: BETH SEANEY

07/07/2020 Party(s): DERRIC MCLAIN
ATTORNEY - APPOINTED ORDERED ON 07/02/2020

Attorney: DAVID BATE

07/23/2020 MOTION - MOTION FOR DISCOVERY FILED BY STATE ON 07/21/2020

MOTION FOR PROTECTIVE DISCOVERY ORDER

07/29/2020 Party(s): DERRIC MCLAIN
ATTORNEY - RETAINED ENTERED ON 07/28/2020

Attorney: HUNTER TZOVARRAS

08/05/2020 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 05/09/2020

ANDREW M MEAD , JUSTICE
COVID

08/10/2020 MOTION - MOTION FOR DISCOVERY GRANTED ON 07/29/2020

ANN MURRAY , JUSTICE
COPY TO PARTIES/COUNSEL

08/25/2020 Charge(s): 1,2
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 07/27/2020

08/27/2020 Charge(s): 1,2
SUPPLEMENTAL FILING - INDICTMENT FILED ON 08/27/2020

09/29/2020 Charge(s): 1,2
MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 09/23/2020
ANN MURRAY , JUSTICE
COPY TO PARTIES/COUNSEL

10/22/2020 MOTION - MOTION TO REVOKE BAIL FILED BY STATE ON 10/23/2020

10/22/2020 HEARING - MOTION TO REVOKE BAIL SCHEDULE OTHER COURT ON 10/23/2020 at 01:00 p.m. in Room No. 11

BANSC

10/29/2020 HEARING - MOTION TO REVOKE BAIL HELD ON 10/23/2020

WILLIAM R ANDERSON , JUSTICE

Attorney: HUNTER TZOVARRAS

DA: CHRISTY STILPHEN

Defendant Present in Court

101 GH0 1.42.30

10/29/2020 BAIL BOND - NO BAIL ALLOWED SET BY COURT ON 10/23/2020

10/29/2020 BAIL BOND - NO BAIL ALLOWED COMMITMENT ISSUED ON 10/23/2020

10/29/2020 HEARING - MOTION TO REVOKE BAIL SCHEDULE OTHER COURT ON 12/14/2020 at 08:30 a.m.

BANSC

12/10/2020 HEARING - MOTION TO REVOKE BAIL CONTINUED ON 12/10/2020

12/10/2020 HEARING - DISPOSITIONAL CONFERENCE SCHEDULE OTHER COURT ON 12/14/2020 at 09:40 a.m. in Room No. 3

BANSC

12/10/2020 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 12/10/2020

12/17/2020 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 12/17/2020

12/18/2020 HEARING - DISPOSITIONAL CONFERENCE HELD ON 12/14/2020

BRUCE JORDAN , JUDGE

Attorney: HUNTER TZOVARRAS

DA: JASON HORN

TELEPHONIC

SET CR-19-2560, 30266, 30334, 30417, 30595, 2020-1748, 1408 FOR A

MOTION TO REVOKE BAIL HEARING

12/18/2020 HEARING - MOTION TO REVOKE BAIL SCHEDULE OTHER COURT ON 12/29/2020 at 08:30 a.m. in Room No. 5

BANSC

12/18/2020 HEARING - MOTION TO REVOKE BAIL NOTICE SENT ELECTRONICALLY ON 12/18/2020

12/29/2020 HEARING - MOTION TO REVOKE BAIL HELD ON 12/29/2020

WILLIAM R ANDERSON , JUSTICE

Attorney: HUNTER TZOVARRAS

DA: JASON HORN Reporter: MAUREEN WHITEHOUSE

201

12/29/2020 MOTION - MOTION TO REVOKE BAIL GRANTED ON 12/29/2020

WILLIAM R ANDERSON , JUSTICE

COPY TO PARTIES/COUNSEL

02/11/2021 HEARING - MOTION TO SUPPRESS SCHEDULE OTHER COURT ON 02/19/2021 at 08:30 a.m. in Room No. 5

BANSC

02/11/2021 HEARING - MOTION TO SUPPRESS NOTICE SENT ELECTRONICALLY ON 02/11/2021

3

02/17/2021 MOTION - MOTION TO TERMINATE BAIL FILED BY THIRD PRTY ON 02/17/2021

02/19/2021 HEARING - MOTION TO SUPPRESS HELD ON 02/19/2021
WILLIAM R ANDERSON , JUSTICE
Attorney: HUNTER TZOVARRAS
DA: JASON HORN
Defendant Present in Court
101 8:48:44 WITNESSES SWORN; EXHIBITS MARKED OFFERED ADMITTED WO OBJ STATE PRESENTS; DEFENSE PRESENTS; STATE RESTS; DEFENSE RESTS;

02/19/2021 OTHER FILING - OTHER DOCUMENT FILED ON 02/18/2021

STATE'S EXHIBIT 1

02/19/2021 OTHER FILING - OTHER DOCUMENT FILED ON 02/18/2021

DEF'S EXHIBIT 1

02/22/2021 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 02/19/2021
WILLIAM R ANDERSON , JUSTICE
FILE WITH JUSTICE ANDERSON; OUT FILE AT RUTH'S DESK

02/26/2021 CASE STATUS - CASE FILE LOCATION ON 02/26/2021

OUT FILE AND DEF'S OTHER FILES IN FRONT OF RUTH'S DESK.

03/08/2021 CASE STATUS - CASE FILE RETURNED ON 03/08/2021

WITH DOCKET CALL FILES IN CHAMBERS

03/18/2021 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 03/18/2021

Attorney: HUNTER TZOVARRAS
APRIL DOCKET

03/18/2021 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 03/18/2021

Attorney: HUNTER TZOVARRAS

04/01/2021 MOTION - MOTION TO SUPPRESS DENIED ON 04/01/2021
WILLIAM R ANDERSON , JUSTICE
COPY TO PARTIES/COUNSEL

04/02/2021 MOTION - MOTION TO TERMINATE BAIL DENIED ON 03/30/2021
WILLIAM R ANDERSON , JUSTICE
COPY TO PARTIES/COUNSEL

04/03/2021 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 04/05/2021 at 01:25 p.m.

BANSC TELEPHONIC

04/06/2021 TRIAL - DOCKET CALL HELD ON 04/05/2021
WILLIAM R ANDERSON , JUSTICE
TELEPHONIC

04/27/2021 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 04/27/2021

04/27/2021 OTHER FILING - WITNESS LIST FILED BY STATE ON 04/27/2021

05/11/2021 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 05/18/2021

BANSC TELEPHONIC

05/19/2021 TRIAL - DOCKET CALL HELD ON 05/18/2021
ANN MURRAY , JUSTICE

Attorney: HUNTER TZOVARRAS
SET FOR PLEA/JURY SELECTION

05/19/2021 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 05/19/2021

05/19/2021 MOTION - MOTION FOR SANCTIONS FILED BY DEFENDANT ON 05/19/2021

DA: HUNTER TZOVARRAS
MOTION FOR DISCOVERY SANCTIONS

05/19/2021 HEARING - RULE 11 HEARING SCHEDULE OTHER COURT ON 05/20/2021 at 10:00 a.m. in Room No. 9

BANSC VIDEO

05/20/2021 MOTION - MOTION TO CONTINUE MOOT ON 05/18/2021

CASE ON MAY DOCKET CALL

05/20/2021 HEARING - MOTION FOR SANCTIONS SCHEDULE OTHER COURT ON 05/20/2021

BANSC

05/20/2021 HEARING - MOTION FOR SANCTIONS HELD ON 05/20/2021

ANN MURRAY , JUSTICE

Attorney: HUNTER TZOVARRAS

DA: JASON HORN Reporter: MAUREEN WHITEHOUSE

Defendant Present in Court

BY VIDEO

05/20/2021 MOTION - MOTION FOR SANCTIONS DENIED ON 05/20/2021

ANN MURRAY , JUSTICE

05/20/2021 HEARING - RULE 11 HEARING NOT HELD ON 05/20/2021

05/20/2021 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 05/21/2021 at 08:30 a.m. in Room No. 9

BANSC

05/22/2021 TRIAL - JURY TRIAL HELD ON 05/21/2021

ANN MURRAY , JUSTICE

Attorney: HUNTER TZOVARRAS

DA: JASON HORN Reporter: MAUREEN WHITEHOUSE

Defendant Present in Court

JURY SELECTED. TRIAL TO COMMENCE 6/1/2021.

05/22/2021 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 05/21/2021

05/22/2021 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 05/21/2021

ANN MURRAY , JUSTICE

COPY TO PARTIES/COUNSEL

05/22/2021 ORDER - ORDER APPOINTING COUNSEL ENTERED ON 05/21/2021

ANN MURRAY , JUSTICE

BASED UPON THE INFORMATION CONTAINED IN THE DEFENDANT'S FINANCIAL AFFIDAVIT, MOTION FOR ASSIGNMENT OF COUNSEL IS GRANTED. ATTY TZOVARRAS IS APPOINTED TO REPRESENT THE DEFENDANT.

05/22/2021 Party(s): DERRIC MCLAIN

ATTORNEY - APPOINTED ORDERED ON 05/21/2021

Attorney: HUNTER TZOVARRAS

05/25/2021 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 05/25/2021

5

DA: JASON HORN

05/25/2021 OTHER FILING - WITNESS LIST FILED BY STATE ON 05/25/2021

SECOND AMENDED WITNESSES FOR THE STATE

05/27/2021 Charge(s): 1,2

OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 05/27/2021

DA: JASON HORN

05/27/2021 MOTION - MOTION IN LIMINE FILED BY STATE ON 05/27/2021

DA: JASON HORN

05/27/2021 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 05/27/2021

Attorney: HUNTER TZOVARRAS

MOTION IN LIMINE, DEFENDANTS PROPOSED JURY INSTRUCTIONS

05/27/2021 JURY FILING - PROPOSED JURY INSTRUCTIONS FILED BY DEFENDANT ON 05/27/2021

Attorney: HUNTER TZOVARRAS

05/27/2021 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 05/27/2021

Attorney: HUNTER TZOVARRAS

MOTION IN LIMINE

06/01/2021 MOTION - MOTION IN LIMINE FILED BY STATE ON 06/01/2021

RE:GIGLIO DOCUMENT

06/02/2021 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 06/02/2021 at 08:30 a.m.

BANSC

06/02/2021 OTHER FILING - OTHER DOCUMENT FILED ON 06/01/2021

DA: JASON HORN

STATES PROPOSED INSTRUCTIONS

06/02/2021 Charge(s): 1,2

HEARING - ARRAIGNMENT HELD ON 06/02/2021

ANN MURRAY , JUSTICE

Attorney: HUNTER TZOVARRAS

DA: JASON HORN Reporter: MAUREEN WHITEHOUSE

Defendant Present in Court

DEFENDANT INFORMED OF CHARGES.

06/02/2021 Charge(s): 1,2

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 06/01/2021

06/03/2021 Charge(s): 1,2

TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 06/03/2021 at 08:30 a.m.

BANSC

06/03/2021 TRIAL - JURY TRIAL HELD ON 06/02/2021

ANN MURRAY , JUSTICE

Attorney: HUNTER TZOVARRAS

DA: JASON HORN Reporter: MAUREEN WHITEHOUSE

Defendant Present in Court

DAY ONE OF JURY TRIAL

06/03/2021 Charge(s): 1,2
TRIAL - JURY TRIAL HELD ON 06/03/2021
ANN MURRAY , JUSTICE
Attorney: HUNTER TZOVARRAS
DA: JASON HORN Reporter: MAUREEN WHITEHOUSE
Defendant Present in Court

DAY TWO OF JURY TRIAL - VERDICT RETURNED

07/17/2021 HEARING - SENTENCE HEARING SCHEDULE OTHER COURT ON 07/28/2021 at 08:30 a.m. in Room No. 5

BANSC

07/17/2021 HEARING - SENTENCE HEARING NOTICE SENT ELECTRONICALLY ON 07/17/2021

07/27/2021 Charge(s): 1
VERDICT - GUILTY RETURNED ON 06/03/2021

07/27/2021 Charge(s): 1,2
FINDING - GUILTY ENTERED BY COURT ON 06/03/2021
WILLIAM R ANDERSON , JUSTICE

07/27/2021 Charge(s): 1,2
FINDING - GUILTY CONT FOR SENTENCING ON 06/03/2021
WILLIAM R ANDERSON , JUSTICE

07/28/2021 Charge(s): 1
RULING - ORIGINAL ORDERED ON 07/28/2021
ANN MURRAY , JUSTICE

It is adjudged that the defendant is guilty of 1 AGGRAVATED TRAFFICKING OF SCHEDULED DRUGS 17-A 1105-A(1)(M) Class A as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 15 year(s).

It is ordered that all but 8 year(s) of the sentence as it relates to confinement be suspended.

It is ordered that the defendant be placed on a period of probation for a term of 4 year(s) upon conditions attached hereto and incorporated by reference herein.

Said Probation to commence after completion of the unsuspended term of imprisonment.

Charge #1: It is ordered that the defendant forfeit and pay the sum of \$ 400.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

10% GOV'T OPERATION SURCHARGE FUND \$ 40.00

\$ 35 VICTIMS COMPENSATION FUND

100% GENERAL FUND \$ 400.00

1% COUNTY JAIL \$ 4.00

5% GENERAL FUND ADDL 5% SURCHARGE \$ 20.00

3% MAINE CRIMINAL JUSTICE ACADEMY 2006 \$ 12.00

1% MSP COMPUTER CRIMES \$ 4.00

\$ 15 COURT MANAGEMENT SYS FEE FINE

TOTAL DUE: \$ 530.00.

Special Conditions of Probation:

1. refrain from all criminal conduct and violation of federal, state and local laws.
2. report to the probation officer immediately and thereafter as directed and within 48 hours of your release from jail.
3. answer all questions by your probation officer and permit the officer to visit you at your home or elsewhere.
4. obtain permission from your probation officer before changing your address or employment.
5. not leave the State of Maine without written permission of your probation officer.
6. maintain employment and devote yourself to an approved employment or education program.
8. identify yourself as a probationer to any law enforcement officer if you are arrested, detained or questioned for any reason and notify your probation officer of that contact within 24 hours.
9. waive extradition back to the State of Maine from any other place.

7

10. not own, possess or use any firearm or dangerous weapon if you have ever been convicted of a crime in any jurisdiction with a potential penalty of one year or more or any crime involving domestic violence or the use of a firearm or dangerous weapon.
11. pay to the Department of Corrections a supervision fee of \$ 10.00 per month.
- 12a. provide a DNA sample if convicted of applicable offense listed in 25 MRSA Section 1574.

submit to random search and testing for alcohol at the direction of a law enforcement officer.
submit to random search and testing for firearms at the direction of a law enforcement officer.

07/28/2021 Charge(s): 1
RULING - ORIGINAL ISSUED ON 07/28/2021
ANN MURRAY , JUSTICE
DEFENDANT ACKNOWLEDGES RECEIPT

07/28/2021 Charge(s): 2
RULING - ORIGINAL ORDERED ON 07/28/2021
ANN MURRAY , JUSTICE
It is adjudged that the defendant is guilty of 2 VIOLATING CONDITION OF RELEASE 15 1092(1)(A) Class E as charged and convicted.
The defendant is sentenced to the PENOBSCOT COUNTY JAIL for a term of 30 day(s).
\$ 20 VICTIMS COMPENSATION FUND
TOTAL DUE: \$ 20.00.

07/28/2021 Charge(s): 2
RULING - ORIGINAL ISSUED ON 07/28/2021
ANN MURRAY , JUSTICE
DEFENDANT ACKNOWLEDGES RECEIPT
07/28/2021 BAIL BOND - SURETY BAIL BOND BAIL RELEASED ON 07/28/2021

Date Bailed: 06/18/2020
Lien Issued: 06/18/2020

07/28/2021 BAIL BOND - SURETY BAIL BOND RELEASE ACKNOWLEDGED ON 07/28/2021

Date Bailed: 06/18/2020
Lien Issued: 06/18/2020

07/28/2021 Charge(s): 1
RULING - AUDIT REPORT FINE UPDATED ON 07/28/2021

Charge: 1 Previous value(s) => Base Fine: 0 Current value(s) => Base Fine: 400

07/28/2021 OTHER FILING - FINE PAYMENT SCHEDULE ORDERED ON 07/28/2021

INSTALLMENT PYMTS: 0.00; WEEKLY:F; BI-WEEKLY:F; MONTHLY:F; BI-MONTHLY:F; PYMT BEGIN: AT
0000; PYMT IN FULL:20271120 AT 0000; THRU PPO:F; PYMT DUE AMT: 20.00; PMT DUE:20280320 AT 0000;
OTHER:

07/30/2021 BAIL BOND - SURETY BAIL BOND BAIL LIEN DISCHARGED ON 07/28/2021

Date Bailed: 06/18/2020
Lien Issued: 06/18/2020

08/13/2021 HEARING - SENTENCE HEARING HELD ON 07/28/2021

ANN MURRAY , JUSTICE
Attorney: HUNTER TZOVARRAS

DA: JASON HORN
202/8:50:06

08/13/2021 MOTION - MOTION IN LIMINE MOOT ON 07/28/2021

08/13/2021 MOTION - MOTION IN LIMINE MOOT ON 07/28/2021

08/13/2021 MOTION - MOTION IN LIMINE MOOT ON 07/28/2021

08/13/2021 MOTION - MOTION IN LIMINE MOOT ON 07/28/2021

08/13/2021 OTHER FILING - SENTENCING MEMORANDUM FILED BY DEFENDANT ON 07/27/2021

08/13/2021 APPEAL - NOTICE OF APPEAL FILED ON 08/05/2021

08/13/2021 APPEAL - NOTICE OF APPEAL SENT TO REPORTER/ER ON 08/13/2021

08/13/2021 APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 08/13/2021
SCANNED TO OFFICE OF TRANSCRIPT PRODUCTION AND OCR MAUREEN WHITEHOUSE

08/13/2021 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 08/05/2021

08/13/2021 ORDER - TRANSCRIPT ORDER ENTERED ON 08/05/2021
AT STATE'S EXPENSE

08/13/2021 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 08/13/2021

09/01/2021 LETTER - FROM NON-PARTY FILED ON 08/23/2021
WILLIAM R ANDERSON , JUSTICE

09/08/2021 APPEAL - RECORD ON APPEAL DUE IN LAW COURT ON 09/09/2021
NOTICE OF DOCKETING IN THE LAW COURT (CRIMINIAL PROCEEDINGS) FILED ASSIGNING DOCKET NUMBER
PEN-21-256

09/08/2021 APPEAL - RECORD ON APPEAL SENT TO LAW COURT ON 09/08/2021

VIA UPS SHIPPING.

Receipts

09/14/2021	Case Payment	\$99.92	CK	paid.
10/22/2021	Case Payment	\$175.00	CK	paid.
11/08/2021	Case Payment	\$12.50	CK	paid.
12/08/2021	Case Payment	\$35.00	CK	paid.

FINE PAYMENT SCHEDULE

Execution/payment stayed to pay in full by 11/20/2027 or warrant to issue.

A TRUE COPY

ATTEST: _____
Clerk

STATE OF MAINE
PENOBSCOT, ss

UNIFIED CRIMINAL DOCKET
DOCKET NO. PENCDCR-20-01748

STATE OF MAINE,)
)
 v.)
)
 DERRIC MCLAIN,)
)
 Defendant.)

ORDER

Defendant Derric McLain has been indicted on one count of aggravated trafficking in scheduled drugs (Class A) and one count of violation of conditions of release (Class E). Before the Court is Defendant’s Motion to Suppress evidence obtained during a traffic stop on June 12, 2020. Defendant argues law enforcement lacked reasonable articulable suspicion or probable cause to stop and prolong the detention of Defendant. Defendant also moves to suppress statements made to law enforcement subsequent to his arrest because he did not waive his Miranda rights and made a request for counsel. A hearing on the motion was held by video conferencing software on February 19, 2021. The Court heard testimony from Special Agents Patricia McLaughlin and Paul Gauvin of the Maine Drug Enforcement Agency (“MDEA”), and Cpl. Thomas Fiske of the Maine State Police.

I. SUPPRESSION OF EVIDENCE

a. Facts

On June 11, 2020 MDEA agent Patricia McLaughlin received information from a confidential source, Rent-a-Wreck employee in Hampden, Maine, that Calvin Vandine of East Millinocket, had been renting vehicles in an unusual pattern. According to the source, Mr. Vandine rented a vehicle on a weekly basis, kept it for 24-hours, and returned the vehicle with several hundred miles on it. Mr. Vandine would leave his personal car at the store location while he rented a vehicle. On the morning of June 11, 2020, Mr. Vandine rented a Ford 150 pickup truck and was

expected to return it the following day. The source suspected that Mr. Vandine may be involved in moving drugs in and out of the state.

Agent McLaughlin was familiar with Mr. Vandine through her work with MDEA. She knew that he was a drug user who associated with known drug traffickers. She also recalled that Vandine had recently experienced a non-fatal drug overdose on heroin in 2018. Agent McLaughlin confirmed this information by conducting a search in the police database, which revealed Vandine has had post 2018 encounters with local law enforcement for drug related offenses. Agent McLaughlin had no knowledge that Mr. Vandine was ever involved in drug trafficking.

On June 11, Agent McLaughlin contacted the Chief of police in East Millinocket and learned that Mr. Vandine's personal car was a gray Pontiac G6 and was given the license plate number. Agent McLaughlin requested that East Millinocket Police stop Vandine's vehicle if they encountered it. She also had East Millinocket police drive by Vandine's house to see if his Pontiac was in the driveway and it was not.

The following day Agent McLaughlin asked East Millinocket police to drive by Vandine's house again. When she learned his car was not there, she sent Agent Gauvin, also with MDEA, to the Rent-a-Wreck in Hampden. Mr. Vandine's car was not at Rent-a-Wreck. An employee told Agent Gauvin that Mr. Vandine and another male by the name of Kris left just minutes before he arrived. The employee gave a description of the male accompanying Mr. Vandine. Based on the name and description, Agent McLaughlin assumed that the other male was Kristopher Hersey. Agent McLaughlin was aware of intelligence that Mr. Hersey was a suspected drug trafficker from the East Millinocket area who has had multiple drug-involved contacts with the police. She then formed her own conclusion, based on her twelve years of experience as a law enforcement officer and drug enforcement agent, based on her knowledge of Mr. Vandine and Mr. Hersey, and the

unusual pattern of renting cars, that Mr. Vandine was likely transporting drugs in and out of the state. Agent McLaughlin did not have any evidence of drugs at that time.

Agent McLaughlin then contacted Cpl. Thomas Fiske of the Maine State Police and asked him to look for, stop, and hold the Pontiac driven by Mr. Vandine until MDEA could get there to conduct its investigation. The only information Fiske received was that MDEA had drug intel related to the vehicle. Meanwhile, Agent Gauvin left Rent-a-Wreck and located the Pontiac shortly thereafter. Agent Gauvin followed the vehicle in his unmarked car until Cpl. Fiske also located the vehicle and initiated a traffic stop close to interstate mile marker 212 in Edinburg. Agent Gauvin pulled over behind Cpl. Fiske's cruiser. Cpl. Fiske had also noticed the car's exhaust was unusually loud and although he had to address that with the driver, the reason he pulled the vehicle over was because MDEA asked him to. Without the request from MDEA, he may or may not have initiated a stop solely for the loud exhaust.

The encounter that followed the stop was recorded on the cruiser dashboard camera (Def.'s Ex. 1.) Cpl. Fiske exited his cruiser, approached the car on the passenger side, and asked the occupants several routine questions. The driver identified himself as Calvin Vandine and the passenger identified himself as a Kyle Bouchard. About 3 ½ minutes later, Cpl. Fiske returned to his cruiser, called Agent Gauvin, and completed a check of Vandine's license, which revealed no warrants or suspensions.

Cpl. Fiske then called Trooper Dube who was on route with the K-9. Trooper Dube told Cpl. Fiske it would take about 20 minutes for the drug sniffing dog to arrive on the scene, to which Cpl. Fiske responded, "I'll keep 'em occupied." Approximately 12 minutes into the stop Cpl. Fiske approached the car again and conducted a mechanical inspection of the vehicle, including a test of the lights, blinkers, horn, and wipers, which lasted 3 minutes. Cpl. Fiske returned to his cruiser

and remained there until Agent McLaughlin arrived on the scene nearly 22 minutes after the initial stop. Cpl. Fiske saw no signs of drug use or possession during the portion of the stop that he conducted and stated it was normal course of conduct to wait for MDEA to arrive on scene in this situation.

Agent Gauvin remained in his car until Agent McLaughlin arrived as Agent McLaughlin was leading the investigation and MDEA agents work in pairs. When Agent McLaughlin arrived, she and Gauvin approached the vehicle and Agent McLaughlin recognized the passenger to be Defendant Derric McLain, not Kyle Bouchard. At that time, she believed he had given Cpl. Fiske a false name. Agent McLaughlin was familiar with Derric McLain and was aware of the existence of a warrant for his arrest for the offense of drug trafficking. She also knew there were other warrants for his arrest and that he was out on bail with search conditions. Both occupants were instructed to get out of the car and were patted down for weapons. When Defendant McLain exited the vehicle, Agent Gauvin noticed a loaded hypodermic needle in the console next to the passenger seat. Agent Gauvin also found a container the size of a battery in Defendant McLain's pocket which appeared to contain drugs. At the time, he believed the substance was fentanyl, but later tested positive to be a hallucinogenic called MDA. The agents then searched the car and discovered 94 grams of fentanyl in the back seat. The occupants were arrested and brought to the Penobscot County Jail for questioning. The stop lasted an additional 6 or 7 minutes after Agent McLaughlin arrived. Altogether, the stop lasted approximately 28 minutes.

b. Analysis

In order to justify a brief investigatory stop of a motor vehicle, "a police officer must have an articulable suspicion that criminal conduct or a civil violation has occurred, is occurring, or is about to occur" and the suspicion must be reasonably held under the existing circumstances. *State*

v. Brown, 1997 ME 90, ¶ 5, 694 A.2d 453. To justify such a stop, “the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968). The police can conduct a warrantless search of a readily mobile motor vehicle if the officer has probable cause to believe that it contains items subject to seizure. *Carroll v. United States*, 267 U.S. 132, 149 (1925). “Probable cause exists when the officers’ personal knowledge of facts and circumstances, in combination with any reasonably trustworthy information conveyed to them, would warrant a prudent person to believe that the area to be searched holds evidence of a crime.” *State v. Melvin*, 2008 ME 118, ¶ 15, 955 A.2d 245 (citation omitted). There must be a fair probability that a crime has or is being committed and evidence of the crime will be located in a particular place. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Because a stop and frisk is more limited in scope than a full-blown search, the stop and frisk standard is less rigid than the probable cause standard. *Terry*, 392 U.S. at 20.

Cpl. Fiske stopped the vehicle in which Defendant was a passenger based on Agent McLaughlin’s request, which was based on her belief that the vehicle contained illegal drugs. Needless to say, the facts and circumstances known by Agent McLaughlin are to be imputed to Cpl. Fiske. *See State v. Carr*, 1997 ME 221, ¶ 7, 704 A.2d 353 (“Reasonable and articulable suspicion to conduct an investigatory stop can rest on the collective knowledge of the police”) (citation omitted). Her articulable suspicion that the occupants had returned with drugs after returning from a trip during which they purchased drugs, is objectively reasonable. She was aware that a person was routinely traveling the substantial distance from Millinocket to Hampden to rent a vehicle to take a brief trip of a few hundred miles. She was aware that the person renting the vehicle was a user of illegal drugs who had survived an overdose in 2018, and who had had

multiple encounters with the police that were drug related. Furthermore, the person who she suspected was the passenger was, according to police intelligence, a drug trafficker and Agent McLaughlin was aware that traffickers frequently had users drive for them when obtaining drugs.

At some point, a stop and brief detention can ripen into a seizure requiring probable cause to justify the continued seizure. Here, the stop of Defendant was a stop based on a suspicion that the vehicle contained illegal drugs, supported by a reasonable articulable suspicion. ¹ An investigative stop is not subject to rigid time limits, but at some point, an extended stop that has not developed probable cause can no longer be justified as reasonable. ²

In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant....A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing.

United States v. Sharpe, 470 U.S. 675, 686 (1985).

Having noticed that the car's exhaust was excessively loud as it went by, Cpl. Fiske then examined the car for other defect violations, after he stopped it at McLaughlin's request. He approached the car, obtained routine information from the occupants, communicated with dispatch, and electronically received information relevant to the stop. He then checked the car for defects because he had heard the loud exhaust. He completed this activity approximately 13 to 15 minutes after the initial stop with McLaughlin arriving within 6 to 8 minutes thereafter. Once

¹ The result in this case could be different if this were only a loud exhaust stop.

² The fact that the Court is deciding this motion based on the reasonableness of extending the *Terry* investigative stop to await McLaughlin's arrival does not mean that it is rejecting a claim that probable cause existed from the very beginning which would justify a seizure equal to an arrest, in which case the wait for McLaughlin would be a nonissue.

Agent McLaughlin arrived, she realized Bouchard was McLain³ and the officers saw what appeared to be a hypodermic needle in the car and discovered a small container of drugs in McLain's pocket, providing ample probable cause for a car search. The question then becomes whether this delay was reasonable under the circumstances. The Court observes that Cpl. Fiske's interaction with the occupants, confirmation of information and inspection of the vehicle was entirely appropriate. Having stopped the car for another reason but observing defects in the car before and during the stop, he was entitled to investigate the existence of motor vehicle defects. The question then is narrowed to whether the additional 6 to 8 minute delay waiting for McLaughlin to arrive was reasonable. The State maintains that it was necessary to wait for a drug agent to arrive because Cpl. Fiske, as he put it, had "no intel." Against this it could be argued that agent Gauvin was on the scene from the beginning, so it was unreasonable to wait additional minutes for the arrival of another drug agent. The Court finds however, it was reasonable to wait this short period of time because it was Agent McLaughlin's case, she was aware of the investigative facts and she was familiar with the Millinocket Medway area and many of its residents. It would be advantageous for the officer with the most knowledge of the case to be able to interact with the suspected drug traffickers. The reasonableness of awaiting her arrival is reinforced by recognizing that it is very likely that neither law enforcement officer would have recognized that the person identifying himself as Bouchard was in fact Derric McLain, McLain's deception would have rewarded him with his continued freedom because in all likelihood the then existing warrant for McLain's arrest for aggravated trafficking would not have been executed.

³ It is not clear how "Kris" turned out to be Derric McLain. The fact that there could be multiple theories and the occurrence remains unexplained is not fatal to the Court's other findings supporting this result.

The Court became suspicious upon hearing testimony that while waiting on the roadside after stopping a motorist, the stopping officer indicated he would keep the driver occupied while awaiting the arrival of a drug sniffing dog and a drug investigator.⁴ But here, the alleged inspection violations were not the reason for the stop, but investigation of the defective motor vehicle conditions gave the police an independent reason to detain the driver while examining the conditions, thereby legally justifying the early portion of the temporary seizure. The Court has no reason to disbelieve Cpl. Fiske's account that in fact the car had a loud exhaust and there were other defects that warranted examination. Although the ulterior motives of the police in detaining suspects for minor violations was once part of a pretext stop analysis, it no longer is, in light of *Whren v. United States*, 517 U.S. 806 (1996), in which the U.S. Supreme Court clearly stated that an officer's ulterior motives do not invalidate the officer's conduct that is justifiable on the basis of probable cause to believe that a violation of the law has occurred. *Id.* at 812-13. The Law Court has interpreted *Whren* as also applying to a stop based on a reasonable articulable suspicion. *State v. Taylor*, 1997 ME 81, ¶ 9 n.6, 694 A.2d 907. Because it was legitimate for Cpl. Fiske to examine the car's defective conditions, the period of time in which he conducted the examination is not considered in computing the length of time the defendant was held awaiting Agent McLaughlin's arrival only, shortening the period significantly.

II. SUPPRESSION OF THE STATEMENTS

a. Facts

An officer arrested Mr. McLain after discovering illegal drugs on his person and in the car and properly read a *Miranda* warning to him. After the officer read the last section of the warning, by saying, "having all those rights which I explained to you in mind, do you wish to answer

⁴ Indeed, if this were a stop for a minor traffic infraction only, it is unlikely that the State would prevail on the motion to suppress.

questions at this time?" Mr. McLain responded by saying that "depends on the questions." The officer indicated that he understood that it depended but told him that's why he read him his rights and asked him, "yes or no do you want to answer questions?" Mr. McLain then asked if there was a lawyer there and the officer responded no. The officer then said, "you know why you are here, for trafficking in scheduled drugs plus the six warrants." The defendant said yes and asked about the warrants. The officer then indicated he didn't know what the warrants were for and a discussion ensued that constituted interrogation.

b. Analysis


A *Miranda* waiver has two distinct requirements:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the 'totality of the circumstances surrounding the interrogation' reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Moran v. Babine, 475 U.S. 412, 421 (1986). Applying this standard to Mr. McLain's statements, the Court finds that he waived his rights when speaking to the officer. His comment "that depends" and his question "is there a lawyer here?" reveal that he understood that he could answer some questions and not others, and after being told no lawyer was present, he could choose to answer questions or not. The officer used no trickery or deceit and the defendant willingly engaged in conversation with the officer, curious about the six arrest warrants. The "it depends" response is what could be called a selective waiver and the logical way the officer could discern whether the defendant chose to ask a question was to answer one. In similar "it depends" circumstances, such a waiver was upheld in *United States v. Eaton*, 890 F.2d 511, 513 (1st Cir. 1989).

Based on the above analysis, Defendant's Motion to Suppress evidence and statements is **DENIED.**

DATE: 3/1/21



William Anderson,
JUSTICE SUPERIOR COURT

STATE OF MAINE
PENOBSCOT, ss

PENOBSCOT COURT
LOCATION: BANGOR
DOCKET NO: 20-1748

STATE OF MAINE

INDICTMENT

v.

DERRIC M. MCLAIN

DOB: [REDACTED]/1984

SIN: MEY009460

[REDACTED]
G: Male Ht: 6'2" Wt: 205 H: Blonde
E: Hazel R: White

**COUNT 1: AGGRAVATED TRAFFICKING IN
SCHEDULED DRUGS
COUNT 2: VIOLATION OF CONDITION OF
RELEASE**

THE GRAND JURY CHARGES:

COUNT 1:

**17-A M.R.S. §1105-A(1)(M)
Seq No: 13783
AGGRAVATED TRAFFICKING IN SCHEDULED
DRUGS
CLASS A
ATNCTN 368327B001**

On or about June 12, 2020, in Edinburg, Penobscot County, Maine, **DERRIC M. MCLAIN**, did intentionally or knowingly traffick in what he knew or believed to be a scheduled drug, which was in fact fentanyl powder, a schedule W drug. At the time of the offense, **DERRIC M. MCLAIN** trafficked in fentanyl powder in a quantity of 6 grams or more or 270 or more individual bags, folds, packages, envelopes or containers of any kind containing fentanyl powder.

COUNT 2:

**15 M.R.S. §1092(1)(A)
Seq No: 9632
VIOLATION OF CONDITION OF RELEASE
CLASS E
ATNCTN 368327B002**

On or about June 12, 2020, in Edinburg, Penobscot County, Maine, **DERRIC M. MCLAIN**, having been granted pre-conviction bail on condition that he must not commit a criminal act; and not use or possess alcohol or illegal drugs, did violate that condition.

DATED: August 27, 2020

A TRUE BILL


FOREPERSON

OFFICER: Paul Gauvin
DEPT: Maine Drug Enforcement Agency (Inc: 20D001136)
PROS: Jason Horn JW#: 20-2672

20

STATE OF MAINE
PENOBSCOT

UNIFIED CRIMINAL DOCKET
BANGOR

STATE OF MAINE

)
)
)
)
)

DOCKET NO. CR-20-1748

v.

DERRIC MCLAIN

MOTION TO SUPPRESS

Derric McLain moves to suppress the following evidence under the state and federal constitution: (1) the search of the car Mr. McLain was a passenger in on June 12, 2020 because it was the result of a de facto arrest lacking probable cause to extend and detain Mr. McLain following a traffic stop, and (2) all statements made to law enforcement by Mr. McLain on June 12, 2020 because he did not waive his Miranda rights and made request for counsel.

1. De Facto Arrest.

"When an investigating officer's actions during the stop exceed what is necessary to dispel the suspicion that justified the stop, the detention may amount to an arrest and is lawful only if it is supported by probable cause." *State v. Blier*, 2017 ME 103 ¶ 8. "During an investigative detention, an officer may take action reasonable related in scope to the circumstances

which justified the detention, but such a detention may rise to the level of a de facto arrest when an officer takes actions during the detention that exceed what is necessary to dispel the suspicion that led to the detention." *State v. White*, 70 A.3d 1226, 1230-31 (Me. 2013).

"It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." *Florida v. Royer*, 460 U.S. 491, 500 (1983).

The Supreme Court has indicated that a traffic stop seizure becomes unlawful when it is prolonged longer than necessary to complete the traffic infraction. "A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete the mission." *Illinois v. Caballes*, 543 U.S. 405, 407-8 (2005).

"[I]n strict accordance with Terry and its progeny, questioning during a traffic stop must be limited to the purpose of the traffic stop and thus may not be extended to the subject of drugs [or anything else]." *W. LaFave, Wayne R., Search and Seizure*, § 9.3(b), p. 391 (4th ed. 2004).

The traffic stop in this case was prolonged longer than necessary and exceeded the scope of the stop. The car Mr. McLain was riding in was stopped for a loud exhaust. The officer making the stop took no steps to cite the driver for the loud exhaust, but rather held the car for approximately 20 minutes for the MDEA to arrive at which time Mr. McLain and the driver were ordered out of the car. There was no reasonable suspicion or probable cause to detain the car and Mr. McLain for 20 plus minutes on a stop for a loud exhaust and therefore the subsequent search of Mr. McLain and the car are unlawful.

2. Miranda Waiver.

“The State bears the burden of establishing a knowing, intelligent, and voluntary waiver of Miranda rights by a preponderance of the evidence.” *State v. Coombs*, 704 A.2d 387,391-92 (Me. 1998).

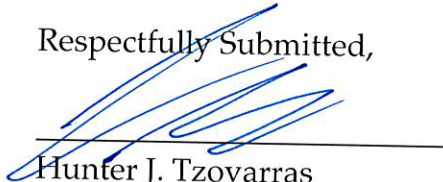
Before an in-custody suspect waives his rights under Miranda even an ambiguous assertion of the right to counsel is sufficient to invoke and terminate the interrogation. *State v. Holloway*, 760 A.2d 223, 228 (Me. 2000). “When an individual has not yet made a valid waiver of the Miranda rights and invokes, even ambiguously, the right to remain silent or the

right to an attorney, he or she has invoked the Miranda rights." *State v. Lockhart*, 830 A.2d 433, 443 (Me. 2003)

Here, Mr. McLain was read Miranda and when asked if he waived indicated it "depends on the questions". He then asked if a lawyer was here now, and told no. These statements are at a minimum an invocation of his rights and therefore all subsequent questioning is unlawful and should be suppressed.

Dated: December 16, 2020

Respectfully Submitted,



Hunter J. Tzovarras

Bar No. 004429

88 Hammond Street, Ste 321

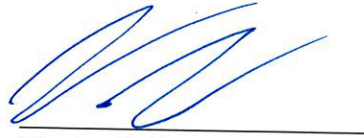
Bangor, Maine 04401

(207) 941-8443

hunter@bangorlegal.com

CERTIFICATION OF SERVICE

I hereby certify that on December 16, 2020 I sent a copy of the above Motion to: AAG Jason Horn, 97 Hammond Street, Bangor, ME 04401.



Hunter J. Tzovarras
Bar No. 4429

CERTIFICATE OF SERVICE

I hereby certify the above APPENDIX was sent on December
____, 2021 to AAG Jason Horn, 97 Hammond Street, Bangor,
ME 04401.

Hunter J. Tzovarras
Bar. No. 004429