THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Yor-24-503

STATE OF MAINE
Appellee

v.

RANDAL J. HENNESSEY
Appellant

ON APPEAL from the York County
Unified Criminal Docket

REPLY BRIEF OF APPELLANT

Rory A. McNamara # 5609
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
(207) 475-7810

ATTORNEY FOR RANDAL J. HENNESSEY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

U.S. Supreme Court Cases

Cases

Statutes

Rules

Constitutional Provisions

INTRODUCTION

(I) Arguing that Dr. Rylant's testimony was inadmissible because it was not "specific to the facts" of our case, the State skips over numerous decisions from this Court holding that case-specificity is not required by M.R. Evid. 702. The State also overestimates the "average juror's" familiarity with the workings of the hippocampus, cortex, thalamus and amygdala. Surely, most jurors don't even know what these are, let alone how they affect decision-making during times of self-defense.

(II) The State does not defend most of the prosecutor's improper conduct; its brief doesn't even *mention* the vast majority of it. Rightly so, as the comments are perhaps the most egregious case of prosecutorial error that Maine has ever seen in a homicide case. By itself, just one component of the prosecutorial error should count as structural error.

(III) *State v. Dechaine*, 572 A.2d 130, 135 (Me. 1990) controls this case. Yet, the State does not cite or mention that decision, let alone offer any argument how it does not dictate the outcome in defendant's favor.

(IV) The State has misread *State v. Grant*, 394 A.2d 274 (Me. 1978). *Grant* clearly held that a defendant's "willful violation of gun control regulations" is inadmissible to attack a defendant's credibility. Yet, that is precisely the theory of relevancy for which the State sought, and the court granted, admission of defendant's status as a felon prohibited from possessing firearms.

(V) Defendant has several contentions about prejudice, which, for the sake of brevity, he combines together under one heading.

(VI) The State would afford sentencing judges unlimited "discretion" within a statutory sentencing range. That is anathema to the statutory sentence review process, and it embraces unconstitutionally vague sentencing criteria and arbitrary sentences.

ARGUMENT

First Assignment of Error

I. The court's exclusion of Dr. Rylant's testimony was reversible error.

The State's argument vis-à-vis the exclusion of Dr. Rylant's testimony boils down to three contentions: (A) it was not "specific to the facts of Hennessey's case," Red Br. 21; (B) it did not convey information "outside the understanding of an average person," Red Br. 22; and (C) it had not been subjected to peer review, Red Br. 22 n. 7. None of these arguments is supported.

A. This Court has repeatedly held that an expert's testimony need not be specific to the case.

In seeking to distinguish some of the cases defendant cited in the Blue Brief, page 26, the State omits one and misreads others.

Defendant cited *State v. Westgate*, 2020 ME 74, 234 A.3d 230, among others, for the proposition that this Court has repeatedly held that experts need not "testify as to 'opinions' regarding the case at hand." *Westgate* upheld the admission of "expert testimony regarding forensic interviews of children." 2020 ME 74, ¶ 24. It did so in part because the expert did *not* offer case-specific testimony. *Id*. at ¶ 30 ("[T]he trial court did not allow the witness to offer opinion testimony about either the veracity of the victim's testimony or whether the methodologies employed by the prior questioners

were scientifically valid methods of truth-seeking."). Perhaps that is why the State's brief does not address *Westgate*.[1]

Defendant also cited to *State v. Paquin*, 2020 ME 53, 230 A.3d 17 for the same proposition – experts need not offer case-specific opinions. Blue Br. 26. The State misreads *Paquin*, *see* Red Br. 23, which expressly supports defendant's position:

> [T]he court limited the risk of unfair prejudice to Paquin by restricting the expert's testimony to the subject of delayed disclosure in general — **as opposed to an opinion as to why the victim in this case may have made a late disclosure** — and **excluding from the expert's opinion** the effect of an abuser being a member of the clergy.

2020 ME 53, ¶ 18 (emphasis added).

The State has also misread *State v. Perry*, 2017 ME 74, ¶ 19, 159 A.3d 840, which clearly notes that "the State's strangulation expert did **not** review any facts pertinent to the case, [and] she did **not** give an opinion as to whether the victim had been strangled." (emphasis added).

These three cases sink the State's contention about case-specificity. Incidentally, the State's (and court's) fundamental misinterpretation of M.R. Evid. 702 and related decisional law underscores why legal interpretations such as this must be subject to de novo review.[2]

---

[1] The Red Brief references *Westgate* for other purposes. *See* Red Br. 24 n. 3, 27.

[2] Other than writing, "The Court should decline to do so," Red Br. 18, the State makes no argument why this Court should not clarify its standard of review as outlined at pages 21 through 24 of the Blue Brief.

B. Dr. Rylant's testimony was not within the ken of the average juror.

To date, this Court has endorsed the notion that jurors need help understanding that child victims of sexual abuse sometimes don't disclose immediately. *Paquin*, 2020 ME 53, ¶¶ 16-17. It has likewise approved of expert testimony about the seemingly obvious fact that, to elicit from children the most accurate answers possible, interviewers should pose non-leading questions. *Westgate*, 2020 ME 74, ¶¶ 24-30. And it has held that trial courts "must" admit proffered expert testimony to explain the, frankly, obvious fact that victims of domestic abuse often fear their abusers yet stay with them. *State v. Anaya*, 438 A.2d 892, 894 (Me. 1981).[3]

Dr. Rylant's testimony (*see* A97-A108; Blue Br. 27-28) is far more nuanced than the examples above. Defendant ventures to guess that most average jurors do not know, for example, how the cortex, thalamus and amygdala interact in moments of stress. Most jurors do not understand the physiological processes of the brain and nervous system in moments of self-defense.

Finally, unlike the expert testimony offered in *Paquin* and *Westgate*, which was offered by the *prosecution*, this evidence was offered by a *defendant* with a constitutional right to offer a defense. *State v. Le Clair*, 425 A.2d 182, 186 (Me. 1981) (A "court should allow the defendant 'wide latitude' to present all the evidence relevant to his defense….").

---

[3] Though cited in the Blue Brief (at 28-29), the Red Brief omits any mention of *Anaya*.

C. The State baselessly claims that Dr. Rylant's testimony is unsupported by peer-reviewed studies.

As the State's contention here is raised in a bare footnote, this Court should consider it waived. *Cf. State v. Lepenn*, 2023 ME 22, ¶ 1 n. 3, 295 A.3d 139.

On the merits, even were peer-reviewed science necessary for expert testimony – it is not, *see Searles v. Fleetwood Homes of Pa., Inc.*, 2005 ME 94, ¶¶ 20-30, 878 A.2d 509 – there is no basis for the State to suggest that Rylant's testimony lacked a peer-reviewed foundation. At pages A103 through A108 of the Appendix, this Court can view the numerous citations, including many to scholarly journals and university publishing houses that are surely subject to peer-review.

Second Assignment of Error

II. The prosecutor committed reversible error.

A. The State does not defend its attorney's repeated statements of her personal belief that defendant lied on the stand.

Unable to offer a non-frivolous defense of the prosecutor's conduct, catalogued at pages 31 through 35 of the Blue Brief, the State has instead opted not to even *mention* most of the objectionable statements, including but not limited to:

- "I suggest to you that what the defendant did on the witness stand was **fiction**. What he explained was **manufactured** to fit the self-defense statute. And try as he might he couldn't do it. [¶] And the law does not require that you sort out his **lies**.";
- "I would suggest to you that Randal Hennessey has read the self-defense statute and **he has tried desperately to conform his testimony** to the physical evidence that was presented, to all the eyewitnesses and the ear witnesses, he has **tried to fit his testimony into all of those things**. And **he couldn't even keep it straight**.";
- "I suggest to you that in his testimony he used the word retreating five times. Why? Because **he knows what that self-defense statute says and he knows what he's got to say in order to convince all of you that he was acting in self-defense**."

6Tr. 72, 84-85 (emphasis added). These are just the beginning. Understandably, the State has not tried to defend them.

B. The State incorrectly reads *Tripp* and *Goodwin*.

In his opening brief, defendant cited *State v. Tripp*, 634 A.2d 1318, 1321 (Me. 1994) and *State v. Goodwin*, 1997 ME 69, ¶ 5, 691 A.2d 1246 for the notion that is has long "been improper for Maine prosecutors to argue that, in order to acquit a defendant, the jury must find that the State's witnesses were lying." Blue Br. 35. The State confidently asserts that "*Tripp,* in fact, does not stand for that proposition." Red Br. 28. It represents that Tripp's conviction was overturned because the prosecutor "expressed an opinion" that either the complaining witness or the defendant (who had testified) had lied on the stand. Red Br. 28.

Respectfully, the State seems to have read *Tripp* too quickly. While, yes, the Law Court concluded that the prosecutor's closing argument "***also*** was improper because the prosecutor stated that defendant had lied," 634 A.2d at 1320 (emphasis added), the Court first and independently held: "[T]he State's questioning of defendant regarding whether the victim lied was prejudicial and constitutes reversible obvious error." *Ibid.* As for *Goodwin*, the State, again, doesn't even cite or mention it. Otherwise, it would have been confronted with the bald-face statement:

> The practice of asking a defendant whether a witness is lying is objectionable for two reasons. First, it creates the impression that the jury could believe the defendant only if the jury found another witness lied. **That impression, whether**

> **conveyed in cross-examination or in final argument, is manifestly erroneous.** *See Tripp*, 634 A.2d at 1320.

Goodwin, 1997 ME 69, ¶ 5 (emphasis added). The State's failure to recognize the impropriety of this tactic – which occurred twice at trial – is a concerning omen for its future prosecutions.

C. The prosecutor committed structural error by clearly and repeatedly referring to defendant's decision not to "call" "police," "detectives" and herself.

The State seeks to defend the prosecutor's repeated questions to defendant about why he remained silent, offering a lone rejoinder: The prosecutor did so to in reference to defendant's "recorded statements to the police." Red Br. 26-27.

The State's reading simply isn't true. The prosecutor's statements subject to appeal are *not* those related to defendant's "recorded statements to the police." They are patently related to defendant's choice not to "call" the prosecutor, personally, or the police:

> Q. My question to you is, you understand today on this witness box [what] you have to say in order to get a justification for self-defense that you believed Douglas Michaud was about to use deadly force on you?
>
> A. Yes, ma'am.
>
> Q. You understand that?
>
> A. Yes, ma'am.
>
> Q. And that is the very first time you have said that?
>
> A. **Because I haven't spoken to law enforcement**.

Q. Is that the very first time you've said that to **me**, to detectives, today?

A. Today.

4Tr. 254 (emphasis added).

***

Q. You never **called** law enforcement, did you?

A. No, ma'am.

Q. You never **called** them to tell them, hey, it was self-defense, did you?

4Tr. 238 (emphasis added).

***

Q. And if you were acting in self-defense, sir, you've got nothing – no problems, there's no murder charge, right?

A. Can you repeat that, please?

Q. If you're acting in self-defense, you're justified. There's no murder charge. You didn't **call** the police to tell them you were acting in self-defense, did you? That is my question. Did you **call** the police –

A. No, ma'am.

Q. – and tell them that?

A. No, ma'am.

4Tr. 238-39 (emphasis added).

These exchanges clearly seek to capitalize on defendant's choice not to *affirmatively* relinquish his right to remain silent. They are unambiguous suggestions that defendant's choice not "call" the prosecutor and the police

is evidence of his guilt. As discussed below, they should be treated as structural error. *Cf. State v. White*, 2022 ME 54, ¶ 36, 285 A.3d 262 (reiterating that "unambiguous comments on a defendant's silence are structural error").

Third Assignment of Error

III. The court committed reversible error by permitting Sgt. Rose to testify in rebuttal.

Without a possible counter to it, the State simply ignores the controlling case-law, omitting to cite or address it. At page 44 of the Blue Brief, defendant cited *State v. Dechaine*, 572 A.2d 130, 135 (Me. 1990)[4] for the following:

> The fact that evidence otherwise discoverable pursuant to M.R. Crim. P. 16 is used solely for impeachment and is offered in the State's rebuttal case **does not relieve the State from its duty of disclosure**.

(emphasis added). *Dechaine* alone demonstrates that the court erred.

Regardless, there is another, independent way to view that error. Rose's testimony was not used "solely for impeachment." Rather it was substantive evidence that was subject to the *automatic* discovery provisions of, among others, Rule 16(a)(2)(G)[5]; *see also* M.R. U. Crim. P. 16(a)(2)(A) & (I).

The State's argument is merely that defendant's testimony surprised it so much that it did not have to disclose the nature of Sgt. Rose's testimony in

---

[4] The State's brief refers to a different decision in the ongoing Dennis Dechaine saga. *See* Red Br. at 19, quoting *State v. Dechaine*, 630 A.2d 234, 237 (Me. 1993)

[5] This provision requires the automatic disclosure of "**[a]ny** reports or statements of experts, made in connection with the particular case, including **results of physical** or mental examinations and of **scientific tests, experiments, or comparisons**." (emphasis added).

advance. *See* Red Br. 32 ("Hennessey had never made statements claiming self-defense…."). That is misleading. Certainly, by the time Dr. Rylant's expert report was filed, the State was on notice that defendant would claim self-defense. Weeks before trial, in fact, the prosecutor put on the record, "I am assuming that Mr. Hennessey's defense is something along the lines of self-defense." Tr. of 6/11/24 at 25.

This assignment of error is not about what is *admissible* in rebuttal, generally. *But see* Red Br. 29, 31-32 (erroneously framing the issue). Rather, it is about what the State is obligated to do – by court rule, court order, and due process notions of notice and opportunity to respond – before it can offer otherwise admissible rebuttal evidence.[6] The State's violation of those antecednt requirements deprived defendant of the opportunity to vet Rose's testimony through his own expert, effectively cross-examine Rose, and offer a surrebuttal case. Though defendant reserves discussion of harmlessness for below, these ills deserve mention here, as the purpose of discovery and notice is to avoid trial-by-surprise such as the State has undertaken.

---

[6] The State resorts to hyperbole when it suggests defendant's demand for notice would work "nothing short of a wholesale, unnecessary expansion of the State's discovery obligations that would be impossible for the State to meet." Red Br. 32.

To the contrary, it would have merely required the State to disclose the work that Sgt. Rose had obviously already conducted, as the discovery rules already require.

Fourth Assignment of Error

IV. The court committed reversible error by permitting the State to introduce evidence that defendant was a felon prohibited from possessing a firearm to prove that he was not a credible witness.

Confronted with *State v. Grant*, 394 A.2d 274 (Me. 1978), discussed at pages 48 through 50 of the Blue Brief, the State argues:

> Again, Hennessey supports his argument with a case distinguishable from his own and ignores what the State actually argued.

Red Br. 36. How does the State claim that *Grant* is distinguishable? "Importantly," it begins, "the State proffered those convictions as probative of Grant's state of mind, *not* his credibility." Red Br. 36 (emphasis in Red Br.).

However, as the *Grant* Court noted, evidence of Mr. Grant's "willful violation of gun control regulations," 394 A.2d at 276, "went directly to the **credibility** of the defendant as a witness." *Id*. at 275 (emphasis added). That is, the fact that the evidence "went to" Mr. Grant's credibility was precisely why the Law Court found reversible error. Thus, in our case, following *Grant*, it was error for the prosecutor to argue, and the court to rule, that defendant's felon-firearm-prohibition was relevant to his credibility. *See* 4Tr. 97 (Prosecutor: "So I think it's squarely relevant to his credibility that he was breaking the law in the first place by possessing the gun. He knew he didn't have a right to a gun under Maine law. So I do think it's completely relevant to his credibility and veracity."). Again, with all due respect, the State has misread the applicable precedent: "[W]illful violation

of gun control regulations" is *not* admissible for attacking a defendant's credibility.

Fifth Assignment of Error

V. On their own or collectively, the errors require vacatur.

Defendant has several contentions about prejudice.

First, this Court should treat the prosecutor's clearly improper references to defendant's silence as structural error. Defendant realizes that the issue is unpreserved, and, therefore, per this Court's case-law, the error is not structural, as it would otherwise have been had it been subject to contemporaneous objection. *Compare State v. Tarbox*, 2017 ME 71, ¶¶ 12, 13, 158 A.3d 957 *with State v. Tibbetts*, 299 A.2d 883, 889 (Me. 1973). But, *Tarbox*, and its predecessor, *State v. Clarke*, 1999 ME 141, ¶ 23, 738 A.2d 1233, were wrongly decided. There are two reasons why.

Had trial counsel objected, it would have been inconsequential; *Tibbetts* would have nonetheless required a new trial, and there would have been nothing – no curative instruction – the court could have done about it. An objection would have been futile; irreversible damage was already done. Because the point of preservation is to permit a judge to remedy an error, it places form over function to require preservation when a judge is already powerless to save a trial from reversal. Separately, if this Court holds that a lack of objection is what separates defendant from a new trial, it will be needlessly burdening the system with more work. That is, if the lack of objection is dispositive, the case will simply go to post-conviction review, wasting everyone's time (and resources) and delaying finality for everyone, including the decedent's family. That would be an unprincipled way to run a justice system.

Second, assuming there is no structural error, several harmlessness standards are in play. Some of defendant's arguments are of constitutional magnitude and therefore require the State to demonstrate that the errors are harmless beyond a reasonable doubt. *See State v. Judkins*, 2024 ME 45, ¶ 20, 319 A.3d 443. Others are preserved and therefore necessitate reversal so long as it is not highly probable that they played no role in the outcome – *e.g.*, a murder (rather than manslaughter) conviction. *Id.* at ¶ 21. Those pertaining to prosecutorial error will justify reversal if they affect substantial rights, meaning whether there is a reasonable probability of a different outcome. *See State v. Lowery*, 2025 ME 3, ¶ 31, 331 A.3d 268. And, the errors can be assessed individually or in aggregate.

Obviously, in assessing any of these standards, the strength of the State's case is relevant. To bolster its evidence, the State cites to dicta in *State v. Woodard*, 2025 ME 32, ¶ 11 n. 2, __ A.3d ____ for the notion that there is no viable claim of self-defense here.[7] *See* Red Br. 24-25. However, the State waived that argument by *proposing* the jury instructions below, including the self-defense instruction. 5Tr. 3-5 (noting that State's appellate attorney

---

[7] This portion of *Woodard*, respectfully, is out of step with established notions of self-defense, particularly imperfect self-defense. It is for the jury to evaluate a defendant's *belief* that deadly force is needed. *See* 17-A M.R.S. § 108(2)(A) ("reasonably believes"). Not only did defendant testify that he feared Doug was armed, he feared that the much-larger Doug could have physically assaulted him to the point of death.

Persons can and do make reasonable mistakes about how much force they may permissibly use. For example, if followed to a "T", the dicta in *Woodard* will deprive police officers safe harbor in the self-defense statutes when they fatally shoot suspects whom they falsely believe to be armed and dangerous.

drafted those instructions, with others). That is now law of the case, should defendant testify at a second trial.

The State makes too much of Jane Harrell's testimony that defendant shot Doug in the head. *See* Red Br. 15, 33. There is no dispute that he did so; he acknowledged he did, testifying that it was an accidental reflex upon being nudged by Doug's fiancé. Moreover, Harrell's testimony was uneven, claiming that Doug fell only *after* the second "volley" of shots – not at all consistent with the State's theory that Doug was already on the ground by that point. 2Tr. 78-79.

Without Sgt. Rose's rebuttal testimony, this was truly a he-said-she-said case pitting defendant against the fiancé. Each had natural motives to blame the other. However, the State's misconduct and the court's erroneous rulings undermined defendant's credibility while buttressing the fiancé's. The court's exclusion of Dr. Rylant's seriously diminished the believability of defendant's fears by depriving jurors of an understanding of the biological dynamics he faced in the moment.

More importantly, Rose's spatter and trajectory analyses were not challenged by the defense because they had no notice of his opinion. In other words, they were not subjected to adversarial testing of the sort the Sixth and Fourteenth Amendments mandate. Without that testing, this Court cannot be confident what the evidence would have demonstrated.

The State mischaracterizes defendant's agreement with the prosecutor that shooting someone in the back is not self-defense. Red Br. 33-34 n. 10. A fair reading of that testimony – in light of defendant's other testimony and

his attorney's apparent strategy – is that defendant would not be claiming self-defense had he *intentionally* shot Doug in the back. Indeed, he testified that he fired as Doug approached him, spinning at the last moment to avoid the bullets. 4Tr. 218-19. Even Doug's fiancé repeatedly testified that she believed defendant shot Doug in the chest. 2Tr. 42, 54, 66.

Defendant has always recognized that his actions were imperfect, explaining his flight, his ditching the gun, and his statements that he was "mad" at Doug. *See* Red Br. 17 (implying that the latter is evidence of his guilt). The point is not a likelihood of an outright acquittal; it is that, absent the errors here, there is more than a reasonable probability of merely a manslaughter conviction. That would have resulted in a far lesser sentence than life.

Finally and separately, this Court has supervisory authority to order a new trial when it is necessary to protect the integrity of the court system. Undersigned counsel does not say this lightly: This was a very sloppy trial. The rulings – *e.g.*, permitting Sgt. Rose to testify but barring Dr. Rylant from testifying – are starkly incongruent. The prosecutorial errors are as bad as they get. If ever there were an occasion for safeguarding the system's appearance of fairness, this would be it.

Sixth Assignment of Error

VI. The court improperly sentenced defendant.

Defendant disagrees that sentence appeals are subject to preservation requirements as stringent as those pertaining to issues of law, notwithstanding any case-law to the contrary. The purposes of sentence appeals, as expressed in 15 M.R.S. § 2154 and referenced in 15 M.R.S. § 2155, indicate that the legislature intends for this Court to establish and enforce unitary sentencing *principles*. Often in competition, principles are necessarily subjectively applied. They are gray, not black and white statutory or constitutional commands. To require an explicit objection to everything a judge asserts to be his subjective view of principle would be to require a never-ending parade of objections without a purpose. Instead, it should be sufficient that a defendant's or his attorney's advocacy clearly indicates a different priority of principles. *Cf. Holguin-Hernandez v. United States*, 589 U.S. 169, 175 (2020) (a defendant's argument at sentencing for a lesser sentence than that imposed serves to preserve his claim that the resulting sentence is legally unreasonable).

Defendant certainly did that when he sought to have his difficult upbringing deemed mitigating. *See* STr. 64-65; *Defendant's Memorandum in Aid of Sentencing* at 1-2, 7-8. He certainly did that when he argued that other cases – *e.g.*, *Daly*, *Diana*, *Athayde*, and *Basu* (all cited in the Blue Brief) – offered comparable basic sentences. STr. 68-72. He certainly did that when he argued that the court should not impose a life-sentence. These

arguments adequately apprised the court that defendant contended it should have emphasized different principles.

On the merits, defendant disagrees with the State's contention that the court acted concordant with reasonable sentencing principles by rejecting the argument that his childhood was mitigating. For all the reasons explained in the Blue Brief at 57-58, and thus not rehashed here, the court's express logic – "many people have difficult upbringings but they don't commit murders" – works a categorical bar on murderers *ever* having their sentences mitigated because of their difficult childhood. That's unreasonable.

Second, the State offers no rationale by which a sentencing judge is to decide whether a *Shortsleeves* factor should justify a life-sentence, merely be counted at Step One, or be weighed at Step Two. Defendant is likewise aware of none. The problem is, chalking up the divergent treatment to "discretion" creates constitutional problems. In capital cases,[8] the Constitution requires "clear and objective standards." *Gregg v. Georgia*, 428 U.S. 153, 198 (1976). Instead of "standardless sentencing discretion," the Constitution requires "specific and detailed guidance." *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980) (cleaned up). Thus, arbitrary metrics like "outrageously or

[8] There is no principled difference for our purpose. Per federal law, individualized sentencing is only required for capital cases, thus the lack of a need for "clear and objective" factors when imposing lesser sentences in federal court. *See Harmelin v. Michigan*, 501 U.S. 957, 996 (1991). In contrast, in Maine, there *is* a legal entitlement to individualized sentencing for *all* felony-level convictions. *See* 17-A M.R.S. § 1602(1); ME. CONST., Art. I, § 9.

wantonly vile, horrible and inhuman," *Godfrey*, 446 U.S. at 428, and "especially heinous, atrocious, or cruel," *Maynard v. Cartwright*, 486 U.S. 356, 363-64 (1988), are unconstitutionally vague and subjective.

The results, as defendant demonstrated in the Blue Brief, are arbitrary. This Court must enunciate meaningful standards to guide the hugely significant point at which a defendant goes from facing decades in prison to facing a lifetime of prison.

CONCLUSION

For the foregoing reasons, this Court should vacate defendant's convictions and remand for proceedings not inconsistent with its mandate.

Respectfully submitted,

May 19, 2025

/s/ Rory A. McNamara

Rory A. McNamara, #5609
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
207-475-7810

ATTORNEY FOR RANDAL J. HENNESSEY

CERTIFICATES OF SERVICE & WORD COUNT

I have filed this brief, and served opposing counsel, as listed on the briefing schedule and the Board of Bar Overseers' (email) directory, in compliance with M.R. App. P. 1D(c), 1E and 7(c).

I further certify that, minus those portions of the brief exempted from the word count per M.R. App. P. 7A(f)(3), this brief contains 4,440 words.

/s/ Rory A. McNamara