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

DOCKET No. LIN-25-49

STATE OF MAINE

Appellee

v.

NATHAN LEE

Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF FOR APPELLEE, State of Maine

Natasha Irving, Esq.
ME Bar No.: 5490

Kent G. Murdick, Esq.
ME Bar No.: 5195
Attorney for the State
Lincoln County District Attorney's Office
32 High St.
P.O. Box 249
Wiscasset, ME 04578
kent.murdick@maineprosecutors.com

Table of Contents

Table of Authorities

U.S. Supreme Court Cases

Cases

Statutes

Other

STATEMENT OF FACTS

Procedural History

The Defendant/Appellant Nathan Lee (hereafter Appellant) was first charged in a complaint containing a single count of Domestic Violence Aggravated Assault, a Class B violation of **17-A M.R.S. Section 208-D(1)(D)** and a single count of Domestic Violence Criminal Threatening with a Dangerous Weapon a Class C violation of **17 M.R.S. Section 209-A(1)(A), 1604(5)(A)**. (App at 17).

The Appellant was charged with the same two (2) counts in an indictment returned on May 10, 2023. (App at 19). Appellant waived arraignment and pleaded not guilty on June 1, 2023. (App at 19). Jury selection took place on October 8, 2024, and a panel was seated. (App at 22).

The trial began on October 10, 2024. (App at 22). The State and Appellant rested that same day, and the court was recessed until October 11, 2024. (Tr. T. I at 167). On October 10, 2024, Appellant moved for Judgment of Acquittal. (Tr. T. I at 146-147). The Motion was denied. (TR. T I 147.).

On October 11, 2024, following instructions to the jury from the court and closing statements by counsel, the jury retired to deliberate at 10:31 a.m. (Tr. T. II at 54). On October 11, 2024, at 12:35 p.m. the jury returned a verdict of guilty on Count

1 and Count 2. (TR. T. II 55). The jury members were polled and confirmed the foreperson's report of the verdicts. (Tr. T. II 56-59).

Sentencing was scheduled for January 31, 2025. The court sentenced Appellant on Count 1, Domestic Violence Aggravated Assault Class B, to eight (8) years with all but two (2) years suspended followed by three (3) years of supervised release and on Count 2, Domestic Violence Criminal Threatening, two (2) years concurrent to Count 1. (App at 24-25). The appellant timely appealed the judgment. (App. at 25).

Evidence Presented

Lucinda [redacted] and Appellant began dating in high school around the year 1996 when both were sixteen (16) years old. (Tr. T. I 23-24). Lucinda and the Appellant married in 2003 and two (2) years later [redacted] their daughter, [redacted], was born. Lucinda and Appellant have lived at the same address in [redacted] since 2003. (Tr. T. I 22). [redacted] lived at the [redacted] address with her parents from her birth in 2003 until 2024. (Id.).

Lucinda testified that she and Appellant played sports in high school and these activities were passed on to [redacted] (TR. T. I 26). Lucinda stated that as [redacted]

[1] When Count 1 and Count 2 were initially charged and the matter was presented to the Grand Jury [redacted] was using her birth name [redacted]. The Indictment reflects this. At the time of the trial [redacted] had changed her name to [redacted] The Appellee will use [redacted] throughout it's Brief to remain consistent with Appellant's Brief and the Trial Transcript.

got older, she played competitive softball and basketball. (Id). Lucinda stated that Appellant coached [redacted] on her teams and this is when she noticed a change in [redacted] and Appellant's relationship. (Tr. T. I 28-29). Lucinda testified that Appellant was very "harsh" and displayed "excessive aggression" at times when [redacted] did not perform to Appellant's expectations. (Tr. T. I 28). Lucinda stated she witnessed a lot of yelling between Appellant and [redacted] over sports that would carry over from the field to the home. (Id.).

Lucinda testified that she and Appellant drank heavily as many as five (5) days a week. (Tr. T. I 32). Lucinda stated the Appellant started out drinking beer then switched to Pinnacle vodka, which gave him hangovers, so he moved to Absolut vodka and Lucinda moved on to Tito's. Tr. T. I 31). Lucinda stated the increased drinking led to more arguments, which caused [redacted] to retreat to her bedroom. (Tr. T. I 33).

Lucinda testified that her marriage to Appellant continued to break down and the couple separated in the fall of 2019. (Tr. T. I 48). Lucinda stated the couple began divorce proceedings in 2020 and by that same year Appellant moved out of the Whitefield residence and returned only to pick up his personal property. (Tr. T. I 48-49).

Lucinda stated that in 2023 she and [redacted] were at a store, Ulta Beauty, when she noticed [redacted] had stolen an item and placed it in her pants pocket. (Tr. T. I 42). Lucinda stated she told [redacted] to put the item back and when she and [redacted] returned to their car, Lucinda asked [redacted] what was going on as [redacted] had tried to steal something right in front of her. (Id). Lucinda stated [redacted] told her she was "dead inside." (Tr. T. I 43). Lucinda stated that [redacted] explained that she was so afraid of the Appellant that she wanted to vomit when she returned home from school and saw Appellant's car in the driveway. (Id). Lucinda stated that at this time [redacted] told her that Appellant had threatened her with a gun. (Tr. T. I 51).

A referral was made to the Maine Department of Health and Human Services (DHHS) and Detective Sergeant Mark Ferreira and Detective Einar Mattson of the Maine State Police were assigned to investigate the allegations made by [redacted] (Tr. T. I 79-80). A forensic interview was scheduled at the Child Advocacy Center (CAC) in Wiscasset which was attended by both Detective Sergeant Ferreira and Detective Mattson. (Tr. T. I 82). During this interview [redacted] described an event that occurred when she was twelve (12). (Tr. T. I 86-87). During this event, which started as an argument during a softball game and continued through the drive home and into the residence, [redacted] stated that Appellant went into a back bedroom, retrieved a firearm, pointed it at her and stated words to the effect of, he could end her. (Tr. T. I 87). [redacted] described another incident which

took place in January or February of 2020. (Tr. T. I 88). During this incident [redacted] stated that Appellant wanted full custody of her and for [redacted] to call his new girlfriend "Mother" or "mom." (Id.). [redacted] stated that the argument ended when Appellant grabbed her by the neck, pushed her against the wall and choked her unconscious. (Id.). [redacted] stated she regained consciousness and had a cold compress on her neck. (Id.). Following this interview Detective Sergeant Mark Ferreira called Appellant who agreed to meet with law enforcement at the State Police Barracks in Augusta. (Tr. T. I 82). Appellant met with Detective Sergeant Ferreira and Detective Mattson at the barracks; Appellant was mirandized and denied the allegations made by [redacted] (Tr. T. I 92). During the interview Appellant blamed Lucinda for all the problems with their marriage, the problems with [redacted] and for his drinking and behavior. (Tr. T I 93). Appellant stated that [redacted] would side with him against Lucinda in most arguments. (Tr. T. I 85)

[redacted] testified that when she was growing up there was a lot of drinking in the household. (Tr. T. I 103). Kylie testified that she began mixing drinks for her parents when she was about eleven (11) or twelve (12) and grabbing alcohol out of their vehicles when she was eight (8) or nine (9). (Tr. T. I 104). [redacted] stated she did not have much of a relationship with Appellant from the time he began his excessive drinking when she was around seven (7) years old. (Id.). [redacted] stated

that she played softball and basketball and that Appellant coached her teams until she reached middle school. (Tr. T. I 106).

[redacted] stated nothing she did in sports was good enough for Appellant and this led to him calling her names and "saying horrible things to me." (Tr. T. I 107). [redacted] stated the yelling would get physical and described an incident that occurred in 2013 when she was twelve (12) or thirteen (13). (Tr. T.I 107-108). [redacted] stated Appellant drove her to practice after school and at this practice he was particularly hard on her saying she needed to work harder and be better. (Tr. T. I 108). [redacted] testified he made the team stand on the sidelines and she had to run until she basically "puked." (Id.). [redacted] stated he berated her, called her rude things and tried to get other members of the team to laugh at her. (Id.). [redacted] stated on the way home from practice the abuse continued, and Appellant stated to [redacted] that she embarrassed him. (Tr. T. I 109). [redacted] stated the argument escalated until she stated that Appellant did not care about her and she did not want to be part of this family. (Id.). [redacted] stated that Appellant asked her if she did not want to be part of the family why she was still here. (Id.). [redacted] stated that she wanted to be there and wanted a family. (Id.). [redacted] testified that Appellant then stated if she hated this family so much, he could take it all away. (Id.). [redacted] stated she replied that Appellant had already taken everything from her. (Id.). [redacted] stated at this point Appellant went into his room and came back with a gun. (Tr. T. I 110). [redacted]

testified that Appellant stated if you really don't care we can just end it all here, end it all now. (Id.). [redacted] stated that she could not believe her own father would point a gun at her and she told him to just do it. (Id.). [redacted] testified that the next thing she knew Appellant "clicked the trigger" looked at her and said, good thing it was not loaded. (Id.). [redacted] testified following this event she went into her closet with her dog and cried until her mom came. (Id.). [redacted] stated that Appellant stated if she told anyone about the event no one would believe her because she was crazy. (Id.). [redacted] stated Appellant also said if anyone found out about the incident, he would hurt her or her mother. (Tr. T. I 111).

[redacted] testified to another incident which occurred around November or December of 2019. (Id.). [redacted] stated that her parents were separated and taking turns staying in the Whitefield residence with her. (Id.). [redacted] stated she was at home with Appellant who was in the kitchen drinking. (Id.). [redacted] testified that Appellant was saying horrible things about her mother and that [redacted] should choose to live with him. (Tr. T. I 112). [redacted] stated that she stood up to him and defended her mother and stated to Appellant she wanted to stay with her mother. (Id.). [redacted] testified at this point in the argument she observed Appellant's eyes glazing over and his demeanor change. (Id.). [redacted] testified that Appellant backed her into the dining door while telling her how ungrateful she was. (Id.). [redacted] testified that she was telling Appellant to get away from her because she did not

want him to hurt her. (Id.). [redacted] stated that she tried to spit on Appellant and the next thing she knew Appellant had pinned her against the door and had his hands around her throat. (Tr. T. I 113). [redacted] testified that she was scared because she knew that if she died her mom would get blamed and she would have died for a sad reason and nobody would know what happened. (Id.). [redacted] testified that Appellant had his hands on her throat, and he squeezed it until she blacked out. (Id.). [redacted] stated the next thing she remembered was waking up on the couch with icepacks around her neck. (Id.). [redacted] testified that Appellant stated no one would believe her and that it was her fault. (Id.). [redacted] stated that there were marks on her neck, and she had to go to school the next day. (Tr. T I 114). [redacted] testified that she and Appellant searched the house to find makeup to cover up the bruises. (Id.). [redacted] testified that Appellant made her carry the makeup with her to make sure the bruises would stay covered. (Id.).

STATEMENT OF THE ISSUES

I. The prosecutor did not improperly lay a foundation for impermissible testimony.

II. The prosecutor's closing argument, to which there was no objection, was not improper and does not require reversal of the convictions under the Obvious Error Standard of Review.

ARGUMENT

I. The prosecutor did not commit prosecutorial error by attempting to elicit impermissible testimony from a witness and no mistrial should be granted.

"As part of its obligation to ensure a fair trial for the defendant, the prosecution must avoid eliciting inadmissible testimony." *State v. Gaudette*, 431 A.2D 31, 34 (Me. 1981) "The failure of the prosecutor to observe this duty is improper prosecutorial conduct." *See id at 34-35; State v. Thornton* 414 A.2d 229, 235 &n. 5 (Me. 1980). "Such misconduct may be sufficient grounds for a mistrial." *See Gaudette,* 431 A.2d at 34-35*; State v. Edwards,* 412 A.2d 983, 987 & n. 3 (Me 1980).

"In deciding whether an improper line of questioning requires a mistrial, however, a trial judge has broad discretion." *See State v. Hilton,* 431 A.2d 1296, 1302 (Me.1981); *State v. Butts,* 372 A.2d 1041, 1042 (Me.1977). Unless "there are exceptionally prejudicial circumstances or prosecutorial bad faith," "a less drastic measure, such as a curative instruction, will suffice to preserve a fair trial for the defendant." *See Hilton,* 431 A.2d at 1302; *Thornton,* 414 A.2d at 235. "Moreover, where the defendant at trial fails to move for a mistrial or argue that the prejudicial effect upon the jury is irreparable, he "must be taken to have acquiesced" in whatever measures the trial judge takes on his own." *See State v. Conner,* 434 A.2d 509, 511 (Me.1981); *State v. Brown,* 410 A.2d 1033, 1037 (Me.1980). "In such a

case, this Court will vacate a conviction on appeal only for obvious error affecting substantial rights." *See Conner,* 434 A.2d at 511; *Gaudette,* 431 A.2d at 33, 35; M.R.Crim.P. 52(b).

"To demonstrate obvious error, the defendant must show that there is" "(1) an error, (2) that is plain, and (3) that affects substantial rights." *Pabon,* 2011 ME 100, ¶ 29, 28 A.3d 1147; *see Olano,* 507 U.S. at 734, 113 S.Ct. 1770. "Even if these three conditions are met, we will set aside a jury's verdict only if we" "conclude that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Pabon,* 2011 ME 100, ¶ 29, 28 A.3d 1147.

The prosecutor, during his direct examination of Detective Sergeant Ferreira, and as the last question posed to the witness during the direct examination, begins a line of inquiry that in its totality states:

> "So I'll take you to—you had an opportunity to—and this—these will be—I'll wrap it up here. So you—we talked about some of the training you have and of the things you look for regarding interviews for credibility purposes. And so you've had an opportunity to view—" (Tr. T. I 93).

At this point the counsel for Appellant objected, there was a sidebar conference after which no further questions were asked of the Detective Sergeant related to this issue. (Tr. T. I 93-94).

The statement does not refer to the credibility of any single person. To assume, as the Appellant does, that the question was related to the Appellant's credibility requires a speculative leap of faith that quite simply is incredible. (Appellant Brief at 12). Appellant states that:

> Although the trial court did not permit this line of impermissible questioning, the answer was already before the jury as a result of asking this improper question: Detective Ferreira clearly did not believe Lee because Lee was charged and on trial for the accusations he told Detective Ferreira were fiction. (Id.).

Again, nowhere in the prosecutor's statement is there a mention of the Appellant or anyone for that matter. In fact, the last word in the prosecutor's statement is "view" not interview or spoke to. It is just as likely the prosecutor was going to speak about the CAC or some video as to an individual. Because of the skill of Appellant's counsel, we will never know what the prosecutor was getting at and neither did the jury. This is likely why there was no request by the Appellant

for a mistrial and no curative instruction was requested or offered. In the analysis for obvious error this statement by the prosecutor does not get past the first test for error.

II. The prosecutor's closing argument, to which there was no objection, was not improper and does not require reversal of the convictions.

The Appellant did not object to the portion of the closing that is mentioned in his Brief (Appellant Br. at 12).

It appears the alleged impropriety was a reference to evidence regarding an issue of credibility. The prosecutor begins, his closing and states:

> "So at first, we saw Lucinda. Lucinda is [redacted] mother and Mr. Lee's ex-wife. She was—she—she was pretty, I—I—I thought honest. I think we need to look—a lot of this will turn on credibility, and there are certain things we can look for when we're looking to see if people are testifying credibly.
>
> I think—if you remember back to Lucinda's testimony, she was a woman who came up here, testified to her shortcomings. She flat-out stated that if [redacted] had come to her and asked for help, she would have backed Mr. Lee 100 percent...

> She admitted that she was drinking heavily, took responsibility for it, admitted she was not a good parent...." (Tr. T. II 20).

A prosecutor may properly suggest to the jury ways to analyze the credibility of witnesses when those arguments are "fairly based on facts in evidence." *See Hassan*, 2013 ME 98, ¶ 33, 82 A.3d 86 (quotation marks omitted). It is improper, however, for a prosecutor to vouch for a witness by "impart[ing] her personal belief in a witness's veracity or impl[ying] that the jury should credit the prosecution's evidence simply because the government can be trusted." *State v. Williams*, 2012 ME 63, ¶ 46, 52 A.3d 911 (quotation marks omitted)(quoting *United States v. Perez–Ruiz*, 353 F.3d 1, 9 (1st Cir.2003))). A lawyer shall not "state a personal opinion as to ... the credibility of a witness." M.R. Prof. Conduct 3.4(e); However, "an argument that does no more than assert reasons why a witness ought to be accepted as truthful by the jury is not improper witness vouching." *Perez–Ruiz*, 353 F.3d at 10 (quotation marks omitted). A prosecutor may "appeal to the jury's common sense and experience without crossing the line into prohibited argument." *State v. Schmidt*, 2008 ME 151, ¶ 17, 957 A.2d 80 (quotation marks omitted). "[T]he central question is whether the comment is fairly based on facts in evidence or improperly reflects a personal belief" about the witness's overall credibility. *State v. Moontri*, 649 A.2d 315, 317 (Me.1994).

Appellant points to a single instance of the prosecutor's closing as being improper witness vouching with the offensive language being; "She was—she—she was pretty, I—I—I thought honest." Taken out of context, while not a ringing endorsement of credibility when couched with the term "pretty" rather then dead honest, it still could have been structured more artfully. However, the prosecutor then goes on to explain that Lucinda was honest in her testimony about herself and states, "I think—if you remember back to Lucinda's testimony, she was a woman who came up here, testified to her shortcomings. She flat-out stated that if [redacted] had come to her and asked for help, she would have backed Mr. Lee 100 percent..."

"She admitted that she was drinking heavily, took responsibility for it, admitted she was not a good parent...." (Tr. T. II 20).

When viewed in the entire context of the prosecutors' statement the offending words could be seen as merely stating what was in evidence, that Lucinda has had a reckoning that at an important time in her daughter's life she was not there, and Lucinda is not on trial for being a deficient parent. This kind of brutal honesty is personal, and the fact finder can determine whether it makes her testimony credible. As stated in *Hassan* 2013 ME 98, ¶ 33, 82 A.3d 86, a prosecutor may properly suggest to the jury ways to analyze the credibility of witnesses when those arguments are "fairly based on facts in evidence." "an argument that does no more than assert reasons why a witness ought to

be accepted as truthful by the jury is not improper witness vouching." Perez–Ruiz, 353 F.3d.

Finally, Lucinda did not testify to any facts or elements of the crimes that were alleged by the State. She did testify that there was a lot of drinking, but this was corroborated by other witnesses including Marshall [redacted] who testified that Lucinda and Mr. Lee would drink a half gallon of Captain Morgans and a twenty-four (24) pack of Coors every two (2) days. (Tr. T. I 68). Lucinda also testified to witnessing verbal abuse by Mr. Lee at sport events. This was also corroborated by Mr. [redacted] while he was watching [redacted] play a softball game Mr. Lee was coaching, (Tr. T. I 70).

Finally, in his closing the prosecutor states; "I'll leave it to you to decide on the credibility of the witnesses…", "Just another thing to think about when you're thinking about the credibility of the witnesses…", "It's just when you are trying to gauge credibility, you—I—I just ask you think about what people go through to get here and how the process works and the stress it puts on them." (Tr. T. II 27-29). Thrice the prosecutor reminds the jury that they determine credibility.

This Court has stated, "The mere existence of a misstatement by a prosecutor at trial, or the occasional verbal misstep, will not necessarily constitute misconduct when viewed in the context of the proceedings". (See

State v. Corrieri, 654 A.2d 419, 422 (Me.1995) (concluding that a prosecutor's "ill-chosen words" during closing "within the context of the entire three-day trial, did not affect the jury's determination or [the defendant's] right to a fair trial"). Even if the offending statement by the prosecutor with regards to Lucinda's testimony constitutes a single verbal misstep by the prosecutor in the course of a two (2) day trial it does not rise to the level of obvious error warranting a reversal.

This court has further stated that "Juries are presumed to have followed jury instructions, including curative instructions." See *Gentles*, 619 F.3d at 82; *State v. Bridges*, 2004 ME 102, ¶ 10, 854 A.2d.

In the instant matter the Court stated in its instructions that;

> "Please remember that the arguments of counsel are not evidence." (Tr. T. at 205.) and "Please remember that the arguments of counsel are not evidence but the attorneys' opportunity to discuss the evidence and the points of law they believe are most significant. As advocates, the attorneys may discuss the evidence as they see it and suggest inferences and conclusions that you might draw from the evidence, but it is ultimately your decision what inferences and conclusions you decide to draw from the evidence." (Tr. T. II 17-18)

The Court's instructions made it clear that the closing and statements of counsel were not evidence and should not be treated as such.

Because Appellant did not object to the prosecutor's closing analysis on appeal is under the four-part test described in *State v. Dolloff*, 2012 ME 130, 58 A.3d

1032, at 1043-1044. To prevail on appeal the Appellant must prove that there was error, that it was plain, that it affected substantial rights, and that it seriously affected the fairness or integrity of the proceeding. Appellant has failed in every respect to meet the burden he has under *State v. Dolloff*. The following language from *Dolloff* emphasizes the high burden of proof borne by an Appellant who did not object at trial: "When a prosecutor's statement is not sufficient to draw an objection, particularly when viewed in the overall context of the trial, that statement will rarely be found to have created a reasonable probability that it affected the outcome of the trial." *Ibid* at 1044. Notably, a new trial was not ordered in *Dolloff* itself, despite the court's identification of several instances of prosecutorial misconduct. Nor was a new trial ordered in *State v. Woodward*, 2013 ME 36, 68 A.3d 1250, despite the prosecutor's use of an expression ("send a message") which was clearly improper. Even if the court in the present case concludes that the prosecutor's comments were improper, which it should not, Appellant falls far short of meeting his burden of proof under *State v. Dolloff*.

The prosecutor could have used better language and encouraged the jury to make their own determination using common sense to reach a conclusion as to the truthfulness of Lucinda's testimony, however he did ameliorate his ill-chosen words later in the closing by stating it was the jury's responsibility to determine the credibility of the witnesses and to review the evidence in making that determination.

CONCLUSION

Appellant has raised two (2) points on appeal. In both instances the claim Appellant now makes was not made to the trial court. Appellant has either waived the issue for appeal or the issue is reviewed under the obvious error standard, and Appellant has not met that very high standard. The appeal should be denied and the judgment affirmed.

Dated: July 10, 2025,

Respectfully,

/s/ Kent G. Murdick

Kent G. Murdick, Bar no. 5195
Deputy District Attorney
Lincoln County DA's Office
32 High Street
P.O. Box 249
Wiscasset, ME 04578
207-882-7312
Kent.murdick@maineprosecutors.com
Attorney for the Appellee-State

Certificate of service

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

Dated: March 31, 2025

Respectfully,

/s/ Kent G. Murdick
Kent G. Murdick
Deputy District Attorney