STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. WAL-24-181

MATTHEW PENDLETON

Appellant,

v.

STATE OF MAINE

Appellee

REPLY BRIEF OF APPELLANT

ON APPEAL BY MATTHEW PENDLETON
FROM THE UNIFIED CRIMINAL COURT

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REPLY TO ARGUMENTS OF APPELLEE

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING, IN PART, DEFENDANT'S MOTION IN LIMINE AND ALLOWING REDACTED, UNAUTHENTICATED, PREJUDICIAL, AND IRRELEVANT TEXT MESSAGES TO BE ADMITTED IN EVIDENCE.

A. The redacted text message screenshots were not properly authenticated.

The State contends that the text message screenshots sent to Claudia Pendleton on January 5, 2023, were properly authenticated in accordance with M.R. Evid. 901. The State argues that Claudia's history of texting her farther and familiarity with the contact name 'dad' suffices to authenticate these messages under the "low burden" standard. (Red Br. 12.) However, this level of authentication falls short of the stringent standard for reliability in criminal proceedings. While the State relies on cases such as *State v. Churchill* and *State v. Tieman* to support a lower threshold, these cases do not adequately address the heightened risk of misinterpretation or alteration inherent in screenshots of digital communications in today's digital world.

Screenshots are particularly vulnerable to manipulation and the State did not establish that these messages originated from Pendleton's device or that he authored them. Federal courts have recognized for over a decade that "electronic communications are susceptible to fabrication and manipulation" and that "the fact that an electronic communication on its face purports to originate from a certain person's [account] is generally insufficient standing alone to authenticate that person

as the author of the communication." *Campbell v. Texas*, 382 S.W.3d 545, 547 (Tex. Ct. App. 2012). In this case, considering the lack of foundation through expert analysis or secure metadata—which the State has ample access to through the State Crime Lab and routinely uses in prosecutions—the trial court erred when it ruled that the witness's mere acknowledgement that she had Pendleton saved under "dad" in her phone (Tr. Tran. I, 89) and texted him previously was sufficient to establish that the digital evidence was authentic and not tainted by fraud, alteration, or fabrication. Lt. Col. Eric Catto, *The Spoof Is In the Evidence: Obtaining Electronic Records to Corroborate Text Message Screenshots,* 2020 Army Law., 34 (2020) ("Recognizing that electronic communications are susceptible to 'spoofing' or frauds, courts have found it is insufficient to merely argue that, on its face, a message purports to be from a person's messaging systems. The availability and ease of modern spoofing technology makes such an assumption naïve.").

The State also relies on statements made by the witness after the disputed redacted screenshots were admitted in evidence to argue that the court's admission of the screenshots over Defendant's objection was not erroneous. *Compare* (Red Br. 12-13) *with* (Tr. Tran. I at 95). Considering that this witness was hostile to Defendant, relying on post-admission testimony to justify the admission of evidence is not particularly persuasive.

Lastly, the State cites only outdated resources and caselaw concerning

electronic evidence in support of its contentions. The State's only citations for its argument, Field & Murray (published in 2007) and *State v Churchill*, 2011 ME 121, 32 A.3d 1026 (decided in 2011), were both published at a time before today's artificial intelligence-driven digital environment could ever be imagined. The reliability of digital evidence must be understood and evaluated by the reality of the digital environment today. The State employs technicians and analysts to extract and examine electronic data in criminal prosecutions so the information can be used in court to authenticate electronic communications. The State's failure to properly conduct such an investigation should never shift the burden of a criminal defendant to disprove the authenticity of an electronic communication—yet the trial court's decision to admit the text message screenshots over objection did just that.

For these reasons and those outlined more fully in the Blue Brief, Defendant requests this Court hold that trial court's ruling that the screenshots were sufficiently authenticated was erroneous, find that the error was prejudicial to the Defendant, and remand this matter for a new trial.

B. The redacted screenshots were not relevant and were unfairly prejudicial.

The State also contends that the text messages were relevant to proving the Defendant's state of mind and intoxication. (Red Br. 15-16.) However, the link between these messages and the elements of the crime as charged is tenuous at best. The text messages purporting to be from Defendant to his daughter about her

boyfriend relate to a personal relationship that holds no probative value to his intent or actions towards the decedent.

Moreover, admitting these messages was unduly prejudicial, as their impact could only lead the jury to focus on an inflammatory portrayal of Defendant's character rather than on evidence as to state of mind and conduct that led to the decedent's death. (*See also* argument in Blue Brief and Grey Brief at 7.) The trial court should have excluded the messages under M.R. Evid. 403 due to the undue and unfair prejudice that substantially outweighed any probative value.

For these and the reasons more fully developed in Defendant's Blue Brief, the Defendant's conviction should be vacated and the matter remanded for a new trial.

II. DEFENDANT PROPERLY RAISED AND PRESERVED THE ISSUE OF CLAUDIA PENDLETON'S TESTIMONY FOR APPELLATE REVIEW, AND THE COURT ABUSED ITS DISCRETION AND ERRED IN ALLOWING THE WITNESS'S TESTIMONY.

Defendant filed with the trial court prior to jury selection a number of motions *in limine*, including one titled "Motion *in Limine* (Exclusion of Evidence and Testimony of Claudia Pendleton)" (filed January 29, 2024) (emphasis added). This motion was discussed in chambers following the second day of jury selection on February 6, 2024. The motion included the following:

> Any testimony Ms. Pendleton could provide, in addition to being irrelevant, would hold no probative value to the issues before the jury, and any probative value alleged would be substantially outweighed by the danger of unfair prejudice, confusing the narrow issues of the case regarding Mr. Pendleton's conduct as to Mr. Curit, misleading the jury,

> and other dangers identified in M.R. Evid. 403. . . . Furthermore, if the State did offer Ms. Pendleton's testimony, the evidence provided by her testimony would be inadmissible pursuant to M.R. Evid. 404.

(1/29/2024 Motion *in Limine* (Exclusion of Evidence and Testimony of Claudia Pendleton), at 2.) The trial court ultimately denied this motion, although through its ruling on a separate motion *in limine* restricted the State's direct examination regarding the text message screenshots at issue to only the unredacted portions.

During the first day of trial, following an on-the-record discussion in chambers, the Defense articulated to the trial court it would be preserving its objections and arguments for appeal on the record, (Tr. Tran. I, 76), and articulated during sidebar at trial that " . . . we'll just preserve all of our prior objections we made to the -- in the motion in limine." (Tr. Tran. I, 84.). The Defense preserved all its previously discussed objections. (Tr. Tran. I, 77, 84, 115.) Additionally, the Defense articulated, although it did not need to, that it may still object on the record if an issue was raised. (*See* Tr. Tran. I, 84.) The context was not, as the State argues, only in regard to the first proffered exhibit as these conversations almost entirely occurred at sidebar prior to Claudia taking the stand. Furthermore, the Defense's incorporation of all prior arguments and objections occurred before Claudia was even sworn in. (*See* Tr. Tran. I, 87.) Accordingly, these issues were properly preserved for appeal.

The State attempts to justify the admission of Claudia's testimony regarding

Defendant's alleged aggressiveness when intoxicated by arguing that it was relevant to his state of mind when he purportedly murdered the decedent. However, this testimony only served as inadmissible character evidence, which should have been excluded pursuant to M.R. Evid. 403 or 404(b).

The State's direct examination of Claudia centered on her relationship and opinion of her father and redacted text messages she received from him in January 2023. By highlighting his daughter's strained relationship with him—including her poor opinion of him generally and of his drinking habits—the State introduced highly prejudicial evidence that was more likely to sway the jury's perception of the Defendant's character rather than focusing on evidence of the alleged offense. Evidence of purchasing alcohol from a cashier who believed the Defendant was sober (Tr. Tran. I, 73) is not evidence of enraged, murderous, drunkenness later in the evening. Thus, the State resorted to suggesting its theory of a drunken rage to the jury through Defendant's alleged statements via text about a different individual, but redacted in a way that could only confused and inflame the jury. This argument was specifically raised by Defendant's counsel in chambers.

> [A]ll of the statements are part and parcel of the threats being made to [3rd individual]. And if you start to isolate out the individual statements which are part of threats and are threats, [brief list of examples], there's no ability for [the Defense] to provide any further context without explaining these are threats to [the 3rd party]. So it does start to become a 403 issue because these are all threats to [the 3rd party] and it states to almost look like [Defendant's] talking about, you know, what he's done to

Kevin Curit by taking these things out in isolation.

(Tr. Tran. I, 17-18.) The State suggests that following the trial court's admission of this evidence over objection, the Defense's decision to ask questions of the witness is actually support that the trial court's ruling was correct. (Red Br., 19-20.) Such a contention is ludicrous. Although the State may imagine a legal world where in order to preserve an objection a defendant must never discuss or challenge evidence it objected to, such a world does not exist. Once potentially inflammatory and confusing evidence is admitted by the trial court, the defense is compelled to address the evidence. It is nonsensical to argue that what the Defense considered "worthy of cross-examination" (Red Br., 19-20), must have been properly admitted.

For these and the reasons more fully articulated in Defendant's Blue Brief, this Court should remand the matter for a new trial.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING PEARSON'S TESTIMONY.

Although the State attempts to argue that a person's custodial status does compromise their presumption of innocence, the reality is that is does. Prior to the testimony, the trial court stated on the record that it was

> … also concerned with the reference to residing together. The residing nature goes directly to this custodial nature with regard to the status of the defendant, which is the countervailing balance that 403 analysis relates to most particularly in this case. . . . But the issue with respect to residing together I think skirts too closely to the nature, of, again,

Pendleton's custodial status.

(Tr. Tran. III, 31.) The trial court's concerns were correct; however, the decision to allow the witness to testify was not and Defendant was unfairly prejudiced as a result. Accordingly, Defendant requests his conviction be overturned and this matter be remanded for a new trial.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN DETERMINING THAT A CURATIVE INSTRUCTION WAS SUFFICIENT CURE TO THE EXPOSURE OF INADMISSABLE EVIDENCE AND IN DENYING DEFENDANT'S MOTION FOR MISTRIAL.

The State argues that the trial court's curative instruction was sufficient to address Derek Pearson's unauthorized mention of Defendant's custodial status. However, this isolated instruction could not offset the significant, implicit prejudicial impact that Pearson's testimony had on the jury. Jurors, having been exposed to this inadmissible information, may have based their verdict on assumptions regarding Defendant's guilt unrelated to the evidence presented. The proper course of action would have been to grant a mistrial to ensure the integrity of the proceedings.

Unlike the situation in *State v. Retamozzo*, 2016 ME 42, 135 A.3d 98, as raised in the Red Brief, Pearson's statement was not inadvertent. In *Retamozzo*, the defendant was charged with two counts of criminal restraint by a parent following her disappearance with her children from Maine, a national alert enacted for two days, and the eventual discovery of the defendant and her two children in South

Carolina. During trial, Retamozzo's mother testified about how she traveled to South Carolina to pick up her grandchildren after Retamozzo was found there and inadvertently informed the jury that she visited her daughter in jail in South Carolina. *Retamozzo*, 2016 ME 42, ¶ 3-5, 135 A.3d 98. The defense made no objection and the questioning moved on. *Id*. On appeal, the *Retamozzo* Court reviewed for obvious error on the unpreserved issue and, finding none, affirmed. It also reflected on existing caselaw within its analysis. The State's summaries of the caselaw are not fully accurate. (Red. Br. 25). For example, this Court's holding in *State v. White*, 456 A.2d 13, 15 (Me. 1983) was that "brief and inadvertent exposure to jurors of a defendant *in handcuffs*, without more, is not so inherently prejudicial as to require a mistrial." (Emphasis added). Here, the intentional disclosure from a prepared, instructed witness was not inadvertent, fleeting, and because it was the last statement heard by the jury before a sidebar and break, the jury had ample opportunity to digest and reflect on Defendant's custodial status before a curative instruction told them otherwise. Pearson was specifically instructed and coached to not refer to Defendant's custodial status. Yet within the first few questions did expressly that. Because of the exceptionally prejudicial effect, the trial court abused its discretion in determining that the curative instruction was a proper and sufficient remedy and in denying the motion for a mistrial.

As such, for the reasons stated in herein and argument more fully in

Defendant's brief, Defendant requests this Court overturn his conviction and remand the matter for a new trial.

V. THE SENTENCING COURT INCORRECTLY EXTENDED THE MAINE RULES OF EVIDENCE TO APPLY IN PROCEEDINGS OUTSIDE THE RULE'S STATED PURVIEW.

The State argues in its brief that the Defendant is asking this Court to ignore long standing precedent and "do exactly what the rule prohibits." (Red Br. 27). The State then provides in a footnote a number of cases in which a juror was not allowed to testify at trial or during an inquiry into the validity of a verdict or indictment. (*Id.* n.5.) By its terms, M.R. Evid. 606 applies in only two context: "(a) At the trial" and "(b) During and inquiry into the validity of a verdict or indictment." M.R. Evid. 606. The exceptions outlined in Rule 606 apply only in the context of "(b) During and inquiry into the validity of a verdict or indictment." *Id.* The Defendant's argument involves neither prohibited context nor any of its exceptions. Rather, Defendant argues that the sentencing court's conclusion that Rule 606 applied to a sentencing hearing was an abuse of discretion given the unambiguous language of the Rule. By determining that Rule 606 applied to the sentencing hearing to prohibit juror participation (in both affidavit and in person testimony), the sentencing court without authority expanded Rule 606 beyond its stated and ratified scope. There is no way to cure the error other than with a new sentencing hearing.

The State has cited no authority for the proposition that a juror is prohibited from participating in either party's presentation to the sentencing court. Because there is no rule or statute limiting a juror affidavit or in-court testimony during a sentencing hearing, the sentencing court's decision over objection unfairly, unjustly, and prejudicially limited the Defendant's sentencing presentation

CONCLUSION

For the stated reasons stated above, Appellant Matthew Pendleton respectfully requests that the sentence and/or conviction be vacated, and that this Court order any further relief this Court determined to be just.

Respectfully submitted,

Dated: October 29, 2024

/s/ Christopher K. MacLean

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CERTIFICATE OF SERVICE

I, Christopher K. MacLean, Esq. attorney for the Appellant in this matter,

hereby certify that I have made service of two copies of the foregoing REPLY BRIEF OF APPELLANT on Katie Ann Sibley, AAG, Office of the Attorney General, 6 State House Station, Augusta, ME 04333.

Dated at Camden, Maine October 29, 2024 /s/ Christopher K. MacLean

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