No.____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

RICHARD W. KELLEY,

Petitioner

v.

STATE OF MAINE,

Respondent

_____

ON PETITION FOR WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT

_____

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a regular passenger in a vehicle being GPS tracked by the Government have a Fourth Amendment privacy interest in his movements and the vehicle, where spent hours traveling in the vehicle and stored his personal property in the vehicle?

PARTIES TO THE PROCEEDING

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OPINIONS BELOW

The Maine Judicial Supreme Court's decision is reported at State of Maine v. Richard W. Kelley, 2025 ME 1. The decision of the trial court on the motion to suppress is not reported and a copy is provided in the appendix herein.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). This matters seeks the review of a decision from the State of Maine's highest court on a decision involving the Fourth Amendment of the United States Constitution. The Maine Supreme Judicial Court issued its decision on January 2, 2025.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

On May 26, 2021, Richard Kelley was Indicted on the charge of Aggravated Trafficking of Scheduled Drugs. 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.

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

On November 24, 2020, Maine Drug Enforcement Agency (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 offense. 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).

During the times Mr. Kelley travelled in the vehicle, its movements were being GPS tracked by the State with the GPS tracker placed on the vehicle.

3. Appellate Court Proceedings.

The trial court's suppression decision was appealed to the Maine Supreme Judicial Court. The appellate court held Mr. Kelley did not have standing the challenge the search of the vehicle he was a regular

passenger in, stored his belongings, and had his movements track in by a GPS device.

> Kelley argues that he had a reasonable expectation of privacy in the vehicle because he was "a regular passenger" who "spent hours riding in the passenger seat" on trips "all around [Mount Desert Island]," to Bangor, and to Massachusetts and because he stored his fishing boots and sea bag in the vehicle for about a month. "If [a] 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."8 Lovett, 2015 ME 7, ¶ 8, 109 A.3d 1135 (emphasis in Lovett and quotation marks omitted).
>
> To show a reasonable expectation of privacy in a third party's vehicle, a passenger must show a property or possessory interest in the vehicle or "an interest in the property seized." Rakas, 439 U.S. at 148; see Lovett, 2015 ME 7, ¶ 8, 109 A.3d 1135. On appeal, we review the trial court's factual findings for clear error but review the court's conclusions of law and ultimate determination de novo. Ornelas v. United States, 517 U.S. 690, 699 (1996); State v. Barclift, 2022 ME 50, ¶ 9, 282 A.3d 607.
>
> In Symonevich, the First Circuit decided a case with facts similar to those here. 688 F.3d at 16-17. There, the First Circuit established that a passenger on "a nearly six hour round-trip drive" between Maine and Massachusetts who had placed a personal item under the passenger seat lacked an expectation of privacy in the vehicle. Id. at 20-21. After he was indicted, Symonevich moved to suppress evidence recovered during the search of the car in which he had been riding as a passenger on a trip between Maine and Massachusetts. Id. at 16-20. The traffic stop was unrelated to a separate ongoing Drug Enforcement Agency investigation that had identified Symonevich as a caller to a recorded phone line. Id. at 16. Citing Rakas, the First Circuit concluded that Symonevich lacked standing to challenge the search. Id. at 19-21. Although

the First Circuit acknowledged that it had stated previously "that the fact of a long trip 'would engender a slightly greater privacy expectation than would a short trip,'" it rejected Symonevich's claim that a passenger on a long ride is comparable to an overnight house guest, explaining, "We are skeptical about the continued relevance of the type of duration argument that Symonevich makes" given the Supreme Court's subsequent case law "circumscribing the amount of privacy one can expect in a vehicle and further differentiating searches of automobiles from searches of homes." Id. at 20 (quoting United States v. Lochan, 674 F.2d 960, 965 (1st Cir. 1982)). The First Circuit stopped short of "categorically rejecting the relevance of the duration of a trip in an automobile to the reasonable expectation of privacy analysis," but it also concluded that the duration of Symonevich's six-hour trip between Maine and Massachusetts "did nothing to enhance [his] expectation of privacy." Id. at 21. The First Circuit also concluded that whether Symonevich had a possessory interest in an item placed under the passenger seat at the time of the stop and search by law enforcement was irrelevant to whether he had an expectation of privacy in the space below the seat. Id.; see also United States v. Almeida, 748 F.3d 41, 47 (1st Cir. 2014) (noting the factors considered when evaluating whether a person has a reasonable expectation of privacy in a vehicle; that a defendant must show a property or possessory interest in the vehicle; and that a person who is merely a passenger lacks a reasonable expectation of privacy in a vehicle).

We conclude that the court did not err in determining that Kelley lacked standing to challenge the warrants here. In Symonevich, the First Circuit concluded that taking a long trip as a passenger in a vehicle and storing a personal item in the vehicle had little to no impact on an individual's expectation of privacy in that vehicle. Symonevich, 688 F.3d at 20-21. Although Kelley spent more time in the vehicle here than Symonevich spent in the vehicle in his case, and unlike the vehicle in Symonevich, the vehicle here was the subject of electronic tracking, the First Circuit's holding in Symonevich

> suggests that spending long periods in a vehicle and storing personal items in a vehicle do not create a reasonable expectation of privacy in that vehicle. See id. at 20-21.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari because the decision of Maine's highest court misapplies federal law in holding Mr. Kelley a regular passenger in the vehicle, who stored his personal property in the vehicle, and was having his movements tracked by a Government installed GPS device did not have a privacy interest in the vehicle and search of his movements under the Fourth Amendment.

The Federal Appellate Courts are in conflict as to when a passenger has a Fourth Amendment privacy interest in a vehicle searched by the Government.

Several decisions have held a passenger lacks standing under the Fourth Amendment to challenge a search of the vehicle. *See U.S. v. Almedia*, 748 F.3d 41, 48 (1st Cir. 2014); *U.S. v. Lyke*, 919 F.3d 716, 729 (2d Cir. 2019); *U.S. v. Burnett*, 773 F.3d 122, 132 (3rd Cir. 2014); *U.S. v. Castellanos*, 716 F.3d 828, 833-35 (4th Cir. 2013); *U.S. v. Wise*, 877 F.3d 209, 217 (5th Cir. 2017); *U.S. v. Bath,* 794 F.3d 617, 626 (6th Cir. 2015); *U.S. v. Coverrubias*, 847 F.3d 556, 558 (7th Cir. 2017); *U.S. v. Davis*, 943

F.3d 1129, 1132 (8th Cir. 2019); *U.S. v. Thomas*, 447 F.3d 1191, 1199 (9th Cir. 2006); *U.S. v. Davis*, 750 F.3d 1186, 1190 (10th Circuit. 2014); *U.S. v. Dixon*, 901 F.3d 1322, 1338 (11th Cir. 2018); *U.S. v. Mitchell*, 951 F.3d 1291, 1298 (D.C. Cir.1991).

Several other Circuit Court decisions have held a passenger does have a Fourth Amendment right to challenge the search of a vehicle as a passenger. *U.S. v. Iraheta*, 764 F.3d 455, 461-62 (5th Cir. 2014); *U.S. v. Dunson*, 940 F.2d 989, 994-95 (6th Cir. 1991); *U.S. v. Sanford*, 806 F.3d 954, 958-59 (7th Cir. 2015); *U.S. v. Colin*, 314 F.3d 439, 442-43 (9th Cir. 2002); *U.S. v. Lopez*, 849 F.3d 921, 928 (10th Cir. 2017); *U.S. v. Barber*, 777 F.3d 1303, 1305 (11th Cir. 2015).

The Petitioner is unaware of any Circuit decisions with the fact pattern of this case where the passenger's movements were also being tracked by a Government installed GPS device. This 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).

The United States Constitution guarantees citizens protection against unreasonable searches and seizures. U.S. Const. amend. IV. 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)."

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

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.

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 a 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.

Based on the several hours spent traveling in the vehicle, storing his personal property in it, and having his every movement GPS tracked by the State, Mr. Kelley had a Fourth Amendment expectation of privacy in the vehicle under the Fourth Amendment and this Court should hear the appeal.

CONCLUSION

For all the reasons set forth above, it is respectfully requested the Court grant certiorari to decide the question presented in this petition.

March 31, 2025

Respectfully submitted,

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APPENDIX

State of Maine v. Richard W. Kelley, 2025 ME 1

State of Maine v. Richard W. Kelley, Trial Court Orders

MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2025 ME 1
Docket: Pen-24-36
Argued: October 10, 2024
Decided: January 2, 2025

Panel: STANFILL, C.J.,[1] and MEAD, HORTON, CONNORS, LAWRENCE, and DOUGLAS, JJ.

STATE OF MAINE

v.

RICHARD W. KELLEY

CONNORS, J.

[¶1] The primary issue presented in this appeal is under what circumstances a passenger in a motor vehicle has standing under the Fourth Amendment to challenge a search of the vehicle.

[¶2] Richard W. Kelley appeals from a judgment of conviction of aggravated trafficking of scheduled drugs (Class A), 17-A M.R.S. § 1105-A(1)(M) (2024), entered in the trial court (Penobscot County, *A. Murray, J.*) on Kelley's conditional guilty plea.[2] Kelley's indictment followed the stop and search of a

[1] Although not available at oral argument, Chief Justice Stanfill participated in the development of this opinion. *See* M.R. App. P. 12(a)(2) ("A qualified Justice may participate in a decision even though not present at oral argument.").

[2] The court also entered an order of criminal forfeiture, 15 M.R.S. § 5826 (2021), not at issue here. Because 15 M.R.S. § 5826 has since been amended, P.L. 2023, ch. 196, § 1 (effective October 25, 2023) (codified at 15 M.R.S. § 5826(6) (2024)), we cite the statute in effect when the crime was committed.

friend's vehicle in which Kelley was riding as a passenger. Law enforcement conducted the search on February 22, 2021, as part of an investigation of the vehicle's owner for drug trafficking. As part of this investigation, law enforcement had obtained a search warrant and two tracking warrants authorizing the installation and use of an electronic tracking device to monitor the vehicle's location.

[¶3] Kelley moved to suppress evidence obtained through the warrants. He contends that the court (*Mallonee, J.*) erred when it denied his motion on standing grounds. Kelley first argues that the trial court should not have reached the question of his standing because, at the suppression hearing, the State stipulated that he had a reasonable expectation of privacy in the vehicle. He then argues that he had a reasonable expectation of privacy in the vehicle because he had taken several trips as a passenger in the vehicle, including four trips between Maine and Massachusetts lasting eight to ten hours each, and because he had stored a "sea bag" and fishing boots in the vehicle for about one month.

[¶4] We conclude that the court did not err in reaching the question of standing despite the stipulation because "standing is a threshold issue[,]" and Maine courts have the authority and the duty to ensure that parties "meet this

basic requirement." *See State v. Lovett*, 2015 ME 7, ¶ 7, 109 A.3d 1135 (alteration and quotation marks omitted). We also conclude that the court properly denied Kelley's motion to suppress because he lacked a reasonable expectation of privacy in the vehicle and therefore did not have standing to challenge the warrants. *See id.* ¶ 8; *United States v. Symonevich*, 688 F.3d 12, 19-21 (1st Cir. 2012); *Rakas v. Illinois*, 439 U.S. 128, 148 (1978). Because we conclude that Kelley lacked standing to challenge the warrants, we do not reach his arguments about their validity. We affirm the judgment.

I. BACKGROUND

[¶5] We view the evidence "in the light most favorable to the court's order on the motion to suppress." *State v. Akers*, 2021 ME 43, ¶ 2, 259 A.3d 127. The following facts are supported by competent record evidence. *See id.*

[¶6] In 2020, a Maine Drug Enforcement Agency (MDEA) Special Agent was investigating Keith Wedge for suspected drug-related activity. As part of his investigation, the Special Agent obtained two warrants authorizing the tracking of Wedge's vehicle using an electronic tracking device. In early 2021, the Special Agent obtained a warrant to search Wedge's vehicle. When MDEA agents executed the warrant and conducted the search, Wedge was driving the

vehicle and Kelley was a passenger. The search revealed drugs in the vehicle, and both Wedge and Kelley were arrested.

[¶7] Kelley was charged by complaint on March 11, 2021, and indicted on May 26, 2021. The indictment charged Kelley with one count of aggravated trafficking of scheduled drugs (Class A), 17-A M.R.S. § 1105-A(1)(M), and sought criminal forfeiture of cash discovered during the search, 15 M.R.S. § 5826 (2021). On March 30, 2022, Kelley filed a motion to suppress the evidence obtained through the two tracking warrants and the search warrant. Kelley made various arguments both in his motion and orally at the suppression hearing as to why he believed that the warrants were deficient.

[¶8] The court held a hearing on the motion on December 20, 2022. Kelley and the Special Agent both testified. At the outset of the hearing, the State declined to stipulate to Kelley's standing. Hence, the evidence in the hearing explored the standing issue.

[¶9] Kelley testified that the vehicle was owned by Keith Wedge, that he had known Wedge "[Kelley's] whole life," and that Kelley had ridden as a passenger in the vehicle "a fair amount," including on several trips around Mount Desert Island, on "[a]t least five" trips from Bass Harbor to Bangor, and on four trips to Massachusetts. Kelley also testified that he had left some

"personal belongings" in a "sea bag" in the vehicle for about a month, explaining that a sea bag is "a fishing bag that you take for spare clothes and takes care of all your personal belongings, makes it easy to travel with it and bring it from boat to boat."[3] Kelley did not assert an ownership interest in the vehicle, and he testified that he had never driven the vehicle.

[¶10] Following Kelley's testimony, the State "concede[d] for the purposes of the motion to suppress that [Kelley] ha[d] a reasonable expectation of privacy" in the vehicle. The parties did not confirm and the court did not indicate that the court had accepted the stipulation.[4] The court then heard oral argument from the parties about the validity of the warrants.

[¶11] In an order entered on January 18, 2023, the court denied Kelley's motion to suppress, concluding that Kelley lacked standing to challenge the warrants. The court concluded that because Kelley lacked standing, it "need not address Kelley's arguments concerning probable cause and the validity of using data generated out of state."

---

[3] At oral argument before us, Kelley stated that during the vehicle search, no evidence was discovered inside his sea bag.

[4] Good practice when a stipulation is offered is for the court to indicate on the record whether the court has accepted the stipulation. *Cf. Bonville v. Bonville*, 2006 ME 3, ¶ 23, 890 A.2d 263 ("The court is not required to accept the agreement of the parties, but before it rejects it, the court must give the parties notice of its intention and an opportunity to present additional evidence on the issue or issues." (quotation marks omitted)).

[¶12] Kelley filed a timely motion to reconsider, arguing that the court should decide the motion on its merits "because the State conceded standing at the hearing, and the evidence presented established standing to challenge the location searches." He argued that "[b]ecause the State did not challenge standing, [he] did not argue it further in closing arguments before the Court." Kelley also argued that he had an expectation of privacy "in the tracking of his movements while a passenger in the [vehicle]" as well as a possessory interest in the vehicle because he stored his sea bag in the vehicle. Kelley, however, did not request that the motion record be reopened for the presentation of additional evidence.

[¶13] The court denied the motion, acknowledging the State's stipulation but concluding that Kelley had "fully argued the issue of standing." The court explained that "although the State eventually conceded the issue, that concession was not offered until after Kelley had argued the issue thoroughly in his brief and had addressed it further at the hearing." The court added that Kelley "cite[d] no evidence and advance[d] no legal argument not addressed in his initial written and oral arguments that might support his contention" that he had standing.

[¶14] The court held a Rule 11 hearing on January 5, 2024, where Kelley entered a conditional guilty plea to one count of aggravated trafficking in scheduled drugs. *See* M.R.U. Crim. P. 11(a)(2). The court accepted Kelley's plea and entered a judgment of conviction and an order of criminal forfeiture, sentencing Kelley to ten years in prison, with all but five years and one day of the sentence suspended and four years of probation. Kelley timely appealed. *See* 15 M.R.S. § 2115 (2024), M.R. App. P. 2B(b)(1).

II. DISCUSSION

[¶15] We begin by considering the effect of the State's stipulation as to standing. We then address whether Kelley had a reasonable expectation of privacy in the vehicle and therefore had standing to challenge the warrants.

A. The State's stipulation is not dispositive because the stipulation is not binding upon the court, and Kelley had a full and fair opportunity to present his evidence and argument as to his standing to challenge the search at the suppression hearing.

[¶16] Kelley argues that "[t]he lower court should not have denied the motion on a lack of standing because standing was not a disputed issue." Kelley asserts that because the State stipulated to his reasonable expectation of privacy in the vehicle at the suppression hearing, the court should not have reached the issue of standing.

[¶17] "We review [a] court's findings on [a] motion to suppress for clear error and the ultimate decision to suppress de novo." *Lovett*, 2015 ME 7, ¶ 6, 109 A.3d 1135.

[¶18] A stipulation between the parties does not preclude a Maine court from addressing a standing issue. *See, e.g.*, *id.* ¶¶ 7-9. In *Lovett*, Lovett appealed from a judgment of conviction for drug trafficking following the denial of his motion to suppress. *Id.* ¶¶ 1-2. Lovett argued that law enforcement had lacked probable cause to search a vehicle in which he had been riding as a passenger at the time of the search. *Id.* ¶¶ 1-3. At the suppression hearing, the State argued that Lovett lacked standing to challenge the search, but the motion court did not address standing, instead concluding that the MDEA had had sufficient probable cause to search the vehicle. *Id.* ¶¶ 5, 7. The State did not appeal the court's ruling, and neither party briefed the issue of standing on appeal. *Id.* ¶ 7. We nonetheless addressed Lovett's standing "because '[s]tanding is a threshold issue and Maine courts are only open to those who meet this basic requirement.'" *Id.* ¶ 7 (quoting *Lindemann v. Comm'n on Governmental Ethics & Election Practices*, 2008 ME 187, ¶ 8, 961 A.2d 538). As we explained in *Lovett*, "[l]itigants and judges at suppression hearings must address the issue of standing because the inquiry as to whether a defendant's Fourth Amendment

rights have been substantively violated requires a determination as to whether that defendant's reasonable expectation of privacy was violated." *Id.* ¶ 9; *cf*. *State v. Cyr*, 501 A.2d 1303, 1305 (Me. 1985) (a certificate agreed to by the court and the State pursuant to M.R. Crim. P. 11(a)(2) is not binding upon this Court); *State v. Drown*, 447 A.2d 466, 471 (Me. 1982) (establishing that this Court "will decide for itself" whether a State's appeal, even when pursued with the approval of the Attorney General pursuant to 15 M.R.S. § 2115-A(5) (2024), meets the statutory standard established by 15 M.R.S § 2115-A(1) (2024)); *State v. Placzek*, 380 A.2d 1010, 1012 (Me. 1977) (a lower court's report agreed to by the State is not binding on this Court).

[¶19] A significant body of federal case law holds that stipulations as to law are generally not binding on courts,[5] although courts will make exceptions where a stipulation by one party prejudiced the other by inducing him to rely on that stipulation to his detriment.

[¶20] For example, in *United States v. Blanco*, 844 F.2d 344, 349 n.4 (6th Cir. 1988), a federal drug case, the Sixth Circuit rejected a defendant's

[5] *E.g.*, *United States v. Tortorello*, 533 F.2d 809, 812 (2nd Cir. 1976) ("[W]hether [the defendant] has standing to challenge the legality of the searches is a question of law. A concession by the Government on a question of law is not binding on the court."); *United States v. Lisk*, 522 F.2d 228, 231 n.8 (7th Cir. 1975) (noting that even if a statement by the government could be read as a stipulation to standing, "[w]e are not bound to accept, as controlling, stipulations as to questions of law" (quotation marks omitted)).

claim that the district court had erred "in allowing the government to withdraw from a 'stipulation' that he had standing," insisting that "[t]here is no evidence that [the defendant] and the government had ever so stipulated" and concluding that "[a]lthough the government did state during the hearing before the magistrate that it was satisfied that [the defendant] had standing, we see no prejudice to [the defendant] from the government's reversal of its position. The change of position was damaging in that it led to [the defendant's] conviction, but it was not prejudicial in the sense that he had relied on the government's original position to his detriment." *Id.* The Sixth Circuit added that "[i]t is doubtful, indeed, whether the government has any power to 'stipulate' as to standing; questions of law are not generally subject to stipulation." *Id.*

[¶21] Two cases in which federal appellate courts have found that a stipulation bound the government also indicate that whether a stipulation has a binding effect hinges on whether enforcing the stipulation would prejudice the defendant. In *United States v. Lott*, which involved a motion to suppress handguns and other evidence gathered during a traffic stop, the First Circuit held that the government was bound by its stipulation at the suppression hearing that "for purposes of this hearing . . . both Defendants . . . had [] standing to challenge whether or not they were, in fact, in possession of those

firearms." 870 F.2d 778, 781 n.5 (1st Cir. 1989). The court reasoned that "when the government has stipulated to standing, *thereby obviating the need for a defendant to present facts relevant to standing*, it may not thereafter claim the defendant lacked standing." *Id.* at 781 (emphasis added).

[¶22] Similarly, in *United States v. Hernandez*, 668 F.2d 824, 826 (5th Cir. 1982), the Fifth Circuit held that the government could not assert on appeal that the defendants lacked standing under the Fourth Amendment to challenge the search of a boat partly because at the suppression hearings the government had stipulated to their standing. *Id.* The Fifth Circuit reasoned that because of the government's stipulation, the defendants "never presented evidence as to their expectation of privacy in the boat's cabin," adding that based on the facts, "[i]t seems likely that appellants may have been able to demonstrate such a legitimate expectation." *Id.*

[¶23] Here, the court properly identified standing as a threshold issue, explaining, "Even when the parties do not argue the question of standing in a motion to suppress, the court must address this issue before determining whether the motion to suppress has any merit." *See Lovett*, 2015 ME 7, ¶¶ 7-9, 109 A.3d 1135. In its denial of Kelley's motion to reconsider, the court noted that Kelley had "fully argued the issue of standing" and that the court "fully

considered standing." Kelley presented argument on his standing in his motion to suppress, in his motion to reconsider, and at his suppression hearing, where he testified and his attorney presented argument. Further, although Kelley initially argued at oral argument before us that without the State's stipulation, "[p]erhaps . . . we would have wanted to develop [Kelley's privacy interest] further in evidence," Kelley eventually stated that "the record is developed enough on this issue . . . that standing has been established" and confirmed that he had presented evidence at the motion hearing prior to the State's stipulation and had not identified any additional evidence he would have offered if not for the stipulation. In other words, Kelley was not prejudiced by the court's decision not to accept the State's stipulation and fully presented his evidence and argument on the issue of his standing.

[¶24] We therefore conclude that the motion court did not err in reaching the issue of standing despite the State's stipulation.[6]

[6] As discussed *infra* note 7, Kelley has pursued only a federal constitutional claim to challenge the search. We view the impact of a stipulation in pursuing a federal claim as raising as a question governed by Maine law. As noted above, however, it is immaterial whether this impact is governed by Maine or federal law, because the test is the same: stipulations are not binding absent prejudice to the defendant.

B. Kelley lacked a reasonable expectation of privacy sufficient to give him standing to challenge the search of the vehicle.

[¶25] Kelley argues that he had a reasonable expectation of privacy in the vehicle because he was "a regular passenger" who "spent hours riding in the passenger seat" on trips "all around [Mount Desert Island]," to Bangor, and to Massachusetts and because he stored his fishing boots and sea bag in the vehicle for about a month.[7]

[¶26] "If [a] 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."[8] *Lovett*, 2015 ME 7, ¶ 8, 109 A.3d 1135 (emphasis in *Lovett* and quotation marks omitted).

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[7] Although Kelley quotes a decision of ours stating that "[b]oth the United States and Maine Constitutions guarantee citizens protection against unreasonable searches and seizures," *State v. Carton*, 2016 ME 119, ¶ 15, 145 A.3d 555, Kelley conducts no independent analysis of the Maine Constitution, and he does not argue that the requirements for establishing a reasonable expectation of privacy under the Maine Constitution differ from those under the United States Constitution. Therefore, although "the Maine Constitution may offer additional protections" beyond those provided by the Fourth Amendment, we decline to analyze Kelley's claims under the Maine Constitution and instead analyze them under the United States Constitution. *State v. Glover*, 2014 ME 49, ¶ 10 n.2, 89 A.3d 1077; *see State v. Moore*, 2023 ME 18, ¶¶ 19-20, 290 A.3d 533 (declining to analyze a Maine constitutional claim where the defendant failed to adequately raise the issue before the trial court or on appeal).

[8] *See also Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978) ("Fourth Amendment rights are personal rights which . . . may not be vicariously asserted." (quotation marks omitted)); *United States v. Payner*, 447 U.S. 727, 729, 735-37 (1980) (holding that a defendant lacked standing under the Fourth Amendment to suppress documents unlawfully seized from a third party despite the "flagrant[] illegal[ity]" of the underlying search); *Alderman v. United States*, 394 U.S. 165, 171-72 (1969) ("The established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence.").

To show a reasonable expectation of privacy in a third party's vehicle, a passenger must show a property or possessory interest in the vehicle or "an interest in the property seized." *Rakas*, 439 U.S. at 148; *see Lovett*, 2015 ME 7, ¶ 8, 109 A.3d 1135. On appeal, we review the trial court's factual findings for clear error but review the court's conclusions of law and ultimate determination de novo. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *State v. Barclift*, 2022 ME 50, ¶ 9, 282 A.3d 607.

[¶27] In *Symonevich*, the First Circuit decided a case with facts similar to those here. 688 F.3d at 16-17. There, the First Circuit established that a passenger on "a nearly six hour round-trip drive" between Maine and Massachusetts who had placed a personal item under the passenger seat lacked an expectation of privacy in the vehicle. *Id.* at 20-21. After he was indicted, Symonevich moved to suppress evidence recovered during the search of the car in which he had been riding as a passenger on a trip between Maine and Massachusetts. *Id.* at 16-20. The traffic stop was unrelated to a separate ongoing Drug Enforcement Agency investigation that had identified Symonevich as a caller to a recorded phone line. *Id.* at 16. Citing *Rakas*, the First Circuit concluded that Symonevich lacked standing to challenge the search. *Id.* at 19-21.

[¶28] Although the First Circuit acknowledged that it had stated previously "that the fact of a long trip 'would engender a slightly greater privacy expectation than would a short trip,'" it rejected Symonevich's claim that a passenger on a long ride is comparable to an overnight house guest, explaining, "We are skeptical about the continued relevance of the type of duration argument that Symonevich makes" given the Supreme Court's subsequent case law "circumscribing the amount of privacy one can expect in a vehicle and further differentiating searches of automobiles from searches of homes." *Id.* at 20 (quoting *United States v. Lochan*, 674 F.2d 960, 965 (1st Cir. 1982)). The First Circuit stopped short of "categorically rejecting the relevance of the duration of a trip in an automobile to the reasonable expectation of privacy analysis," but it also concluded that the duration of Symonevich's six-hour trip between Maine and Massachusetts "did nothing to enhance [his] expectation of privacy." *Id.* at 21. The First Circuit also concluded that whether Symonevich had a possessory interest in an item placed under the passenger seat at the time of the stop and search by law enforcement was irrelevant to whether he had an expectation of privacy in the space below the seat. *Id.*; *see also United States v. Almeida*, 748 F.3d 41, 47 (1st Cir. 2014) (noting the factors considered when evaluating whether a person has a reasonable expectation of privacy in a

vehicle; that a defendant must show a property or possessory interest in the vehicle; and that a person who is merely a passenger lacks a reasonable expectation of privacy in a vehicle).

[¶29] We conclude that the court did not err in determining that Kelley lacked standing to challenge the warrants here. In *Symonevich*, the First Circuit concluded that taking a long trip as a passenger in a vehicle and storing a personal item in the vehicle had little to no impact on an individual's expectation of privacy in that vehicle. *Symonevich*, 688 F.3d at 20-21. Although Kelley spent more time in the vehicle here than Symonevich spent in the vehicle in his case, and unlike the vehicle in *Symonevich*, the vehicle here was the subject of electronic tracking, the First Circuit's holding in *Symonevich* suggests that spending long periods in a vehicle and storing personal items in a vehicle do not create a reasonable expectation of privacy in that vehicle. *See id.* at 20-21.

III. CONCLUSION

[¶30] For the reasons given above, we conclude that the State's stipulation regarding whether Kelley had standing to challenge the search of Wedge's vehicle was not binding on the court and that Kelley lacked a reasonable expectation of privacy sufficient to bestow standing upon him.

The entry is:

Judgment affirmed.

Hunter J. Tzovarras, Esq. (orally), Bangor, for appellant Richard W. Kelley

Aaron M. Frey, Attorney General, Jason Horn, Asst. Atty. Gen., and Katie Ann Sibley, Asst. Atty. Gen. (orally), Office of the Attorney General, Augusta, for appellee State of Maine

Penobscot County Unified Criminal Docket docket number CR-2021-670
FOR CLERK REFERENCE ONLY

STATE OF MAINE
PENOBSCOT COUNTY

UNIFIED CRIMINAL DOCKET
LOCATION: BANGOR
DOCKET NO. PENCD-CR-2021-00670

STATE OF MAINE,

v.

RICHARD KELLEY,

Defendant.

ORDER on DEFENDANT'S MOTION TO SUPPRESS

Before the Court is Defendant Richard Kelley's Motion to Suppress evidence obtained through three warrants. The Motion seeks to suppress the evidence obtained from the searches that resulted from those warrants on the grounds that the initial warrant lacked probable cause, and because two of the searches were conducted out of state. 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**.

I. FACTUAL BACKGROUND

In 2020, Special Agent Timothy Frost, who was attached to the Maine Drug Enforcement Agency, was investigating an individual named Keith Wedge for suspected drug related activity. On November 24, 2020, Frost presented an affidavit and proposed warrant (Warrant I), seeking authorization to attach an electronic tracking device (the "Tracker") to Wedge's Dodge Challenger. The court authorized Warrant I and Frost attached the Tracker to the Challenger. On January 21, 2021, Frost presented an affidavit and proposed warrant (Warrant II) to extend the authorization for attaching the Tracker to the Challenger. Warrant II was supported by evidence obtained through Warrant I. The court authorized Warrant II and Frost left the Tracker in place.

Warrants I and II generated a third request. On February 22, 2021, Frost presented an affidavit and proposed Warrant III; by this warrant, he sought to search rather than simply track the Challenger. The court authorized Warrant III, after which agents of the Maine Drug Enforcement Agency stopped and searched the Challenger. When the Challenger was stopped, Wedge was driving and Defendant Kelley was a passenger. After the search of the Challenger yielded drugs, both Kelley and Wedge were arrested.

II. PROCEDURAL POSTURE

On March 12, 2021, Kelley was charged with one count of aggravated trafficking in scheduled drugs and one count of criminal forfeiture. Kelley was indicted on both counts on May 26, 2021. On March 30, 2022, Kelley filed this Motion to Suppress. On December 20, 2022, a hearing was held on the Motion, at which the Court heard testimony from Frost. Kelley testified in his own behalf. Both parties argued their positions and the motion is now in order for decision.

III. DISCUSSION

In seeking to suppress evidence generated by all three warrants, Kelley first argues that Warrants I and II were not supported by probable cause. He further argues that the searches authorized by Warrants I and II were improper because the Tracker travelled with the Challenger out of state and the court did not have authority to authorize out of state searches. Finally, he argues that Warrant III itself was invalid because it relied on evidence illegally obtained through Warrants I and II. The Court addresses these three arguments in turn.

A. Kelley Lacks Standing to Challenge Warrants I and II for Lack of Probable Cause.

Kelley argues that Warrants I and II were not supported by probable cause. The State responds in the alternative: that both warrants were supported by probable cause and, if it was lacking, the good faith exception to the warrant requirement would apply. Before the Court reaches these arguments, however, it must consider whether Kelley has standing under the Fourth Amendment to mount his challenge in the first place.

Standing to challenge a search "is a threshold issue and Maine courts are only open to those who meet this basic requirement." *See State v. Lovett*, 2015 ME 7, ¶ 7, 109 A.3d 1135 (quoting *Lindemann v. Comm'n on Governmental Ethics & Election Practices*, 2008 ME 187, ¶ 8, 961 A.2d 538). Even when the parties do not argue the question of standing in a motion to suppress, the court must address this issue before determining whether the motion to suppress has any merit. *See, e.g., Lovett*, 2015 ME 7, ¶ 7, 109 A.3d 1135. "While evidence seized in violation of the fourteenth amendment . . . may be excluded from a criminal trial, a defendant does not have personal standing to object to and procure the exclusion of incriminating evidence solely because he is aggrieved by its use against him at trial." *See State v. Hamm*, 348 A.2d 268, 271 (Me. 1975) (citations omitted). A defendant cannot claim the protections afforded by the Fourth and Fourteenth amendments if his own rights are not infringed upon, regardless of whether the police infringed upon the rights of another. *See id.* Therefore, a defendant "must demonstrate that his own reasonable expectation of privacy was violated by the action of the state" to establish standing in a motion to suppress. *State v. Maloney*, 1998 ME 56, ¶ 6, 708 A.2d 277.

To establish standing to challenge the search of a vehicle, a defendant must establish a possessory interest or reasonable expectation of privacy in the vehicle. *See Rakas v. Illinois*, 439

U.S. 128, 148 (1978). The inquiry into whether passengers in a vehicle have standing to challenge a search turns most heavily on whether they have a possessory interest in the vehicle. *See id.* (holding that where passengers did not own an automobile, they had did not have standing to challenge the search of the car, despite the owner's having given them permission to ride in the car); *Lovett*, 2015 ME 7, ¶ 8, 109 A.3d 1135 (finding that a passenger did not have standing to contest the search of the car). Passengers in vehicles without any possessory interest in the vehicle do not "have a legitimate expectation of privacy" in the enclosed or open spaces of a vehicle they are riding in like "the glove compartment or area under the seat [or] trunk." *Rakas*, 439 U.S. at 148-49. Analyzing the decision in *Rakas*, the First Circuit Court of Appeals has held that "passengers in automobiles who assert no property or possessory interest in a vehicle cannot be said to have the requisite expectation of privacy in the vehicle to permit them to maintain that the search did not meet Fourth Amendment standards." *United States v. Campbell*, 741 F.3d 251, 263 (1st Cir. 2013) (holding that two passengers who asserted no possessory interest in a car did not have standing to contest the search of that car); *see also United States v. Symonevich*, 688 F.3d 12, 19, 21 (1st Cir. 2012) ("[A] passenger who has 'asserted neither a property not a possessory interest in the automobile . . . has made no showing that he or she has a legitimate expectation of privacy in [areas] of the car in which he or she was merely a passenger.").

In this case, the only intrusion authorized by Warrants I and II was for the officer to attach the Tracker to the exterior of the Challenger. Kelley, a passenger, did not have a possessory interest of any kind in the Challenger. He argues nonetheless that he had a reasonable expectation of privacy in the Challenger because he rode in it frequently and sometimes left a bag in it. Frequently being a passenger, and occasionally leaving property in the Challenger, did not generate for Kelley a reasonable expectation of privacy in the Challenger under *Rakas* and *Lovett*. Both of those cases

link a reasonable expectation of privacy to a passenger's possessory interest in the vehicle. *See Rakas*, 439 U.S. at 148-49; *Lovett*, 2015 ME 7, ¶¶ 8-9, 109 A.3d 1135. In the absence of evidence supporting Kelley's claim of a reasonable expectation of privacy in the Challenger, the Court finds he lacks standing to contest Warrants I and II.[1] Correspondingly, the Court does not address whether Warrants I and II were supported by probable cause.

B. Kelley Lacks Standing to Challenge the Searches of the Challenger on the Alternative Basis that they Occurred Out of State.

The same standing analysis that applied above to Warrants I and II applies here also. The searches that occurred under the authority granted in Warrants I and II were of the Challenger. Kelley did not have a reasonable expectation of privacy in the Challenger. As a result, Kelley does not have standing to challenge Warrants I and II because the searches of the Challenger occurred out of state.

[1] Kelley's claim that he has standing relies on five cases, none of which support his argument. Kelley first cites *Brendlin v. California* for the proposition that all occupants of a vehicle are considered seized under the Fourth Amendment when a vehicle is stopped. 551 U.S. 249 (2007). This proposition is inapposite because Kelley was not stopped under Warrants I and II. Kelley next cites *United States v. Jones* for the proposition that when a tracking device is placed on a vehicle it violates the *operator's* right to privacy. 565 U.S. 400 (2012). But in *Jones*, the United State Supreme Court explicitly noted that "Jones . . . possessed the Jeep at the time the Government trespassorily inserted the" electronic tracker. *Id.* at 410. The relationship of Jones to his Jeep is different from that of Kelley to Wedge's Challenger. Kelley's reliance on *State v. Maloney*, 1988 ME 56, 708 A.2d 277 and *State v. Ayers*, 464 A.2d 963 (Me. 1983) is simply to support the unchallenged proposition that on a motion to suppress a defendant must demonstrate that his expectation of privacy was violated. Noteworthy is that in *Maloney* the defendant was the *operator* of the vehicle and in *Ayers* the facts are entirely unrelated to the instant case. *See Maloney*, 1988 ME 56, 708 A.2d 277; *Ayers*, 464 A.2d 963. Finally, Kelley's use of *State v. Lovett* is misplaced because *Lovett*, as this Court has discussed above, supports a holding that Kelley cannot contest Warrants I and II because he had no possessory interest in the Challenger. 2015 ME 7, 109 A.3d 1135.

C. Kelley Lacks Standing to Challenge Warrant III.

Finally, Kelley challenges Warrant III on the basis that "it was obtained as a result of the [two allegedly] illegal searches," and argues its fruits should therefore be suppressed.[2] (Def.'s Mot. Suppress 2.) Again, the State responds that Warrant III was supported by sufficient probable cause and, even if it was not, the deficiency is rescued by the good faith exception. As with Warrants I and II the Court must at the outset consider Defendant's standing. As with Warrants I and II, Warrant III relates solely to the search of the Challenger. For the same reasons addressed above, Kelley did not have a reasonable expectation of privacy in the Challenger and does not have standing to challenge the search authorized by Warrant III. The same result would obtain even if Kelley had standing to challenge Warrant III because his basis for doing so is entirely derivative of his arguments challenging Warrants I and II.

IV. CONCLUSION

Kelley lacks standing to challenge any of the three warrants in this case. Without standing, this Court need not address Kelley's arguments concerning probable cause and the validity of using data generated out of state. As a result, Kelley's Motion to Suppress is denied in full.

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[2] Kelley's Motion and Kelley's argument at the hearing do not make clear whether Kelley intends to argue that Warrant III should fail because, with the invalidation of Warrants I and II, Warrant III would be tainted as fruit of the poisonous tree, or because, without the evidence supplied by Warrants I and II, Warrant III would lack sufficient probable cause. This question is made moot by Kelley's lack of standing to challenge Warrant III.

Entry is:

Defendant Richard Kelley's Motion to Suppress is **DENIED**.

The clerk is directed to incorporate this order into the docket, by reference, pursuant to M.R. Crim. P. 53(a).

January 18, 2023
Date

Bruce C. Mallonee
Justice, Maine Superior Court

+STATE OF MAINE
PENOBSCOT COUNTY

UNIFIED CRIMINAL DOCKET
LOCATION: BANGOR
DOCKET NO. PENCD-CR-2021-00670

STATE OF MAINE,

v.

RICHARD KELLEY,

Defendant.

ORDER on DEFENDANT'S MOTION TO RECONSIDER

Before the Court is Defendant Richard Kelley's Motion to Reconsider the Court's decision on Defendant's motion to suppress. For the reasons set forth herein, Kelley's motion is **DENIED**.

I. BACKGROUND

On March 12, 2021, Kelley was charged with one count of aggravated trafficking and one count of criminal forfeiture. Kelley was indicted on both counts on May 26, 2021. On March 30, 2022, Kelley filed a motion to suppress. A hearing was held on March 30, 2022. The Court denied the motion on January 18, 2023, and on January 31, 2023, Kelley filed this Motion to Reconsider.

II. DISCUSSION

Kelley requests the Court reconsider the issue of standing for two reasons: first, because the State conceded the issue, and, second, because evidence establishes his standing to challenge the searches. Under M.R. Civ. P. 7(b)(5), a motion "for reconsideration of an order shall not be filed unless required to bring to the court's attention an error, omission or new material that could not previously have been presented." A court need not grant a motion for reconsideration unless it is reasonably clear that prejudicial error has been committed or substantial justice has not been done. *See Davis v. Currier*, 1997 ME 199, ¶ 7, 704 A.2d 1207.

Standing "is a threshold issue and Maine courts are only open to those who meet this basic requirement." *State v. Lovett*, 2015 ME 7, ¶ 7, 109 A.3d 1135. Thus, even were the parties not to address

standing, the Court would be required to consider it. *Id.* Here, the Court fully considered standing, and, although the State eventually conceded the issue, that concession was not offered until after Kelley had argued the issue thoroughly in his brief and had addressed it further at the hearing. Kelley's current argument identifies no omission in his argument that might justify reconsideration.

Kelley next argues the evidence shows he had standing. He cites no evidence and advances no legal argument not addressed in his initial written and oral arguments that might support his contention.

For the sake of clarity, the Court addresses again the substance of his argument. Kelley relies on *U.S. v. Jones* to suggest an invalid search occurred here.[1] The inquiry into whether passengers in a vehicle have standing to challenge a search turns on whether they have a possessory interest in the vehicle. *See Rakas v. Illinois*, 439 U.S. 128, 148 (1978); *Lovett*, 2015 ME 7, ¶ 8, 109 A.3d 1135.[2] Passengers without any possessory interest in a vehicle do not "have a legitimate expectation of privacy" in the vehicle they occupy. *Rakas*, 439 U.S. at 148-49. The First Circuit, relying on *Rakas*, held that "passengers in automobiles who assert no property or possessory interest in a vehicle cannot be said to have the requisite expectation of privacy in the vehicle" for standing. *United States v. Campbell*, 741 F.3d 251, 263 (1st Cir. 2013). Many other courts, relying on *Rakas*, have held that a passenger who has no property or possessory interest in a vehicle cannot challenge the search of that vehicle.[3]

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[1] *Jones* stands for the proposition that when a tracking device is placed on a vehicle it violates the *operator's* right to privacy. 565 U.S. 400 (2012). Kelley neither owned nor drove the car in this case and therefore *Jones* is of no avail to the defense.

[2] In this motion, Kelley suggests that *Lovett* is inapposite because in *Lovett* the State did not concede standing and the passenger did not have the same level of regular contact with the car as does Kelley in the instant case. But whether the State concedes standing has no effect on standing. Furthermore, *Lovett* firmly holds that standing turns on whether the defendant has a possessory interest in the car, which Kelley did not. *See Lovett*, 2015 ME 7, ¶ 8, 109 A.2d 1135.

[3] *See United States v. Russell*, 26 F.4th 371, 377 (6th Cir. 2022); *United States v. Marcum*, 797 Fed. Appx. 278, 281 (9th Cir. 2019); *United States v. Lee*, 586 F.3d 859, 864-65 (11th Cir. 2009); *United States v. Carter*, 300 F.3d 415, 421 (4th Cir. 2022); *United States v. Baker*, 221 F.3d 438, 441-42 (3d Cir. 2000); *United States v. Riazco*, 91 F.3d 752, 754-55 (5th Cir. 1996); *United States v. Mangum*, 100 F.3d 164, 170, n.8 (D.C. Cir. 1996); *United States v. Price*, 54 F.3d 342, 345-46 (7th Cir. 1995); *United States v. Perea*, 986 F.2d 633, 639 (2d Cir. 1993).

The Court notes the persuasive reasoning of courts that have addressed what effect being a longer-term passenger has on a passenger's standing. In *United States v. Jefferson* the Tenth Circuit held that a passenger who joined the owner of a car on a long trip and even was driving at the time of the stop did not have standing to challenge the car's search. *Jefferson*, 925 F.2d 1242, 1249-51 (10th Cir. 1991) ("We do not believe that the Supreme Court intended that any time an accused takes a long distance road trip in a car, the car is to be treated like a home for Fourth Amendment purposes. The point remains that regardless of whether it is driven across town or the country, a car does not envelop its occupants in a house-like cloak of Fourth Amendment protection."). In *United States v. Anguiano* the Eighth Circuit held that a passenger in car stopped in Iowa lacked standing to challenge the vehicle's search despite his having been in the car for the duration of a trip from Nevada. *Anguiano*, 795 F.3d 873, 877-79 (8th Cir. 2015) ("[T]he mere duration and distance of his trip alone is insufficient to elevate Anguiano's status beyond a mere passenger without a reasonable expectation of privacy.").

In conclusion, Kelley fully argued the issue of standing and, in his renewed argument, has offered no evidence or new arguments that might persuade the Court that he has standing to contest the search of the car. Mr. Kelley's motion must therefore be denied.

Entry is:

Defendant Richard Kelley's Motion to Reconsider is **DENIED**.

The clerk is directed to incorporate this order into the docket, by reference, pursuant to M.R. Crim. P. 53(a).

04/18/2023
Date

Bruce C. Mallonee
Justice, Maine Superior Court