

**STATE OF MAINE**

**SUPREME JUDICIAL COURT  
Sitting as Law Court**

No. PEN-24-36

STATE OF MAINE

v.

RICHARD KELLEY

On Appeal from the Penobscot Unified Criminal Docket, Bangor

**BRIEF OF APPELLANT,  
RICHARD KELLEY**

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## **I. PROCEDURAL HISTORY**

On May 26, 2021, Richard Kelley was Indicted on the charge of Aggravated Trafficking. He entered a not guilty plea.

On March 29, 2022, Mr. Kelley filed a motion to suppress the warrants authorizing the attachment of an electronic tracking device on a Dodge Challenger that Mr. Kelley was a regular passenger in and stored his property.

On December 20, 2022, a hearing was held on the motion to suppress. Mr. Kelley testified at the hearing as to his connection to the Dodge Challenger, including being a regular passenger in the vehicle and storing his property in it. After Mr. Kelley's testimony, the State conceded he had standing to challenge the warrants and searches.

MR. HORN: Based on the limited scope of this presentation, no cross, Your Honor. And based on those facts, we will concede for the purposes of the motion to suppress that he has a reasonable expectation of privacy.

THE COURT: Okay. That stipulation is noted.

(Tr. p. 12).

Following the hearing, the court issued a written decision.

The Court finds at the outset that Kelley does not have standing to challenge the warrants that authorized the searches. For the same reason, Kelley cannot challenge the out of state searches for having occurred outside of Maine. Kelley's Motion to Suppress must therefore be DENIED.

(Order Motion to Suppress 1/18/2023).

Mr. Kelley filed a motion to reconsider the decision on January 29, 2023. The court issued a decision on the motion on April 18, 2023 denying the motion for reconsideration.

On January 5, 2024, Mr. Kelley entered a conditional guilty plea. The conditional plea preserved the right to appeal the court's decision denying the motion to suppress and motion for reconsideration. The court imposed a sentence of 10 years all but 5 years and 1 day suspended and 4 years of probation. The sentence was stayed pending the outcome of this appeal.

## **II. STATEMENT OF FACTS**

### **1. The Search Warrants for the Dodge Challenger.**

On November 24, 2020, MDEA applied for a warrant to attach an electronic tracking device to a Dodge Charger owned by Keith Wedge. (Motion to Suppress Exhibit 1: 11/24/20 Warrant). The warrant alleged probable cause Mr. Wedge was trafficking in illegal

drugs and used the Dodge Challenger to facilitate the offenses. The warrant authorized the use of the tracker for 60 days. The warrant was granted and the tracking device attached.

On January 21, 2021, MDEA applied for a second warrant for an additional 60 days of electronic tracking. The January 2021 warrant included tracking information obtained as a result of the November 2020 warrant. (Motion to Suppress Exhibit 2: 1/24/2021 Warrant).

On February 22, 2021, MDEA obtained a search warrant for the Dodge Challenger based on the information obtained as a result of the electronic tracking device and two warrants mentioned above. (Motion to Suppress Exhibit 3: 2/22/2021 Warrant). After the warrant was granted, the MDEA stopped the Dodge Challenger in which Mr. Kelley was a passenger and searched it. (Tr. 7).

2. **Mr. Kelley's Privacy Interests in the Dodge Challenger.**

Richard Kelley knew Keith Wedge his entire life. (Tr. 6-7). He was familiar with Mr. Wedge's Dodge Charge. (Tr. 7). Mr. Kelley recalls Mr. Wedge getting the Charger in 2020. (Tr. 8).

Mr. Kelley never drove the Charger, but rode in the front passenger seat numerous times while Mr. Wedge drove. (Tr. 8-9). Mr. Kelley rode in Charger around Mount Desert Island (MDI). (Tr. 8-9). He took trips

to Bangor in the Charger. (Tr. 8). The trip from Bass Harbor on MDI to Bangor was 90 minutes each way. (Tr. 9). Mr. Kelley took at least 5 trips from Bass Harbor to Bangor in the Charger. (Tr. 9). Mr. Kelley would spend "hours" in the Charger. (Tr. 9).

Mr. Kelley travelled out of state in the Charger. (Tr. 10). He took four trips to Massachusetts in the Charger. (Tr. 10). These trips would take at least 8 to 10 hours roundtrip. (Tr. 10).

Mr. Kelley kept his personal belongings in the Charger. (Tr. 10). Mr. Kelley is a commercial fisherman and carpenter. (Tr. 6). He kept his fishing boots, sea bag and clothes inside the Charger. (Tr. 10). A sea bag is a bag with Mr. Kelley's spare clothes and "your personal belongings". (Tr. 10-11). Mr. Kelley left the sea bag in the Charger for about a month. (Tr. 11).

### **III. ISSUE ON APPEAL**

1. Did the court err in finding Richard Kelley lacked standing to challenge the search of the Dodge Challenger, in which he was a regular passenger, and stored personal belongings in, and the State stipulated to Mr. Kelley's privacy interest in the vehicle?

#### **IV. SUMMARY OF ARGUMENT**

The Court erred in finding Mr. Kelley lacked standing because the parties stipulated to standing, and the record established Mr. Kelley's privacy interest in the Charger as both a frequent passenger and in storing his personal belongings inside it.

The State stipulated that Mr. Kelley had a privacy interest and thereby standing as a passenger to challenge the warrants.

Richard Kelley had a privacy interest in the Dodge Charger. He spent hours riding in the passenger seat of the Charger. He travelled all around MDI, made several three hour trips to Bangor, and four out-of-state trips lasting 8-10 hours each.

In addition to the hours of travel inside the Charger, Mr. Kelley kept his personal belongings inside the vehicle. He kept his sea bag that contained his fishing boots and personal belongings inside the Charger for approximately a month.



## V. LAW AND ARGUMENT

"[S]tanding is a threshold issue and Maine courts are only open to those who meet this basic requirement." *Lindemann v. Comm'n on Governmental Ethics & Election Practices*, 2008 ME 187, ¶ 8, 961 A.2d 538 (quotation marks omitted).

"We review standing de novo as a question of law. *JPMorgan Chase Bank v. Harp*, 2011 ME 5, ¶ 7, 10 A.3d 718. " *Blanchard v. Town of Bar Harbor*, 221 A.2d 554, 557 (Me. 2019).

### 1. The State stipulated to Mr. Kelley's Standing.

After Mr. Kelley's testimony, the State conceded he had a privacy interest in the Charger and therefore standing.

MR. HORN: Based on the limited scope of this presentation, no cross, Your Honor. And based on those facts, we will concede for the purposes of the motion to suppress that he has a reasonable expectation of privacy.

THE COURT: Okay. That stipulation is noted.

(Tr. p. 12).

The burden of establishing standing only rest on the defendant when the State disputes standing. "If, upon the filing of a motion to suppress, the State disputes the defendant's assertion that his own

rights were violated by the actions of the State, it is the defendant who must establish standing to pursue the suppression of evidence." *State v. Maloney*, 708 A.2d 277, 279 (Me. 1998).

In this case, the State stipulated to standing. Standing was not disputed by the State and therefore no burden was placed on the defendant to establish standing.

The State's stipulation to standing in this case is explicit. The Court in *Blanchard v. Bar Harbor*, 221 A. 3d at 557, reviewed standing "[b]ecause we may raise the issue of standing sua sponte, we are not bound by the court's conclusion that the Town 'implicitly concede[d]' that the Bar Harbor property owners have standing." (Internal citation omitted). The Court's review of standing in *Blanchard* was a review of the lower court's factual finding that Bar Harbor "implicitly conceded" standing. In this matter, there is not factual finding on standing to review because the State explicitly conceded standing.

This Court has accepted stipulations on standing for the purpose of hearing an appeal. "On appeal, defendant challenged plaintiff's standing to bring this action. At oral argument, the parties stipulated to plaintiff's standing under the purchase and sale agreement." *Camplin v. Town of York*, 471 A.2d 1035 fn 2 (Me. 1984). "Although

there is nothing in the record which defines the exact relationship of the appellant to the testator, it was stipulated that she bore such a relationship as an heir-at-law to the testator that she had standing to appeal from the allowance of the will." *In re Leonard*, 321 A.2d 486 (Me. 1974).

The lower court should not have denied the motion on a lack of standing because standing was not a disputed issue. The State stipulated to standing and the court should have determined the motion its merits.

**2. Mr. Kelley had an expectation of privacy in the Dodge Charger as a regular passenger and in storing his belongings inside it.**

"Both the United States and Maine Constitutions guarantee citizens protection against unreasonable searches and seizures. U.S. Const. amend. IV; Me. Const. art. I, § 5; *State v. Glover*, 2014 ME 49, ¶ 10, 89 A.3d 1077. This authority applies to defendants who have a legitimate expectation of privacy in the location of the search. *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978)." *State v. Carton*, 145 A.3d 555, 559 (Me. 2016).

“[T]he question of whether a specific individual has standing is significantly affected by the unique context of the claim. If the motion to suppress asserts a violation of the Fourth Amendment, the defendant must demonstrate that his own reasonable expectation of privacy was violated by the action of the State.” *State v. Lovett*, 109 A.3d 1135, 1137 (Me. 2015) (internal citations and quotations omitted).

"Ordinarily, an individual lacks standing to challenge the search of another person's property unless the individual has a reasonable expectation of privacy in that property " *State v. Warner*, 2019 ME 140 ¶ 29.

"Standing does not require an ownership interest in the invaded area...." *U.S. v. Iraheta*, 764 F.3d 455, 461 (5th Cir. 2014).

The Supreme Court has held the tracking of a vehicles movements with GPS constitutes a search from which there is a reasonable expectation of privacy. "We hold that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search.'" *U.S. v. Jones*, 132 S.Ct. 945, 949 (2012).

Mr. Kelley had a reasonable expectation of privacy in his travels as a regular passenger of the Dodge Charger. He spent hours riding in the passenger seat of the Charger. He travelled all around MDI, made several three hour trips to Bangor, and four out-of-state trips lasting 8-10 hours each. As a passenger spending hours of travel time inside the vehicle, Mr. Kelley has an expectation of privacy that the State will not be tracking his travels within the vehicle.

Moreover, Mr. Kelley stored his fishing boots and sea bag with his personal belongings inside the Charger. He stored these items within the Challenger for about a month. This shows a heightened expectation of privacy in the vehicle that he not only traveled in regularly, but left his own items within.

Storing his personal belongings inside the Charger creates a possessory interest in the Charger itself and separates this case from the cases where the courts found a mere passenger lacked standing to challenge a vehicle search.

"A defendant lacks standing to contest the search of a place to which he has an insufficiently close connection. Acosta [passenger] neither owned nor drove the Ford and was only an occasional passenger therein." *U.S. v. Marquez*, 605 F.3d 604, 609 (8th Cir.

2010). Mr. Kelley was more than an occasional passenger. He spent hours traveling in the Charger on numerous occasions. He also had a close connection to the vehicle in storing his personal property within it.

The facts of this case are different from *State v. Lovett*, 109 A. 3d 1135 (Me. 2015), where the Court found a passenger lacked standing to challenge a vehicle search. In that case, the State did not concede standing. The passenger in *Lovett* did not ride in the vehicle regularly, the vehicle was not being GPS tracked by the State, and the passenger did not store his personal property inside the vehicle as Mr. Kelley did in this matter.

In *U.S. v. Symonevich*, 688 F. 3d 12 (1st Cir. 2012), the Court held a trip from Maine to Massachusetts did not establish the passenger's expectation of privacy in the car. This case is different as it involves several trips in the searched car. More importantly, it involves an ongoing search of Mr. Kelley's location each time he is a passenger in the car through the GPS tracking. The vehicle in *Symonevich* was not being GPS tracked as the Charger in this case. Mr. Kelley also had a possessory interest in the car by storing his fishing bag in it. The

passenger in *Symonevich* did not store any property within the vehicle stopped and searched.

Mr. Kelley's storing of his personal property in the Charger for a month shows he had gained some level of access or control of the vehicle beyond a mere passenger. "To show a reasonable expectation of privacy in a vehicle, the defendant bears the burden at the suppression hearing to show a legitimate possessory interest in or [a] lawful control over the car. Defendant "must at least state that he gained possession from the owner or someone with the authority to grant possession. If defendant claims at the suppression hearing that he lawfully borrowed the car from the registered owner, that is sufficient to show standing." *U.S. v. Beltran-Palafox*, 731 F.Supp. 2d 1126, 1164 (D. Kansas 2010) (internal citations omitted). Mr. Kelley's storing of personal property in the vehicle is the equivalent of borrowing the vehicle from the owner.

Therefore, based on Mr. Kelley's regular and close connection with the Dodge Charger he had a reasonable expectation of privacy within the vehicle and standing to challenge the search warrants.

VI. **CONCLUSION**

For all of the above reasons, it is respectfully requested the Court vacate the denial of the motion to suppress and remand the matter to the trial court to decide the motion on the merits.

Dated: April 15, 2024

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

I hereby certify a copy of the above brief was sent on April 15, 2024 to:

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