STATE OF MAINE
YORK, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: YOR-24-503

STATE OF MAINE,
Appellee

v.

RANDAL J. HENNESSEY,
Appellant

ON APPEAL FROM THE SUPERIOR COURT

BRIEF OF APPELLEE

AARON M. FREY
Attorney General

JENNIFER F. ACKERMAN
Assistant Attorney General
State's Attorney Below

KATIE SIBLEY
Assistant Attorney General
State's Attorney on Appeal
6 State House Station
Augusta, Maine 04333
(207) 626 - 8834

LISA J. MARCHESE
Deputy Attorney General
LAURA YUSTAK
Assistant Attorney General
Of Counsel

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STATEMENT OF THE ISSUES

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II. **The prosecutor committed no error, much less obvious error, during her cross-examination or closing argument.**

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V. **The sentencing court committed no error, let alone obvious error, in imposing Hennessey's sentence.**

SUMMARY OF ARGUMENT

1. The trial court committed no abuse of discretion by excluding the testimony of Dr. Rylant. His proffered testimony was generic, unconnected to this specific case, and pertained to subject matter within the knowledge of a lay person. Any perceived error in the court's evidentiary ruling was harmless given the other substantial evidence of guilt in this case.

2. The prosecutor committed no error, much less obvious error, in her cross-examination and closing argument. The prosecutor meticulously reviewed the evidence with the jury and contrasted the claim of self-defense against the testimony of every other witness and the physical evidence. Thus,

the prosecutor's statements constituted appropriate commentary on the plausibility of the self-defense claim.

3. The trial court committed no abuse of discretion by admitting the State's rebuttal evidence. The evidence was directly responsive to rebutting the testimony offered to support a self-defense claim that the State learned for the first time at trial. Any perceived error in the court's evidentiary ruling was harmless given the other substantial evidence of guilt in this case.

4. The trial court committed no abuse of discretion by permitting the State in cross-examination to inquire about a prior Class B burglary conviction and the witness' status as a prohibited person. The State proffered this evidence as relevant to credibility, and this Court has consistently held that such evidence is admissible for that purpose. Any perceived error in the court's evidentiary ruling was harmless because, given the substantial evidence of guilt, it is unlikely the jury considered this evidence for an improper purpose.

5. The sentencing court committed no error, much less obvious error, in imposing a life sentence. The court reasonably concluded that the objective nature and seriousness of the crime - premeditated, execution style murder of an unarmed man, in front of his pregnant fiancée, by a person illegally possessing a firearm, with a young child near the scene who was immediately abandoned thereafter - warranted a basic life sentence. Similarly, the court did

not err by concluding that, given the significant number of aggravating factors, a difficult childhood was not sufficiently mitigating to reduce the maximum and final sentence from life imprisonment.

PROCEDURAL HISTORY

On September 15, 2021, the State filed a criminal complaint in the Superior Court at York County charging the defendant Randal J. Hennessey (Hennessey) with one count of intentional or knowing murder for the death of Douglas Michaud.[1] *State of Maine v. Randal J. Hennessey,* Superior Court, York County, Docket No. YRKCD-CR-2021-614; (Appendix 4, 81 (A. ___)). Hennessey made his initial appearance on September 16, 2021. (A. 4).

On November 1, 2021, the York County Grand Jury returned an indictment charging Hennessey with intentional or knowing murder, as charged in the complaint, as well as a second count for possession of a firearm by a prohibited person.[2] (A. 5, 82-83). Hennessey entered pleas of not guilty at his arraignment on December 15, 2021. (A. 6).

On May 31, 2024, Hennessey designated his expert witness as Dr. Chuck Rylant. (A. 10, 84). On June 3, 2024, the State filed a motion in limine to exclude Dr. Rylant's testimony. (A. 10, 110-112). On June 11, 2024, as part of a hearing

[1] 17-A M.R.S. § 201(1)(A) (2020).

[2] 15 M.R.S. § 393(1)(C) (2020).

to address all pending motions in limine, the trial court deferred ruling on the State's motion to exclude Dr. Rylant's testimony until the defense's case at trial. (A. 11, 31) (*Mulhern, J., presiding*). The court also deferred its ruling on whether the State could cross-examine Hennessey, should he testify regarding his status as a prohibited person and impeach him with a prior Class B burglary conviction. (A. 56-58).

On June 24, 2024, a jury was selected for Hennessey's trial. (*Mulhern, J., presiding*). (A. 13).[3] The jury began receiving evidence on June 25, 2024. (A. 14; Trial Transcript, volume I (June 25, 2024), page 7 [T.I. __]). On the third day of trial, Hennessey advised the court he intended to testify in his defense. (T., volume III (June 27, 2024), pages 85-87, 89 [T.III. __]). Based on his decision to testify, the trial court ruled that it would permit the State to cross-examine Hennessey on his legal right to possess a firearm and impeach him with his prior Class B burglary conviction. (A. 59-66). Following Hennessey's testimony, the court granted the State's motion in limine to exclude the testimony of Dr. Rylant. (A. 36-45).

On June 28, 2024, after Hennessey testified, the State advised that it would be offering expert testimony in rebuttal. (T., volume IV (June 28, 2024),

[3] Prior to trial, Hennessey waived his right to a jury trial as to count two.

page 7 [T.IV. __]; A. 115-116). On July 1, 2024, prior to the resumption of trial, Hennessey filed a motion in limine to exclude the State's proffered rebuttal evidence. (A. 15, 113-123). After arguments from the parties, the court denied Hennessey's motion and permitted the State to call its rebuttal witness. (A. 46-55). Later this same day, the jury returned its verdict that the State had proven beyond a reasonable doubt that Hennessey was guilty of murder. (A. 15). The court also found Hennessey guilty of possessing a firearm as a prohibited person. (A. 15).

On October 30, 2024, the Superior Court (*Mulhern, J.*) adjudged Hennessey guilty as charged and convicted. (A. 17). The court then imposed a life sentence to the custody of the Department of Corrections on the charge of murder, and a concurrent five-year sentence on the charge of possessing a firearm as a prohibited person. (A. 17, 19-21; Sentencing Transcript 101 [S. Tr. __]). On November 5, 2024, Hennessey filed a notice of direct appeal pursuant to M.R. App. P. 2(a)(1) and 15 M.R.S. § 2115. *State of Maine v. Randal J. Hennessey,* Yor-24-503. Hennessey also filed a separate application for leave to appeal his sentence pursuant to M.R. App. 20 and 15 M.R.S. § 2151. *State of Maine v. Randal J. Hennessey,* SRP-24-502. On December 20, 2024, the Sentence Review Panel issued an order granting the application for leave to appeal sentence.

STATEMENT OF FACTS

In 2019, Jamie Wakefield (Jamie) and Douglas Michaud (Doug) met while playing pool at a local establishment in Biddeford. (T.I. 9-10). The young couple quickly fell in love and Jamie soon moved into Doug's apartment, located on the third floor of a building he owned on Union Street in Biddeford. (T.I. 12). At the time, Hennessey was one of Doug's tenants and resided in the second-floor apartment with his girlfriend and children. (T.I. 12).

In late 2019, after consistent issues with Hennessey regarding noise, smoking inside the building, and parking, Doug handed Hennessey an eviction notice. (T.I. 21-24). Hennessey threw the notice back in Doug's face. (T.I. 21-24). Eventually, Doug and Hennessey reached an agreement whereby if Hennessey maintained "good behavior" for six months, Doug would not pursue the eviction. (T.I. 21-24). Though Hennessey caused no issues during the six-month period, once it ended, his "behavior went back to the way it was before" - disruptive and defiant. (T.I. 21-24).

In 2021, Hennessey decided to start a repair business and purchased a motorcycle that he kept and worked on in Doug's driveway. (T.I. 25; State's Exhibit 144 [St. Ex. ___]). Doug did not initially say anything about the extra motorcycle in the driveway. (T.I. 25; T.III. 43-53; St. Ex. 144). However, by September 2021, Hennessey had filled Doug's driveway with three

motorcycles, a dirt bike, two kayaks, and a trailer, and had strewn tools about the property. (T.III. 43-53; St. Ex. 144). On September 12, Doug finally told Hennessey that his driveway could not be used as a commercial garage and that he needed to remove all but one motorcycle from the property. (T.I. 25-27; T.III. 43-54; St. Ex. 144).

On September 13, despite Doug repeatedly telling Hennessey that using his driveway as a commercial space was not up for discussion, Hennessey again and again harassed Doug throughout the day. (T.III. 39-40, 53-55, 60-62; St. Exs. 143-144). That evening, while Doug was not home, Hennessey and his friend brought all of Hennessey's motorcycles into the street in front of the building, began drinking, and became disruptive by revving the engines. (T.I. 27-28). When Doug returned home, and following multiple days of repeated angry calls and texts from Hennessey insisting on his right to use Doug's property for commercial purposes, Doug prepared an eviction notice. (T.I. 27-29; St. Exs. 141-142, 144). Due to Hennessey's behavior, Doug was not comfortable serving the notice in person and decided to have it served by certified mail. (T.I. 27-29).

On the morning of September 14, Hennessey armed himself with a handgun and went upstairs to confront Doug. (T.III. 208). Hennessey pounded on Doug and Jamie's door for several minutes while yelling about the notice of eviction. (T.I. 29-31). Shortly after 2:00 p.m., Doug left for an appointment and

Jamie remained at their apartment. (T.I. 29-31). At 2:09 p.m., Doug made a note in his phone that Hennessey had told him on this day that "Karmas a bitch and you'll get yours." (T.III. 24, 190-191). Around 2:49 p.m., Hennessey sent Doug a video depicting Hennessey walking around in Doug's driveway screaming about Doug's property. (T.I. 31-32). Hennessey then messaged Doug that the video was "a heads up before going to court." (T.III. 62). Hennessey continued to badger Doug through text, causing Doug to tell Hennessey that his threats and behavior were "too much," he "breaks all the rules," and that Doug was "DONE." (T.III. 55-58, 63-64). He requested Hennessey stop texting him. (Id.).

Doug called Jamie as he was driving home, and they discussed the video and Hennessey's behavior, which was so out of control now that Doug thought he would have to call the police. (T.I. 31-32). Doug arrived home a few minutes later and Jamie was on the front porch waiting for him. (T.I. 32-33). Doug parked his truck in front of his building and told Jamie he was going to inspect his property in the driveway. (T.I. 33-34). Jamie told Doug she would meet him upstairs, but when she opened the front door, Hennessey was sitting at the top of the stairs with his arms crossed. (T.I. 33-35). Hennessey refused to move from the stairs and angrily and loudly confronted Jamie about the eviction. (T.I. 35-36). Hennessey was still berating Jamie when Doug arrived on the porch. (Id.). Doug, extremely upset, told Hennessey that it was one thing to harass him,

but that Hennessey was not going to harass his pregnant girlfriend. (T.I. 36-37). Hennessey only became louder and more aggressive, prompting Doug to close the front door. (T.I. 36-38).

Doug and Jamie remained on the front porch, and Jamie asked Doug to pick up a package that was next to the mailboxes. (T.I. 38-40). As Doug bent over to pick up the package, Hennessey ran down the stairs, opened the front door, stepped out onto the porch, and fired five bullets into Doug's back. (T.I. 40-43; Trial Transcript, volume II (June 26, 2024) pp. 36-37[T.II. __]). Doug fell onto the porch, Jamie began screaming for help, and Hennessey went back inside and shut the door. (T.I. 40-43).

Jamie knelt on the porch to help Doug, his blood "dripping through [her] fingers" and smearing her maternity shirt as she tried to place his head in her lap. (T.I. 43-47). After hearing Hennessey yelling and the first round of shots, Jane Harrell (Jane), who lived across the street, went to her window that looked down onto the front porch of Doug's building. (T.I. 77-79). A few moments later, while Jamie was kneeling next to Doug's head and Jane was looking down on them from her window, Hennessey came back out onto the porch, stepped closer to Doug, and fired a sixth bullet into the back of Doug's head. (T.I. 43-44, 78). Hennessey then fled on his dirt bike, which had been parked in a grass area on Doug's property, yelling towards Jamie, "welcome to Biddeford, bitch." (T.I.

81, 109, 122-132). During his flight, Hennessey disposed of the firearm he had used to kill Doug in "the first body of water [he] saw on the train tracks." (T.III. 240).

Jane and Carl Weber (Carl), another neighbor, rushed to the porch to help Jamie. (T.I. 81, 109-110). When they arrived, Jamie was cradling Doug's head and screaming that Hennessey had "shot him." (T.I. 84, 126, 136). Both Jane and Carl immediately knew Doug was dead. (T.I. 81-82, 109-110). Jane took over communications with 911 as Jamie was virtually incoherent and making sounds that could only be described as those of "ultimate suffering." (T.I. 82, 155-156).

Deputy Chief Medical Examiner Dr. Liam Funte performed an autopsy on Doug. (T.II. 20-21, 24). Dr. Funte found no external signs that Doug had been in a physical altercation, but that he had sustained five gunshot wounds to his back, and one gunshot wound to the back of his head. (T.II. 34-52). Dr. Funte determined that the upward trajectory of the gunshot wounds to Doug's back were consistent with Doug being bent forward or ducking when he was shot. (T.II. 47, 57-58).

During a search of the scene, detectives with the Maine State Police found six shell casings on the front porch and 1 shell casing in the entryway leading to the stairs that were used to access the upstairs apartments. (T.II. 80-85, 90-

91). All seven casings had been fired from the same 9mm Luger handgun. (T.II. 157-158). The blood on the porch indicated two different events had made the patterning. (T.II. 106-107). The first type of patterning was consistent with Doug being bent over and picking up the package when he was shot. (T.II. 101-105). The second type of patterning, including blood on the exterior of the building off of the porch, was consistent with Doug lying down on the porch when Hennessey shot him in the back of the head. (T.II. 103-104, 112-115, 121-123; St. Exs. 54-55). Lead residue on the back of Doug's collar and the trajectory of the bullet wound to his head indicated Hennessey had been standing close to and towards Doug's torso when he fired his final shot. (Trial Transcript, volume 5 (July 1, 2024) pp. 25-27 [T.V. __]; St. Exs. 83-82).

At approximately 8:00 p.m., David Alexander with the United States Marshal Service took Hennessey into custody in Durham, New Hampshire. (T.II. 163-169). Hennessey was uncooperative and swearing. (T.II. 170-171). During transport back to Maine, Hennessey stated that "when he's mad, he's mad," that he's impulsive, that this all happened because Doug kept "threatening [him]," and that police would find the threatening messages in Doug's phone. (T.II. 196-197). A review of their phones revealed that Doug had never sent Hennessey any threatening messages. (T.III. 67-68; 200).

ARGUMENT

I. The trial court did not abuse its discretion by excluding the testimony of Dr. Chuck Rylant.

Hennessey first contends that the trial court abused its discretion by excluding the testimony of Chuck J. Rylant, Psy.D. (Blue Brief 19-29 [Bl. Br. __]). Contrary to his argument, the testimony was not relevant and would not have assisted the jury in making factual determinations regarding any justification in his use of force. (Id. at 24-29). Apparently recognizing that the court did not abuse its discretion, Hennessey invites this Court to overrule established precedent for reviewing a trial court's evidentiary rulings. (Id. at 21-24). The Court should decline to do so.

A. Standard of review and legal framework.

"For expert testimony to be admissible under Rule 702, the trial court must determine that the testimony (1) is relevant in accordance with M.R. Evid. 401, and (2) will assist the trier of fact in understanding the evidence of determining a fact at issue." *State v. Burbank,* 2019 ME 37, ¶ 8, 204 A.3d 851 (quotation marks and citation omitted).[4] To determine whether the proffered testimony is relevant, "the court must make a preliminary determination that

[4] Maine Rule of Evidence 702 provides: "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if such testimony will help the trier of fact to understand the evidence or to determine a fact in issue."

the proponent has presented a sufficient demonstration of reliability." *Id.* "A trial court is entitled to exclude expert testimony that is supported only by evidence that is so general as to lack reliability and therefore is not relevant." *Id.* at ¶ 15.

To determine whether the proffered testimony would assist the jury in understanding the evidence, the trial court must preliminarily determine "whether the subject matter to which the testimony will be addressed is beyond common knowledge so that the untrained layperson will not be able to determine it intelligently without the assistance of a person with specialized knowledge." Field & Murray, *Maine Evidence,* §702.2 at 375-376 (6th ed. 2007). *See State v. Abdullahi,* 2023 ME 41, ¶ 21, 298 A.3d 815 (expert testimony properly excluded when "the subject of inquiry is one which is plainly comprehensible by the jury and of such a nature that unskilled persons would be capable of forming correct conclusions respecting it." (citation omitted)); *State v. Dechaine,* 630 A.2d 234, 237 (Me. 1993) ("The purpose of Rule 702 is to provide specialized knowledge not otherwise expected to be in the possession of the factfinder.").

The Law Court reviews a court's preliminary or foundational findings for clear error, and a court's decision to admit or exclude expert testimony for an abuse of discretion. *State v. Maine,* 2017 ME 25, ¶ 16, 155 A.3d 871 (admission);

State v. Poulliot, 1999 ME 39, ¶ 10, 726 A.2d 210 (exclusion). "A court abuses its discretion in ruling on evidentiary issues if the ruling arises from a failure to apply principles of law applicable to the situation, resulting in prejudice." *State v. Thomas,* 2022 ME 27, ¶ 23, 274 A.3d 356.

B. Dr. Rylant's overly generalized testimony about subject matters within the common knowledge of a layperson was properly excluded as irrelevant.

Here, Dr. Rylant's proffered testimony was that pathways in the brain "may allow initiation of a rapid emotional response in the amygdala before there is time to completely understand what [a person is] reacting to." (A. 102). This can lead to "amygdala hijack" which "is an immediate, overwhelming emotional response, that with the luxury of hindsight is recognized [as] excessive given the stimulus." (Id.). The "core emotion driving" this type of response is "[f]ear," and fear as a reaction "manifest[s] differently according to the unique temperament of the individual." (A. 100).

Below, Hennessey argued that this testimony was relevant because he testified that "he was afraid," and had described emotional conditions he experienced at the time that were consistent with amygdala hijack. (A. 39-43). He further argued that Dr. Rylant's testimony would help the jury understand the evidence of his fear and his response. (A. 39-43). However, "[e]vidence is [only] relevant if: (a) it has any tendency to make a fact more or less probable

than it would be without the evidence; and (b) the fact is of consequence in determining the action." M.R. Evid. 401. This proffered testimony was irrelevant for two reasons.

First, Dr. Rylant's testimony had no relation to establishing that Hennessey's self-defense claim was more probable. He offered no opinion or conclusion specific to the facts of Hennessey's case. (A. 98-108).[5] His report only summarized relevant literature and made no connection as to how that research *otherwise* applied to Hennessey. (A. 40, 98-108). Indeed, the entire basis of Dr. Rylant's testimony was premised on the "core emotion" of fear and the response to fear being "unique [to an] individual." (A.100) Yet he did not speak to Hennessey and did not listen to Hennessey's testimony, to ascertain what "unique" emotions Hennessey was experiencing at the time, that might have been consistent with "amygdala hijack." (A. 28) This type of "generalized analysis of [a response to fear] based on the available literature and [Dr. Rylant's] own experience … offer no inherent advantage over the knowledge possessed by ordinary people." *State v. Mazerolle,* 614 A.2d 68, 71 (Me. 1992)

[5] *See State v. Erickson,* 2011 ME 28, ¶ 12, 13 A.3d 777 (an indicum of reliability and thus relevancy is "whether the expert's conclusion is tailored to the facts of the case.").

(quoting *State v. Gordius,* 544 A.2d 309, 311 (Me. 1988) (quotation marks omitted)).[6]

Second, Dr. Rylant's testimony was not "of consequence" because it would not have assisted the jury in understanding the evidence of his "fear." Fear, and reactions to it, are not concepts outside the understanding of an average person. "Every human being on this planet has felt fear and knows what it means." (A. 42). Hennessey's testimony that he was "afraid" because his family would not have a place to live, and the size difference between he and Doug, is "not far removed from that of a 'normal' person with [similar] frustrations." *State v. Ellingwood,* 409 A.2d 641, 646 (Me. 1979).

Because the concepts of fear and reactions to it are within the understanding of an average person, "[t]he jury was capable of making its own conclusions about the believability of [Hennessey's fear and self-defense claim] without the need for expert testimony." *Mazerolle,* 614 A.2d at 71 (Me. 1992).[7]

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[6] In addition to establishing no connection between the literature summary and Hennessey's purported emotional response the time of the shooting, Dr. Rylant's summary was not subject to peer-review; no "other experts attest[ed] to the reliability of [his summary]," he proffered no studies based on similar circumstances in support of his testimony, and many of his "relevant" trainings, classes, and publications pertain to use of force situations involving police - circumstances profoundly different from this case. *Erickson,* 2011 ME at ¶ 12, 12 A.3d 777; (A. 85-95).

[7] *See also State v. Fernald,* 397 A.2d 194, 197 (Me. 1979) (affirming the exclusion of expert testimony "on the accuracy of human perceptional processes" in response to stress because "the jury was capable of making an intelligent assessment of the reliability of the identification testimony … without the need of the benefit expert testimony as to how stress may affect human perceptional processes.").

Hennessey's arguments to the contrary are unpersuasive. In *State v. Thomas,* the expert witness provided a case specific opinion - the bullet casing from the scene was fired from the gun seized from the defendant's home. 299 A.2d 919, 919-920 (Me. 1973). In *State v. Paquin,* the defendant assented to the victim's delayed disclosure premise thereby providing the "precursor to the expert's opinion being relevant." 2020 ME 53, ¶¶ 20, 22, 230 A.3d 17. Here, Dr. Rylant had no opinion or insight specific to Hennessey's case; he neither spoke to Hennessey, nor reviewed any material documenting Hennessey's version of the shooting, seemingly necessary requirements to *otherwise* connect Hennessey's conduct to the general literature.

In *State v. Perry,* following the victim's testimony about her symptoms and injuries, an expert testified regarding the "technical definition" of strangulation. 2017 ME 74, ¶¶ 3, 9, 19, 159 A.3d 840. The "technical definition" of strangulation is beyond the common knowledge of a layperson because it "is *distinct* from 'choking,' [but] laypeople *often* use those terms interchangeably." *Id.* at ¶ 19 (emphasis added). Thus, specialized knowledge of the "technical definition" of strangulation was necessary for the jury to properly assess "whether Perry's alleged conduct constituted 'strangulation' as defined by statute," rather than mere choking which would have been insufficient for the

jury to return a guilty verdict. *Id.* at ¶ 20.[8] As noted above, the subject matters of Dr. Rylant's testimony were not "technical" concepts beyond the common knowledge of an average person.

C. Any perceived error in the court's exclusion of this evidence was harmless beyond a reasonable doubt.

Even if the trial court erred by excluding this testimony, the error was harmless. The harmless error analysis "applies to evidentiary errors." *State v. Judkins,* 2024 ME 45, ¶ 21, 319 A.3d 443. An error is harmless if it does not affect "the substantial rights of the defendant." *Id.* at ¶ 20 (citation omitted); M.R.U. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights shall be disregarded."). An error affects a defendant's substantial rights if "that error was sufficiently prejudicial to have affected the outcome of the proceeding." *State v. Osborn,* 2023 ME 19, ¶ 21, 290 A.3d 558 (citation omitted).

Here, "[a]lthough the court gave a self-defense instruction, the evidence did not generate facts to support [Hennessey's] use of deadly force in self-defense." *State v. Woodard,* 2025 ME 32, ¶ 11, n. 2, --- A.3d ---. "The undisputed evidence at the time of the altercation … was that [Doug] lacked any weapon," was bent over with his back to the closed door, and he "never got close to

[8] Similarly, "forensic interviewing techniques [are] beyond the knowledge of the average juror." *State v. Westgate,* 2020 ME 74, ¶ 30, 234 A.3d 230.

[Hennessey].” *Id.* “Like the defendant[s] in [*Woodard* and *Cardilli*, Hennessey] introduced the only deadly force to the situation, thus eliminating any possibility that a defense based on [Hennessey’s] belief that [Doug] was about to use deadly force could have succeeded.” *Id.* (citing *Cardilli v. State,* 2024 ME 25, ¶ 36, 314 A.3d 224 (quotation marks omitted).

Because the use of deadly force was not a reasonable hypothesis for the jury to consider, and given the overwhelming evidence supporting the jury’s verdict, the exclusion of Dr. Rylant’s “marginally relevant” testimony did not deny Hennessey “a meaningful opportunity to present a complete defense.” *State v. St. Onge,* 2011 ME 73, ¶ 20, 21 A.3d 1028 (quotation marks and citation omitted).

Accordingly, this Court can confidently conclude the trial court did not abuse its discretion by excluding the proffered testimony of Dr. Rylant.

II. The prosecutor committed no error, much less obvious error, during her cross-examination or closing argument.

Next, Hennessey claims that the State committed prosecutorial error by cross-examining him on his pretrial silence and commenting on his testimony during closing argument. (Bl. Br. 30-40). Hennessey concedes (Bl. Br. 30) that he did not object at trial, so this Court’s review is for obvious error. *State v. Nightingale,* 2023 ME 71, ¶ 29, 304 A.3d 264; M.R.U. Crim. P. 52(b).

A. Standard of review.

"To show obvious error, there must be (1) an error, (2) that is plain, and (3) that affects substantial rights. If these three conditions are met, [this Court] will set aside the jury's verdict only if [the Court] conclude[s] that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* "An error affects a criminal defendant's substantial rights if the error was sufficiently prejudicial to have affected the outcome of the proceeding." *Id.* at ¶ 30 (alteration and citation omitted). A statement will rarely be found to have created a reasonable probability that it affected the outcome of the proceeding when the statement was not sufficient to elicit an objection, particularly when viewed in the overall context of the trial." *Id.* (quotation marks and citation omitted). "The defendant has the burden of persuasion on appeal in an obvious error analysis." *Id.* at ¶ 29.

B. The prosecutor's cross-examination and closing argument were tied to the evidence in this case and proper commentary on the plausibility of his self-defense claim.

Hennessey mischaracterizes the prosecutor's cross-examination and closing argument. The record demonstrates that the thrust of both was to question Hennessey's account of the shooting. (T.V. 41-86). The prosecutor's cross-examination and argument on Hennesey's "silence" was centered on the plausibility of his self-defense claim in contrast to his recorded statements to

the police, none of which suggested that he had acted in self-defense as he claimed at trial. (T.II. 196-201). In characterizing his account as "made up from whole cloth," and designed to fit the statutory requirements of self-defense, the prosecutor methodically compared Hennessey's testimony to other facts in evidence and demonstrated that it was unsupported by the evidence. (T.V. 59-86).

This Court has repeatedly held that "a prosecutor may criticize a defendant's characterization of evidence as implausible and unsupported." *Nightingale,* 2023 ME at ¶ 28, 304 A.3d 264; *State v. Wai Chan,* 2020 ME 91, ¶ 25, 236 A.3d 471 (same); *State v. Cheney,* 2012 ME 119, ¶ 35, 55 A.3d 473 (same). This Court has also "repeatedly upheld the prosecutor's ability to argue vigorously for any position, conclusion, or inference supported by the evidence." *State v. Hunt,* 2023 ME 26, ¶ 36, 293 A.3d 423 (quoting *State v. Scott,* 2019 ME 105, ¶ 26, 211 A.3d 205). And that "a prosecutor is free to comment on the consistency of a witness's testimony – just as the defense is free to comment on the inconsistency of a witness's testimony. *Id.* at ¶ 38 (quoting *State v. Westgate,* 2020 ME 74, ¶ 22, 234 A.3d 230). Exactly what the prosecutor did here.

Hennessey argues that the prosecutor "crossed [the] line" in her closing argument by asserting her personal opinion on witness credibility. Relying on

State v. Tripp, 634 A.2d 1318 (Me. 1994), he asserts that "[s]ince at least 1994, it has been improper for Maine prosecutors to argue that, in order to acquit a defendant, the jury must find the State's witnesses are lying." (Bl. Br. 35). *Tripp,* in fact, does not stand for that proposition. *Tripp* was overturned because the prosecutor asked the defendant repeatedly on cross-examination whether the victim had lied and then expressed an opinion, not tied to the evidence, that the victim had "*told you the truth,"* and "*[o]ne of them was lying here to all of us.*" 634 A.2d at 1321 (Me. 1994) (emphasis original). The prosecutor did neither of those things in this case.

At no point did the prosecutor during her cross-examination attempt to elicit Hennessey's opinion about whether other witnesses had lied. *Id.* at 1319-1320. Nor did the prosecutor argue in closing that only the State's witnesses had "*told you the truth.*" *Id.* at 1321 (emphasis original). Most significantly, unlike *Tripp,* which relied exclusively on the victim's testimony, there is substantial corroborating direct and circumstantial evidence of Hennessey's guilt in addition to any single witness statement. *See Id.* at 1320 ("Other than the testimony of the victim, there was no direct evidence of guilt and limited circumstantial evidence."). In her closing, the prosecutor meticulously reviewed the evidence with the jury, illustrating how incredible Hennessey's

testimony was by contrasting his version of the facts with the testimony of every other witness and the physical evidence.

Moreover, the prosecutor specifically argued to the jury that they were the fact finders, and it was exclusively their role to determine credibility. (T.V. 40, 59). The prosecutor's remarks put Hennessey's statements in stark contrast to each other by pointing out the other evidence that called his account into question. Since "a prosecutor's comment regarding the jury's job to distinguish between fact and fiction does not constitute [improper] vouching but is merely a statement of the jury's role to determine credibility and find facts relevant to determining guilt or innocence," *State v. DesRosiers,* 2024 ME 77, ¶ 37, 327 A.3d 64, the State committed no error, much less obvious error, in its cross-examination or closing argument.

III. The trial court did not abuse its discretion by admitting the State's rebuttal evidence.

Hennessey's third contention is that the trial court erred by allowing the State to offer the testimony of Sgt. Lawrence Rose in rebuttal. (Bl. Br. 41-45). His argument primarily rests on his assertion that the State violated its discovery obligations. (Id.).

"Proper rebuttal evidence is evidence that repels or counteracts the effect of … new facts introduced by the adverse party." *State v. Jones,* 2019 ME 33, ¶

21, 203 A.3d 816 (quotation marks and citations omitted). "[The Law Court] review[s] a court's decision to admit rebuttal evidence for an abuse of discretion, taking into account the fact that the trial judge alone had the opportunity to assess the evidence with the benefit of having heard the testimony sought to be rebutted." *Id.* (alterations, quotation marks, and citation omitted).

A. Hennessey introduced evidence that prompted the State's rebuttal.

At trial, the State presented the testimony of several witnesses in support of its theory that Hennessey's did not kill Doug in self-defense.[9] The State's case also included physical evidence in the form of blood spatter that was consistent with: Doug being bent over with his back to the door when Hennessey fired five shots into his back (T.II. 34-52, 57-58, 105-107; St. Ex. 27); and Doug lying on his stomach, with his head on the porch deck, when Hennessey shot Doug in the back of his head. (T.II. 101-105, 112-115, 121-123; St. Exs. 23-24, 54-55).

Hennessey elected to testify, and he contradicted the testimony of all the State's witnesses. (T.III. 102-262). Specifically, he testified that while he was standing in the doorway, Doug lunged at him, causing him to pull the trigger as fast as he could as he retreated backwards. (T.III. 157-159). After he fired the

[9] See T.I. through T.IV.

shots, Doug spun, then "kind of went straight up," and was still standing when Henessey shut the door. (T.III. 159-160). After a momentary pause, he went back out onto the porch, finger still on the trigger, and decided to pat Doug down for weapons. (T.III. 161-162). While standing at Doug's feet, Jamie pushed him, causing him to trip over Doug's feet and fire another shot. (T.III. 161-162). Hennessey said he had no knowledge at the time of where this shot went. (T.III. 162).

B. The State's rebuttal evidence was relevant to rebutting Hennessey's self-defense claim, which the State was required to disprove beyond a reasonable doubt.

Following Hennessey's testimony, the State sought to admit testimony from Sgt. Rose to corroborate the evidence submitted during its case-in-chief and to rebut Hennessey's account of how the shooting occurred. (T.V. 7). Specifically, the State sought to prove that the physical evidence was inconsistent with Hennessey's assertions that he was retreating backwards, Doug was spinning or otherwise upright when shot, and that Hennessey was standing at Doug's feet when the last shot was fired (all assertions that the State heard for the first time during Hennessey's direct examination). (T.V. 22-29). The Law Court has already "expressly declared testimony such as [Sgt. Rose's is] admissible in rebuttal … to assist the trier of fact in understanding an inconsistency in [Hennessey's explanation of his] conduct [and] to rebut an

express or implied inference that such inconsistency makes it improbable that [Hennessey killed Doug in self-defense]." *Cooke v. Naylor,* 573 A.2d 376, 378 (Me. 1990).

Hennessey's argument to the contrary is unpersuasive. While it is always possible that a defendant might testify, Hennessey had never made statements claiming self-defense and there was no evidence that he acted in self-defense. Given that the defense team, including Hennessey, "had long been on notice" regarding how he specifically shot Doug five times, purportedly in self-defense and once accidently, he "should therefore have reasonably anticipated that" the State would likely seek to rebut his account with evidence regarding blood spatter and shooting trajectory. (Bl. Br. 43-44). To suggest that the State is obligated to produce anticipatory expert reports because a defendant *might* testify or *could* testify in a certain way is nothing short of a wholesale, unnecessary expansion of the State's discovery obligations that would be impossible for the State to meet.

Even if this Court concludes that the trial court abused its discretion for failing to exclude Sgt. Rose's rebuttal testimony as a discovery violation, the violation was harmless. "For a jury verdict to be overturned on appeal based on an alleged discovery violation, the alleged violation must have prejudiced the

defendant to the extent that it deprived the defendant of a fair trial." *State v. Lowery,* 2025 ME 3, ¶ 25, 331 A.3d 268.

Hennessey has not demonstrated the degree of prejudice necessary to vacate his conviction. Prior to and following his testimony, Hennessey was on notice that the State may call Sgt. Rose in rebuttal for the purpose of responding to Hennessy's testimony. (T.III. 88-90, 272, 275; T.IV. 7; A. 115-116). He effectively cross-examined Sgt. Rose, and it is difficult to ascertain how he could possibly have been surprised by the testimony, as it was premised on the discovery provided - the medical examiner's report, the firearms examiner's report, and the photographs Sgt. Rose took of the scene. (T.V. 20-21, 29-35).

Moreover, this was not "simply a he-said-she-said case" because the record contains evidence "favoring Jamie's version of [the shooting]," and further demonstrating Hennessey's guilt. (Bl. Br. 45). For example, Jane's testimony describing the shot to the back of Doug's head; the physical evidence introduced in the State's case-in-chief showing Doug was bent over and lying face down when shot; Hennessey's immediate flight from the murder scene, and his own admission that shooting someone in the back is not self-defense. (T.I. 78, 81, 109, 122-132; T.II. 34-52, 57-58, 101-107, 112-115, 121-123; T.III.

225-226).[10] In light of this evidence, and the trial court's instructions to the jury, including that the credibility of an expert witness' testimony is determined the same way as a non-expert witness, it is highly unlikely that the State's rebuttal evidence resulted in an unfair trial. (T.V. 110-111).

Accordingly, given the evidence of Hennessey's guilt in addition to the State's rebuttal evidence, this Court can conclude that the trial court did not abuse its discretion, or that any perceived error was harmless.

IV. The trial court did not abuse its discretion by permitting the State to use a prior Class B burglary conviction and Hennessey's status as a prohibited person to impeach his credibility.

Next, Hennessey asserts that the trial court erred by allowing the State to elicit testimony on cross-examination about his prior conviction for Class B burglary[11] (which was the basis for the charge that he was prohibited from possessing a firearm) "despite the bifurcated trial on that charge (i.e. Count II)." (Bl. Br. at 46). The prior burglary conviction would not have come into the evidence before the jury had Hennessey not taken the stand. Once he elected to

[10] Prosecutor: "Because self-defense, you don't shoot people in the back, right?" Hennessey" "Yes, ma'am." Prosecutor: "Because they're not a threat. And there were five rounds in his back, right?" Hennessey: "Yes, ma'am." Prosecutor: "This is not self-defense, Mr. Hennessey, is it?" Hennessey: "No, ma'am." (T.III. 225-226).

[11] Hennessey was convicted on October 1, 2009, in the Cumberland County Superior Court of burglary, Class B, in violation of 17-A M.R.S. § 401(1)(B)(4) (2009).

testify, however, he put his credibility at issue, and the State was permitted under the Rules of Evidence to use his prior conviction to impeach him.

The Law Court "review[s] a trial court's determination that prior convictions are admissible for an abuse of discretion." *State v. Burton,* 2018 ME 162, ¶ 20, 198 A.3d 195 (citation omitted). Rule 609 of the Maine Rules of Evidence provides:

> For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a specific crime is admissible but only if the crime (1) was punishable by death or imprisonment for one year or more under the law under which the witness was convicted, or (2) involved dishonesty or false statement, regardless of the punishment. In either case admissibility shall depend upon a determination by the court that the probative value of this evidence upon witness credibility outweighs any unfair prejudice to a criminal defendant or to any civil party.

M.R. Evid. 609(a). "By testifying, a defendant places his general character for truth and veracity on the line and must be prepared to be cross-examined concerning appropriate prior convictions." *State v. Rolls,* 599 A.2d 421, 422-432 (Me. 1991). The Law Court has repeatedly "stated that [convictions for] burglary and theft 'are crimes involving dishonesty or false statement for purposes of M.R. Evid. 609.'" *Burton,* 2018 ME at ¶ 25, 198 A.3d 195 (quoting *State v. Almurshidy,* 1999 ME 97, ¶ 30 n.6, 732 A.2d 280).[12]

[12] *See also State v. Wright,* 662 A.2d 198, 201 (Me. 1995) (prior burglary and theft convictions fall within Rule 609(a) and bear a relationship to a testifying defendant's honesty and credibility); *Rolls,*

Here, Hennessey's prior burglary conviction and status as a prohibited person were directly relevant to, and highly probative of, his credibility. His prior burglary conviction has been recognized by this Court as a crime of dishonesty, making it admissible and probative of a witness' credibility under Rule 609. Because dishonesty directly pertains to credibility, and Hennessey put his credibility at issue by testifying, "[t]he court was entitled to conclude that the jury could find evidence of [Hennessey's] prior burglary conviction to be material in its assessment of his credibility as a witness." *Burton,* 2018 ME at ¶ 25, 198 A.3d 195.

Again, Hennessey supports his argument with a case distinguishable from his own and ignores what the State actually argued. (Bl. Br. 48-50). In *State v. Grant,* the defendant was not charged with an offense that made the mere possession of a firearm a crime. 392 A.3d 274, 275, n. 1 (Me. 1978). The prior convictions used by the State were interpreted as Class E crimes because they were not codified in the criminal code, and thus outside the contours of M.R. Evid. 609(a). *Id.* Importantly, the State proffered those convictions as probative of Grant's state of mind, *not* of his credibility. *Id.* at 276. Here, as argued above, Hennessey's prior conviction was a Class B crime, punishable by

599 A.2d at 423 (Me. 1991) ("A prior conviction of burglary is admissible to impeach the credibility of a defendant charged with attempted murder and assault." (citation omitted)).

up to ten years of imprisonment, as well as a crime of *dishonesty,* and the State offered it "[f]or the purpose of attacking the credibility of [Hennessey]." M.R. Evid. 609. Additionally, the prior conviction here was substantially dissimilar from the charge of murder,[13] thereby decreasing the prejudicial impact that the jury likely used this evidence for an improper purpose; especially considering all the other more substantial evidence demonstrating guilt.

Accordingly, this Court can conclude the trial court did not abuse its discretion by denying Hennessey's request to limit the scope of the State's cross-examination.[14]

V. The sentencing court committed no error, let alone obvious error, in imposing Hennessey's sentence.

Lastly, Hennessey challenges the propriety of his sentence, arguing that the sentencing court's basic sentence is unconstitutionally disproportionate, and that the court failed to consider his childhood as a mitigating factor. (Bl. Br. 52-60).

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[13] *See* Field & Murray, *Maine Evidence,* § 609.1 at 311 (6th ed. 2007) (similarity of offense enhances the prejudicial impact because of the likely inference of predisposition or recidivism).

[14] While Hennessey also requests this Court to consider the cumulative effect of the "errors" he has alleged. (Bl. Br. 51). Given the lack of error, or any significant error, even when his claims are considered cumulatively, the record establishes that Hennessey received a fair trial. *See State v. Williams,* 2024 ME 37, ¶ 45, 315 A.3d 714 (This Court "review[s] allegations of multiple errors cumulatively and in context to determine whether the defendant received an unfair trial that deprived him or her of due process." (quotation marks omitted).

In a discretionary sentence appeal, this Court generally reviews the "sentencing court's determination of the basic sentence at step one for misapplication of the law or of sentencing principles, or an abuse of the court's sentencing power." *State v. Ketchum,* 2024 ME 80, ¶ 34, 327 A.3d 1103. The Court then reviews the sentencing court's "determination of the maximum sentence at step two for an abuse of discretion and the final sentence reached by the court for a disregard of sentencing factors or an abuse of the court's sentencing power." *Id.* However, because Hennessey did not raise any issues "to the sentencing court, [this Court] review[s] for obvious error." *State v. Watson,* 2024 ME 24, ¶ 18, 319 A.3d 430. "In determining whether the sentencing court … abused its sentencing power … or acted irrationally or unjustly in fashioning a sentence, [this Court] afford[s] the [sentencing] court considerable discretion." *Id.* at ¶ 20 (citation omitted).

A. The objective seriousness of Hennessey's crime warranted a basic sentence of life.

There was no impropriety in the life sentence imposed by the court. Hennessey's conduct warranted a life sentence because it met the gateway factor of premeditation-in-fact. *State v. Shortsleeves,* 580 A.2d 145, 149-150 (Me. 1990); (S. Tr. 93-94). Additionally objective factors elevating the seriousness of Hennessey's conduct include: his illegal possession and use of a

gun to kill Doug; the close proximity of Hennessey's nine-year-old child to the murder; and Hennessey's abandonment of his child to flee the scene while yelling an obscenity at Jaime. (S. Tr. 95-96).[15] Thus, the court reasonably determined that the execution style murder of an unarmed man, in front of his pregnant fiancée, with an illegal firearm, while Hennessey's unattended child was at the murder scene, and then abandoned there, all supported a life sentence.

Contrary to Hennessey's argument, the cases on which he relies are factually distinguishable. (Bl. Br. 58-59). For example, none of the cases cited by Hennessey involved the illegal possession and use of a firearm to commit a murder. Three of the five cases did not involve immediate flight from the murder scene. As this Court recently recognized, "[t]he act of immediately fleeing after [firing six shots into the back of an unarmed person] is a component of the offense and reflects the cold-blooded manner in which [this murder] was committed [and] properly weighed in the first step of the court's analysis." *State v. Lester,* 2025 ME 21, ¶ 20 n.6, 331 A.3d 426.

[15] *See State v. Waterman,* 2010 ME 45, ¶¶ 25, 45-46, 995 A.2d 243 (objective factors elevating the seriousness of a basic sentence include the illegal possession of a firearm used to commit a murder and the proximity of children to a murder scene).

B. The court did not abuse its sentencing power by concluding that Hennessey's childhood was an unpersuasive mitigating factor.

The court also committed no error in setting Hennessey's maximum and final sentence at life. Although Hennessey raised his " 'difficult' childhood" as a mitigating factor for the court to consider (Bl. Br. 57-58), "a sentencing court is not required to consider or discuss every argument or factor the defendant raises." *Ketcham,* 2024 ME at ¶ 35, 327 A.3d 1103 (citation omitted). Notably, Hennessey's argument misconstrues the court's analysis.

In addressing Hennessey's upbringing, the court appropriately recognized that "many people have difficult upbringings but they don't commit murders." (S. Tr. 97). The court also recognized that his upbringing had not prevented him from being employed, or having a family, and that "[t]here was no evidence [that his upbringing had caused] a mental disease or illness that might have influenced his behavior." (S. Tr. 97-98). In short, although the court said it "[did] not find his upbringing to be a mitigating factor," (S. Tr. 98), the overall context demonstrates that the court did not disregard this factor, but that in light of the aggravating factors it had no impact on the court's analysis.[16]

[16] The court found as aggravating factors: Hennessey's compete lack of remorse, his suggestion that he needed to "execut[e] Doug to defend or support his family … [was] fantastical [and made] no sense, and the "extremely significant" factor of the impact of Hennessey's crime "on Jamie Wakefield, who was six months pregnant when Mr. Hennessey shot Doug five times in the back in her presence and then returned [a] second later to shoot Doug in the back of the head in close proximity to Jamie, while she was holding Doug, [and] [i]nstead of having Doug as a partner to raise their son, Jamie was rendered a single parents and her son was left without a father. (S. Tr. 98-101).

Therefore, the court committed no error, much less obvious error, in imposing a life sentence.

CONCLUSION

For the foregoing reasons, Hennessey's convictions and sentence should be affirmed.

Respectfully submitted

AARON M. FREY
Attorney General

/s/ KATIE SIBLEY

Dated: April 28, 2025

Katie Sibley, Esq.
Assistant Attorney General
Criminal Division
Maine Bar No.: 4879
6 State House Station
Augusta, Maine 04333
(207) 626 – 8834

Lisa J. Marchese
Deputy Attorney General
Laura Yustak
Assistant Attorney General
Of Counsel

CERTIFICATE OF SERVICE

I, Katie Sibley, Assistant Attorney General, certify that I have emailed two copies of the foregoing "BRIEF OF APPELLEE" to Hennessey's attorney of record, Rory A. McNamara Esq.

Dated: April 28, 2025

/s/ KATIE SIBLEY
_____

Katie Sibley, Esq.
Assistant Attorney General
Criminal Division
Maine Bar No.: 4879
6 State House Station
Augusta, Maine 04333
(207) 626 – 8834