STATE OF MAINE
CUMBERLAND, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO.: Cum-25-217

STATE OF MAINE,

Appellee

v.

JODY FLYNN,

Appellant

ON APPEAL FROM THE CUMBERLAND COUNTY
UNIFIED CRIMINAL DOCKET

BRIEF OF THE APPELLANT JODY FLYNN

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PROCEDURAL HISTORY

On May 13, 2019, an indictment was filed against the Appellant, Jody Flynn (hereinafter referred to as "Jody" or "Appellant"), alleging (Count 1) Theft by Deception, 17-A M.R.S. sec. 354(1)(B)(1) (Class B) and (Count 2) Maine Uniform Securities Act Violation, 32 M.R.S. secs. 16508(1), (2) or (3) (Class C).

An arraignment was held on May 30, 2019, and the Appellant entered pleas of not guilty to both counts. Personal recognizance bail was set at that time.

On September 4, 2024, the State filed a Motion In Limine for the Use of Summaries to Prove Content.

On September 4, 2024, the State filed a Motion In Limine for Admission of Certified Records,

On September 4, 2024, the State filed a Motion In Limine for Admission of Material Omission regarding Criminal Charge and Guilty Finding.

On September 4, 2024, the State filed a Motion In Limine to Seal E-Mail Exhibit.

On September 23, 2024, the Court granted the State's Motion In Limine to Seal E-Mail Exhibit.

On September 26, 2024, the Appellant filed a Motion to Dismiss on the Grounds of Double Jeopardy and Vindictive Prosecution.

On September 26, 2024, the Appellant filed a Motion to Dismiss or in the Alternative for Discovery Sanctions.

On September 27, 2024, the State filed an Objection to the Defendant's Motion to Dismiss.

On September 27, 2024, the State filed an Objection to the Defendant's Motion to Dismiss or, in the Alternative, for Discovery Sanctions.

On September 30, 2025, a hearing was held on various motions.

On October 1, 2024, the Court entered an Order on Motions In Limine and Request for the Jury Questionnaire.

On October 1, 2024, the Court entered an Order Granting the State's Motion In Limine to Allow Mention of a Prior Indictment but not the Conviction.

On October 1, 2024, the Court denied the Defendant's Motion to Dismiss or in the Alternative for Discovery Sanctions.

On October 1, 2024, the Court took partially under advisement the Defendant's Motion to Dismiss on the Grounds of Double Jeopardy and Vindictive Prosecution.

On October 1, 2024, the Court granted the State's Motion In Limine for the Use of Summaries to Prove Content.

On October 1, 2024, the Court granted the State's Motion in Limine for Admission of Certified Records.

A jury was selected on October 15, 2024.

A jury trial commenced on October 28, 2024.

A waiver of jury trial on Count 2 was filed and approved on October 28, 2024.

The jury trial was completed on November 4, 2025, and the jury returned a verdict of guilty on Count 1 of the indictment. A finding of guilty on Count 1 was entered by the Court on the same date.

The Defendant filed a Second Motion for Judgment of Acquittal on November 18, 2024.

The Defendant filed a Motion for New Trial on November 18, 2024.

On November 18, 2024, the State filed a Closing Argument Regarding Count 2: Securities Fraud.

On December 9, 2024, the Defendant filed a Closing Argument for Count 2: Securities Fraud.

On December 9, 2024, the State filed an Objection to Defendant's Second Motion for Judgment of Acquittal.

On December 9, 2024, the State filed an Objection to Defendant's Motion for New Trial.

On December 9, 2024, the State filed a Rebuttal Regarding Count 2 Securities Fraud.

On January 15, 2025, the Defendant's Second Motion for Judgment of Acquittal was denied.

On January 15, 2025, the Defendant's Motion for New Trial was denied.

On January 15, 2025, the Court entered a Decision and Order finding Defendant Guilty on Count 2.

On January 22, 2025, the State filed a Motion for Clarification and Additional Findings and Conclusions of Law.

On February 14, 2025, the Court entered an Order regarding State's Motion for Clarification and Additional Findings and Conclusions of Law Regarding: 1) Prior Indictment; 2) Pharos Gum; 3) Personal Expenses; 4) & 5) Halloran's Investments; 6) Melina's Memo; 7) Motion for Acquittal; 8) U.S. Soils. Any additional relief requested was denied.

On February 18 the Defendant filed an Opposition to the State's Motion for Clarification and Additional Findings and Conclusions of Law.

A sentencing memorandum was filed by the State on April 3, 2025.

The Defendant filed materials for sentencing on April 3, 2025.

A sentencing hearing was held on April 7, 2025. Defendant was sentenced on Count 1 to the Department of Corrections for a term of 3 years, with all but 9 months of the sentence as it relates to confinement suspended, and probation for a term of 3 years with conditions. Defendant was sentenced to a concurrent term of 9 months on Count 2. She was released on personal recognizance bail pending appeal.

On April 17, 2025, Defendant filed a notice of appeal.

STATEMENT OF FACTS

In its indictment, the State alleged that Jody Flynn committed theft, in an amount exceeding $10,000.00, from five Portland area investors, with the intent to deprive the owners of the property and as a result of deception, in that she intentionally created or reinforced the impression that their money would be applied to investments through the Icy Gulch Investor Group, which impression was false and which Jody did not believe to be true. The State also alleged that Jody also engaged in a knowing or intentional securities violation under Maine law. (See indictment dated May 10, 2019, Appendix at 114-115.)

The investors – Richard Henry, Kristin Henry, Patricia Sims, Barbara Vanamee, and Wyatt Garfield – were all friends and neighbors from Portland with whom Jody had socialized in recent years leading up to the investments. Most of the activity alleged to be illegal occurred during a timeframe from about 2010 into 2014. The investments were highly risky and speculative, including the production of onions and other produce, development of an organic fertilizer soil, and a project to farm and distribute a product called gum arabic out of the nation of South Sudan in Africa. The Sudan project in particular had the greatest potential for a lucrative return

on investment, as gum arabic is a product used by companies like Coke, Pepsi, and other soft drink companies for their worldwide products.

Each of the investors signed subscription agreements and other documents with Jody and made various levels of investments ranging from the tens of thousands to hundreds of thousands of dollars. Each of these investors were well-educated and knew that Jody was new and inexperienced in the investment field. The investors understood that there were substantial risks in the investments. (See, for example, the testimony of Richard Henry, Hearing Transcript at 387 et seq.)

The investors signed agreements acknowledging that they had sought independent advice before making the investments. (Id. at 388.) They acknowledged that "the company has offered to provide the undersigned and the undersigned's advisors, if any, with access to all significant books, records, contracts, and other documents pertaining to the company and its business." (Id.) They understood that the investments were "illiquid and highly risky…." (Id. at 390.) They understood that the investment units may end up being held for an indefinite period of time and that they did not know when they were going to get a return on their investments. (Id. at 391.)

Mr. Howaniec: So you understood this was a highly risky investment?

Mr. Henry: Yes.

Mr. Howaniec: What did you understand the word illiquid meant?

Mr. Henry: That if I wanted to sell my shares, it might be difficult to do that.

(Id. at 390-391.) The agreements stated: "There is not currently and will not be in the foreseeable future any public markets for the units…." (Id. at 391.) The units were not registered with the Securities Act of 1933 or Rule 144 of the Securities Act. (Id.)

Mr. Howaniec: So these were risky investments?

Mr. Henry: Yes.

Mr. Howaniec: And you lost money on them?

Mr. Henry: I lost all of the money.

Mr. Howaniec: And it's all Jody's fault?

Mr. Henry: I can't say that. She was the only person that – that I knew that I was investing through.

(Id. at 392.)

Jody Flynn worked for over 30 years in social work, helping people with work disabilities. (Id. at 1074.) She never had work experience, training, or education in financial matters. (Id. at 1075.) She was involved in state politics for a time, working for Congressman Tom Andrews and

appointed to the Maine Employment Rehabilitation Commission by Governor Joe Brennan. (Id. at 1076.)

Jody is a very sociable person and was very friendly with her neighbors in a pleasant neighborhood in Portland during the 2010 timeframe when the dealings giving rise to this case occurred. (Id. at 1079-1080.) Through her social contacts she met individuals like Richard Swett, a former member of the U.S. House of Representatives from New Hampshire and ambassador to Denmark during the Bill Clinton administration. (Id.) By this time she had seen her husband's friend Peter Halloran make his multi-millions in Russia and New York. By now she was in her fifties and had a "huge network" of people that she knew: "I don't have any friends, I just know everyone." She read the novel *Den of Thieves* and decided that, without any experience or training, she wanted to get involved in the big-time financial transaction world. (Id. at 1083.) By 2010 she was socializing with U.S. presidents, congressmen, ambassadors, and multimillionaire businessmen from Wall Street. (Id. at 1085.)

She met Barbara and Kristin as part of her neighborhood social network in Portland, and then subsequently met Rich after Kristin got divorced and married Rich. (Id. at 1086.) She had strong relationships in

Democratic Party circles, including with Severin Belliveau at Preti Flaherty. She had worked with Congressman Swett for nearly two years helping to raise funds for his financial projects. (Id. at 189-1090.) With the help of Attorney Belliveau she incorporated "Icy Gulch Resources (IGR)," "a company that could look at, acquire, listen to pitches and look at opportunities to invest." (Id. at 1090-1091.) The goal of the company was to invest in progressive, organic types of investments, to help farmers save their jobs, promote sustainability, etc. (Id. at 192.) Preti Flaherty drafted the subscription agreements and other legal documents involved in this case. (Id.) A person named Dave Melina, from Connecticut, was the CEO of the company. (Id. at 1092-1093.) The company was based out of Jody's living room at 15 Woodmont Street in Portland.

The first of the kitchen table projects that Jody sold to Kristin and Rich was Progreso Produce out of Texas: "the onion kings of Texas." (Id. at 1094.) She took multiple flights to Texas to meet with the owners and engage in due diligence. (Id. at 1095.) She would incur costs of between $1,500 to $2,000 per trip for flights and hotels. (Id. at 1096.) Icy Gulch Resources CEO Dave Molina was intimately involved in all of the financial transactions with Progreso. (Id. at 1097.) The initial strategy was to

purchase a majority share of Progreso and retain the owner "as kind of the ambassador onion king person." (Id. at 1097-1098.)

Mr. Howaniec: Did you know anything about onions prior to getting involved in this?

Ms. Flynn: No.

Mr. Howaniec: Okay.

Ms. Flynn: I have a garden but no.

(Id. at 1098.)

A letter of intent was drafted by CEO Melina. (Id. at 1099.) Jody sold to Kristin and Rich "convertible notes to help us cover the cost of due diligence and that process to acquire majority share of Progreso Produce Texas." (Id. at 1100.) By the time Jody was meeting with neighborhood investors like Kristin and Rich during this timeframe, Icy Gulch was involved with other companies as well, including Progreso Packing in Idaho, U.S. Soils (which became Ontario Produce), and the gum arabic project out of the Sudan. (Id. at 1104.) IGR was owned by Jody. (Id.)

Jody made many trips as part of her business initiatives, including some 48 trips alone with Ambassador Swett pertaining to his business, Climate Prosperity Enterprise Solutions (CPES). (Id. at 1105.) Among other trips, she traveled to places like New York, Washington D.C.,

Maryland, Texas, California, Paris, London, and New Hampshire. (Id.) The trips were mainly related to conducting due diligence. (Id. at 1106.)

U.S. Soils was an organic fertilizer company with "great potential." (Id. at 1107.) The company was located in Salida, Colorado. Jody made five or six trips out to Colorado to do due diligence. (Id. at 1108.) These involved substantial costs to herself for airfare, hotel, food, rental cars, clothing, etc. (Id. at 1109.) These business travel expenses were "funded personally and – and through the IGR investors." (Id.) Her husband was a teacher at Cheverus High School and she was not making any money off of these projects. (Id. at 1109-1110.) Jody and her husband had no personal wealth. She borrowed upwards of $500,000 over the course of 20 years from her friend in the neighborhood, Barbara Vanamee ("we were like sisters"), to get by and raise her family. She paid back the entire amount that she had borrowed from Barbara. (Id. at 1110.)

Barbara invested $150,000 through Jody. (Id. at 1113.)

Mr. Howaniec: What was your intention in taking that $150,000?

Ms. Flynn: To be a success and create success that would benefit us all.

(Id. at 1114.)

Jody met Wyatt Garfield through Barbara during this timeframe. (Id.) Wyatt was a very nice man. An ancestor of U.S. President James Garfield, Wyatt had attained enormous wealth through various projects over the years. (Id. at 1115.) He owned the World Over Imports store chain in Maine. Wyatt invested substantial amounts in Jody's company. (Id. at 1115-1116.) She had great hope of producing a substantial return for him, in part because her confidence level had grown very high because of the progress she thought she was making with Peter Halloran, Ambassador Swett, and a Mr. Mustafa Ismail from Sudan/California. (Id. at 1116-1117.)

By everyone's account, including Mr. Halloran's, the gum arabic project out of the Sudan had great potential. Jody introduced Mr. Halloran to Ambassador Swett in Midtown Manhattan: "My critical role in that was introducing the ambassador to Pete Halloran. That would not happen without me." (Id. at 1124.)

Jody was part of a team that made a presentation in New York that resulted in a proposed investment of $500,000,000 in the Sudan agricultural projects. (Id. at 1127.) Having known Peter Halloran and his incredible wealth and success for years, Peter's interest in Pharos Ag was very significant. Jody's company Dome Rock had a 2.5% interest, which grew to a 5% interest, in Richard Swett's 25% interest in the up to $500

million investment that Peter was proposing… in other words, potentially a *lot* of money. (Id. at 1128.) This all involved complicated investment documents in which the inexperienced Jody relied upon sophisticated business lawyers from Portland to draft. (Id. at 1130.) After the meetings in New York, Jody "100 percent" thought she had a stake in the potentially half-billion dollar Sudan project. (Id. at 1131-1132.) She "had talked to Pete many times" and it gave her "[a]bsolute confidence." (Id. at 1132.)

> There would be significant income out of that combination because that 500,000,000 in terms of investment, I'm sure the return on investment with the return on investment with Pete would have been in the expectation of 25, 30 percent. So that 500,000,000 would grow into a billion, two and a half percent of a billion or whatever the revenues are.
>
> * * * *
>
> It was very, very important, again, that my level of confidence on – on the Pete Halloran side and the Mustafa and CPS side but Pete Halloran with his sophistication, level of operation and how he does things, I was very confident that would be successful. And excited.

(Id. at 1133-1134.)

Jody's unrebutted testimony was that all of the money that she received from Wyatt went to due diligence in the business projects. (Id. at 1137.) She relied almost entirely on her chief financial officer, Dave Melina, "who had prepared a number of financial charts based on investment, the

ownership of IGR, and this is for Progreso Produce in Texas and Progreso Packing in Idaho and U.S. Soils." (Id. at 1138.) In her testimony, Jody went through a document from Mr. Melina in which Mr. Melina was projecting a target market in the range of $500,000,000 for U.S. Soils, and that Pete and other major investors were "on board." (Id. at 1141-1144.) This and other information from Peter and others colored her communications with Rich, Kristin, and Patti: "Well, we were all excited about, you know, this." (Id. at 1144.) Kristin was even working for the company. (Id. at 1145.) Melina reported that he was working with a bank on a $17,000,000 acquisition of the majority of Progreso Texas. (Id. at 1145.) The good news went on, with $510,000 in projected revenues for Progreso Packing Idaho, which everyone was counting on to bring a quick turnaround in return on investment. (Id. at 1145-1146.) According to Melina, Walmart was planning on buying large quantities of onions from Progreso. (Id. at 1147.)

By October of 2012, "I was very excited and very confident." (Id.) Optimistic emails as late as April 18, 2014 – some two to three years after the initial transactions with Rich and Kristin – continued to come from Dave Melina, with a new group of investors with "deep capital" interested in purchasing large quantities of produce. (Id. at 1151.)

Between 2010 and 2014, Jody put in about 1,500 to 1,700 hours per year working on the various projects. (Id. at 1152.) She and her husband lost everything:

> Mr. Howaniec: From your perspective, did you lose any – make or lose any money in these investments?
>
> Ms. Flynn: I lost money. I had personal funds in there that I lost. I had income at the time from some other things. I had an inheritance loan that my brother had given me ahead of time. I lost all that. I lost my house. Yeah.
>
> Mr. Howaniec: Did you have to take any legal action during that time to address your debts or expenses?
>
> Ms. Flynn: I filed bankruptcy, yes, and successfully went through the process, yes. So where Rebecca Taylor interviewed me, that was a rental that we were fortunate to get before the market went a little crazy.
>
> And I lost – you know, it hurt my relationship – I was – thought I was close to Kristin. She spent every summer at my lake house rental for weeks.
>
> And – Barbara, of course, my sister – or my cousin but. We all lost.
>
> And Wyatt who is a sophisticated, accredited investor but very much believed in me, very much believed in me.
>
> And I believed in these projects, and I made every effort to make them succeed. Sorry.

(Id. 1153-1154.)

For their parts, Richard Swett and Peter Halloran could not distance themselves further from Jody or run faster off the sinking ship that was Icy Gulch Resources. (Mr. Halloran's interview with the Maine Attorney General's Office was with a New York criminal defense lawyer present.) From the rarefied air in which these Wall Street and Washington, D.C., titans operated, Jody Flynn was a small fry from Portland, Maine. Mr. Melina, the chief financial officer who had his fingers in all of the financial dealings of Jody's business, never testified. His fifth amendment counsel, however, appeared at the courthouse. (Id. at 527.)

Peter Halloran was a lifelong friend of Jody's husband, Steven Dalvet, since their days as students at Yale University in the early 1980s. That is how he met Jody, and maintained a friendship with her and her husband over the years. (Id. at 808-809.) Mr. Halloran became very wealthy on Wall Street and in various ventures, maintaining an opulent lifestyle on Park Avenue in Manhattan.

Mr. Halloran testified about his background and some of his ventures as a risk arbitrage analyst in New York, brokering business deals in the many millions of dollars. (Id. at 812.) He worked on derivatives and had extensive experience in capital and financial markets. (Id. at 813.) He spent a decade in Russia during the 1990s and into the early 2000s,

advising the ministry of finance and central bank there as the country's economy transitioned following the fall of the Berlin Wall. (Id.) He amassed a huge fortune from his business ventures in Russia, and his wealth grew even larger after he returned to New York in 2005. His projects came to focus on private equity and "real life Shark Tank" enterprises by 2010, when his friendship with Jody evolved into a business relationship. (Id. at 816.)

In late 2010, Jody initially met with Mr. Halloran in Manhattan for coffee and to seek business advice. Jody eventually introduced Richard Swett to Mr. Halloran in New York, and Mr. Halloran became interested in Mr. Swett's Sudan gum arabic venture. (Id. at 819.) Of the 75 to 100 projects that Mr. Halloran typically considered each year he would usually get involved in a small number of them, but the Sudan project was one that attracted his attention. (Id. at 820.) "It – it had potential, and looking back, it's really a shame because it could have worked." (Id.)

Mr. Halloran was especially impressed by Swett's connection with a South Sudanese citizen named Mustafa Ismail, who had connections with the president and top levels of the government in war-torn Sudan. (Id. at 821.) Mr. Halloran acknowledged a letter that he wrote on October 31, 2011, to Mustafa Ismail and Richard "Dick" Swett, proposing a possible

investment of up to $500,000,000 in the gum arabic venture. (See Mr. Halloran's discussion of the October 31, 2011, proposal at Hearing Transcript pages 821-829.) Testifying about the proposal, which was published on the courtroom video screen as an exhibit, Mr. Halloran testified that, if the deal was consummated, his company Pharos Ag would own 75% of the project. And as for the remaining 25%:

> Mr. Howaniec: And – is that Dick's – how's the other 25 percent divided up?
>
> Mr. Halloran: So as I read this, the other 25, looks like that would be Dick Swett, CPES, plus AME, which I guess is Mutafa Ismail.
>
> Mr. Howaniec: Okay, but you're not sure about AME?
>
> Mr. Halloran: No, I'm not sure what that is.

(Id. at 827.)

Mr. Halloran acknowledged that even 2% of a 25% ownership interest in a company worth $500 million could be worth a lot of money:

> Mr. Howaniec: So she's sitting in a Manhattan office with some – very wealthy man [sic], a former congressman and ambassador, a very impressive person from the Sudan and numbers like 500,000,000 are being thrown around. It's – you could see where that might have a –
>
> Mr. Halloran: Yes.
>
> Mr. Howaniec: – an exciting – it might excite someone? It might have a positive impact upon a person?

Mr. Halloran: Yes. I can see that, yes.

Mr. Howaniec: Create an exuberance and enthusiasm for the project?

Mr. Halloran: Yes.

Mr. Howaniec: And you yourself were enthusiastic about the Project?

Mr. Halloran: I saw potential, yes.

(Id. at 828-829.)

Mr. Halloran acknowledged numerous email communications through 2013 and into 2014, most of which involved Jody, with Dick Swett and others indicating substantial progress with the gum arabic project. (See Mr. Halloran's testimony at Hearing Transcript from pages 836 et seq.) Yet another former congressman, Christopher Shays from Connecticut, was now getting involved. (Id at 840.) Jody was looped into all of the email exchanges between these important people. Peter Halloran was in discussions to partner with Dick Swett's company – a company in which Jody owned a 2.5% interest that increased to 5%. Mr. Halloran acknowledged that even as low as a 2% interest in Dick Swett's 25% interest in the company with which Peter Halloran was partnering could be valuable. (Id. at 841.)

While he was involved with Jody in electronic communications and Midtown Manhattan meetings discussing the potentially half billion dollar gum arabic project out of Africa, Halloran was also involved in Jody's other projects, Progreso Partners and U.S. Soils. (Id. at 843.) By April 2012, Halloran was proposing a partnership with Joseph Lionelle, the owner of U.S. Soils, and looped Jody into the communications. (Id. at 847.) In February 2013 Jody was at a meeting in Washington, D.C., with Dick Swett, Peter Halloran, and other officials. By now the relationship between Peter Halloran and Dick Swett was starting to deteriorate. No evidence was produced indicating that Jody had anything to do with the breakup between the two financial and political forces. (Id. at 860 et seq.)

Mr. Halloran discussed his interactions with Mr. Melina. As late as February 2013 – by now, according to the State, Jody had been intentionally and knowingly stealing money from honest investors – Park Avenue megamillionaire Peter Halloran was proposing investing "up to USD $50,000,000 of capital for acquisitions and growth investments by Progreso Partners, LLC." (Id. at 871-872.)

In the end, though, everything essentially fell apart. Peter's relationship with Dick collapsed. Peter became very suspicious of Dave

Melina. (Id. at 892.) "[W]e had concluded that it was quite likely a lot of fraud involved in the company early on." (Id.)

> Mr. Howaniec: Anything that – when you reference fraud, anything you became aware Jody Flynn was involved in directly?
>
> Mr. Halloran: No, not at all.

(Id.)

In the end, things just "petered out." (Id. at 893.)

Even though they had many contacts together and took numerous business trips together, Ambassador Swett attempted to distance himself from Jody during direct examination by the State on the witness stand. According to Swett, Jody's main role was as a fundraiser for his company CPES. He acknowledged, however, that, during his communications with Peter Halloran, Mr. Swett included Jody. (Id. at 575.) Swett testified at length to the work he did to bring the potentially lucrative gum arabic project to fruition:

> Mr. Swett: [U]ltimately this all fell apart because we didn't have agreements, we were unable to secure the contract with Pepsi, the gum arabic plantation – I don't recall what happened to that, but Sudan continued to have political and economic struggles, so for any number of reasons this all came to naught.
>
> Mr. Howaniec: So if somebody was investing in these types of efforts, they probably would have lost all their money, right?

Mr. Swett: I certainly did.

Mr. Howaniec: You did?

Mr. Swett: Yes.

Mr. Howaniec: But you didn't see any sort of bad faith from Jody or Pete at this point or really anybody, right? You were all operating in good faith that this project was hopefully someday going to realize –

Mr. Swett: Absolutely. This is a highly risky part of the world to work, and we all, I believe, were knowledgeable enough to understand that.

(Id. at 606.)

Mr. Swett acknowledged that Jody had an ownership interest in his company:

Mr. Howaniec: Okay. So Dome Rock Investors, LLC located at Jody Flynn's house in Portland had an ownership interest in your company?

Mr. Swett: Yes because she signed an agreement to raise a certain number of funds, and in exchange for that she received a 2 percent share is my recollection. That was then reduced to one percent because of lack of performance, which was then eliminated because of no performance and so yes.

(Id. at 608.) A K-1 Internal Revenue Service form was introduced into evidence corroborating Jody's ownership interest in Mr. Swett's company. (Id. at 614-615.)

Back during the time of the alleged criminal conduct in this case, Jody was indicted and eventually convicted on a separate Class B theft charge involving misappropriation and commingling of corporate funds relating to the purchase of a pulp and paper mill in Baileyville, Maine. The indictment in that case was dated February 9, 2012. The facts of that case are outlined in this Court's opinion in *State of Maine v. Flynn,* 2015 ME 149.

In the case at bar, the State moved to allow the jury to hear about Jody's prior conviction in the event that she testified. Justice McKeon initially agreed that the prior indictment could come into evidence, then "narrowed" his ruling:

> After thinking about it, I've – I've narrowed it. I think I've defined what would open the door to that evidence in Ms. Flynn's testimony today. And what it is is if she testifies with respect to the allocation of investor funds toward personal uses, that evidence of that indictment and that charge would come in.
>
> The reason is is it wouldn't be admitted for the propensity of committing a crime under Rule 404. Instead, under 404(b) it would be admitted as evidence of knowledge that that was – that was wrong, that it was not innocent. That's the basis for it. And there's piles of law court support on 404(b) where other acts are admitted for these reasons.
>
> I've done the 401, 403 analysis on that. While evidence of this prior – these prior events are very prejudicial,

> I believe that in that circumstance, if Ms. Flynn testifies that the use of those assets for personal reasons, that she did not know that that wasn't okay, then – she can testify that way if she wants, but then the State is permitted to admit that rebutting evidence.

(Id. at 1046-1047.)

This ruling effectively eliminated the defense from having Jody explain why she did not believe it was improper or criminal to spend business investment funds on personal expenses, at the risk of "opening the door" to what would obviously be devastatingly prejudicial information of a prior indictment involving a felony theft of investment funds. As a result, the prosecutor in this case was allowed to go through each of Jody's private expenditures during a lengthy cross-examination, to create the perception that Jody was stealing money from investors and applying it directly to personal expenses.

In the end, the defense was left with the feeble option of asking two questions:

Mr. Howaniec:	Jody, there was non-investor money in those Icy Gulch accounts, correct?
Ms. Flynn:	Correct.
Mr. Howaniec:	And did every penny of the investor money ultimately go to where it was intended to go?
Ms. Flynn:	Yes.

(Id. at 1233.) To have had Jody go into any further explanation of her personal expenses would have "opened the door" to the catastrophic disclosure of her prior indictment from February 9, 2012.

As a result of the Court's order, Jody was unable to rebut Attorney General investigator Rebecca Taylor's testimony in any meaningful way. Ms. Taylor examined Jody's bank records and identified numerous expenditures made by Jody that made it appear Jody was taking investor money and spending it on private expenses. This was not the case. The bank accounts had been commingled with private funds, and Jody had an explanation as to the rationale behind the expenditures. For Jody to go into that explanation, however, would have opened the door.

Ms. Taylor acknowledged that in her interviews with the investors she understood that Jody was taking a salary, "not doing it out of the kindness of her heart." (Id. at 1001.) Ms. Taylor did not investigate the receipts for the expenditures identified in the bank accounts. (Id. at 1003.) She did not know where the funds from cash withdrawals had been spent – funds that Jody said were sent to David Melina. (Id. at 1005-1006.)

During cross-examination by Attorney Roberge for the defense, Ms. Taylor acknowledged that many of the debits in Jody's various bank accounts could have been business related. (Id. at 994 et seq.) Attorney

Roberge walked Ms. Taylor through each of the bank accounts that she had investigated. In the end, the State's own investigator could not rule out the possibility that the expenditures were legitimate:

> Mr. Roberge: So, Miss Taylor, if this sounds like a ballpark to you, again, let me know, but when I add all the investor money together, all the investor money in all the accounts, it looks to me like it comes out to about $1,023,800; does that sound accurate?
>
> Ms. Taylor: Could very well be.
>
> Mr. Roberge: And when I add all of these ATM fees that we don't know where they went, potential business expenses, etcetera, I come out to $1,026,858.38?
>
> Ms. Taylor: Again, I wouldn't know unless I saw it and did it myself.
>
> Mr. Roberge: Do you agree that its possible that between all of the business expenses, all of the ATM withdrawals, all the counter check withdrawals, all the money where we don't know where it went or early [sic] presumptively business expenses, it may come out to more money than the amount that was deposited by the investors?
>
> Ms. Taylor: I know that we did not include a lot of the money that Barbara Vanamee gave her because we could only document for one of her investments so.
>
> Mr. Roberge: But, you know, again, adding all these expenses where we don't know where they went, it very well comes out to, you know, I think as much or more than what the investors put into these accounts?

Ms. Taylor: I wouldn't be able to say for sure.

(Id. at 1016-1017.)

ISSUES PRESENTED

1. Whether the Appellant's convictions were supported by the evidence.

2. Whether the State was improperly allowed to base its case on inadmissible hearsay.

3. Whether the Court violated M.R.Evid. 404(b) in allowing the State to raise Appellant's prior conviction during cross-examination, unfairly depriving the Appellant of the opportunity to defend herself.

4. Whether the Court erred in denying the Appellant's post-judgment motions.

ARGUMENT

1. Appellant's convictions are not supported by the evidence.

Appellant Jody Flynn did not commit theft. She was a well-intentioned, socially conscious mother and wife living in a modest, quiet neighborhood in Portland with her high school teacher husband. She had a grandiose idea that she could make millions for her friends and neighbors. There was no evidence presented at trial that Jody had any intentions of harming these friends, with whom she was very close.

Soon she came into relationships with a former U.S. Congressman and U.S. Ambassador, a multi-millionaire investor from Park Avenue, a Sudanese national who was close to the president and other top officials in South Sudan, and other impressive businessmen from across the United States. There were meetings in Manhattan, Paris, London, and Washington, D.C., among other heady places.

Nor did Jody's conduct rise to the level of securities fraud. Jody genuinely wanted the investments to succeed. Based on information from Peter Halloran, Congressman Swett, David Melina, and others, she genuinely believed there was a vehicle for a return on investments. She dedicated thousands of hours of work on these projects, and genuinely

believed she was innocent in the 2012 criminal case. The investors in this case testified to nothing more than that Jody was exuberant about the prospects of their investments, and that they lost money. The rest of the State's case was based on hearsay.

Jody engaged in unfortunate bookkeeping, but she did not steal money. These were unrealistic investments that petered out. Jody worked nearly 7,000 hours on these projects over the course of four years. In the end, she lost everything, including the house and what little savings she had with her husband. She ended up filing for Chapter 7 bankruptcy.

2. The State's case was based on improperly admitted hearsay.

The five alleged investor victims in this case did not testify to criminal activity by Jody. They testified to the amounts they invested, the documents they signed, and the non-hearsay representations made by the defendant, Jody Flynn. The alleged victims had no personal knowledge of criminal conduct by Jody. Richard Henry's testimony is a prime example of this:

Mr. Howaniec: So these were risky investments?

Mr. Henry: Yes.

Mr. Howaniec: And you lost money on them?

Mr. Henry: I lost all of the money.

Mr. Howaniec: And it's all Jody's fault?

Mr. Henry: I can't say that. She was the only person that – that I knew that I was investing through.

(Id. at 392.)

The State presented two other witnesses – Richard Swett and Peter Halloran – who testified that, from their perspective, Jody was not as important in their efforts as she was representing to the investors… even though they both included her in virtually every one of their communications regarding the various projects. In the case of Ambassador Swett he even acknowledged that Jody had an equity interest in his company.

The State presented none of the other key characters involved in the various projects, most notably Dave Melina and Mustafa Ismail. Instead, they picked and chose hearsay documents out of thousands in this investigation that mischaracterized Jody's communications to the investors, and were allowed to admit the documents as "not being admitted for the truth of the matter." Dozens of objections were raised by the defense to the admission of these documents, which were overruled with what became a rote "instruction" that the jury was not to consider the evidence for the truth of the matter.

When the defense reviewed the State's witness list filed prior to trial, it became clear that the State was going to be attempting to prove its case through hearsay. Objections were made in the earliest moments of testimony at the beginning of the State's case, and continued through dozens of objections for over a week. They are too numerous to replicate in this brief, and we invite the Court to review the record.

3. The Court violated M.R.Evid. 404(b) in allowing the State to raise Appellant's prior conviction during cross-examination, unfairly depriving the Appellant of the opportunity to defend herself.

The most devastating ruling in this case came on the morning of the fourth day of trial. The State indicated that, if Jody were going to testify, it would seek to introduce evidence of an indictment from February 9, 2012, on a felony theft charge. This case had been pending five years and at no point prior to the trial had the State raised this issue or litigated it as part of a motion in limine. As a result, everyone – including Justice McKeon and defense counsel – were caught scrambling to research case law on the subject. The Court subsequently narrowed its opinion but the main colloquy on the State's motion occurs at pages 782-805 of the trial transcript.

At the beginning of the colloquy, the prosecutor is arguing that the February 2012 indictment, as addressed in a Justice Alexander opinion in *State of Maine v. Flynn,* 2015 ME 149, could be presented at this trial if Jody took the stand to defend herself.

At page 783 of the transcript of the colloquy – on the fourth day of trial – the Court asks Assistant Attorney General Bernstein for a copy of the February 2012 indictment. At the bottom of page 783, Attorney Bernstein begins a four pages-of-transcripts summary of his view of the facts in the 2012 case. At the end of the four-page summary of Attorney Bernstein's "facts" from the 2012 case, he concludes: "[T]he allegations are that she improperly used business money and used it for personal expenses. That's exactly what's happening here. That's what the State has alleged." (Id. at 786.)

Unable to find case law in Maine to support his position, Attorney Bernstein then hands "the 2011 First Circuit case" of "the U.S. vs. Landry" to the Court. (Id. at 786.) He was apparently referencing *United States v. Landry,* No. 09-1877 (1st Cir. 2011), in which a woman charged with credit card fraud objected to the admission of evidence of a prior charge of giving a false identification at a traffic stop.

At page 788 of the colloquy the prosecution cites “United States versus Wyatt,” which, as far as we can tell, is the 2009 First Circuit decision in *United States v. Wyatt,* No. 08-1539 (1st Cir. 2009). The facts of that case bear no resemblance to Jody Flynn’s.

While Justice McKeon was reviewing these First Circuit cases being handed to him, he was reviewing for the first time Justice Alexander’s interpretation of the facts in the record of that first trial. While this was all happening, Attorney was making several misrepresentations to the Court, including: that defense counsel was implying that Mr. Ismail was some sort of “Nigerian prince kind of scandal”; that most of Jody’s behavior occurred *after* February 9, 2012; etc. (See Assistant Attorney General Bernstein’s argument at 787-790.)

Attorney Roberge correctly pointed out that much or most of the conduct being alleged by the State occurred *before* September 9, 2012. (Id. at 793 et seq.) Moments before his ruling that sealed Jody’s conviction, Justice McKeon asked: “What happened in the other case?” While these arguments were going on, the Court was reviewing Justice Alexander’s interpretation of the facts in the first *Flynn* decision for the first time. (Id. at 802.)

None of the witnesses in the 2012 case were designated as witnesses in this case. It is not clear from the Court's comments from the bench how he intended to address a "trial within a trial" from 2012 if Jody "opened the door" by defending herself.

It is apparently the State's position in this case that Jody Flynn could put in 1,400 to 1,700 hours per year of effort on behalf of the investors over the course of four years, take dozens of trips across the United States and Europe, and not be compensated for her work. There was no dispute from the defense that this was a case of sloppy bookwork, and that Jody should have obviously set up a more formal program for documenting that she was properly compensated. In threatening to allow the State to bring up the 2012 indictment – involving conduct that occurred essentially during the timeframe in this case – the Court essentially gutted the Appellant's defense.

To say that the prior indictment was "very prejudicial" is an understatement. Jody's whole defense in this case relied on her ability to explain that, while she engaged in poor book keeping and spent funds on personal expenditures, she did not commit theft. The jury might or might not have accepted that explanation, but the Court's ruling on the devastatingly prejudicial prior indictment prevented the defense from even

attempting to explain Jody's behavior. The prosecution was allowed to cross-examine her on each of her personal expenditures, and the defense was not allowed to respond. This was grossly unfair and robbed the Appellant of a fair trial.

The indictment in Jody's first case was dated February 9, 2012. Most of the illegal commingling alleged by the State in the case at bar occurred *prior* to that date. Ms. Flynn had counsel at the time of the investigation in the first case. Even after she was indicted she maintained her innocence and understood that she had a right to a presumption of innocence. The unfair prejudicial effect of the prior felony conviction was far outweighed by any probative value. The State had every right to cross-examine Jody on her personal expenditures and argue that they were improper. Perhaps the jury would buy her explanations, or perhaps they would not. In effectively preventing Jody and her defense team from explaining her conduct, the Court tied both of our hands behind our back and essentially ensured Jody's conviction.

Maine Rule of Evidence 404(b) provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." M.R.Evid. 404(b). Justice McKeon ruled (properly) that the

2012 indictment was not admissible to consider common scheme or modus operandi, pattern, or other theories of admissibility. (Id. at 801.)

Jody would be very happy to relitigate that 2012 case, a case in which to this day she maintains her innocence. Then, as now, she had a very legitimate explanation for her expenditures. She did not testify in that case, upon the advice of counsel. In the present case, she was prevented from defending herself because of that decision from more than a decade ago.

In the end, "[e]ven if probative to the issues to be determined by the factfinder, however, evidence of prior bad acts must be excluded if the danger of unfair prejudice substantially outweighs that probative value." *State of Maine v. Webber*, 613 A.2d 375 (Me. 1992).

The Court did not cite any cases in support of the decision it made moments after "scanning" the 2012 *Flynn* decision. The State did not cite any cases in support of its mid-trial arguments, beyond two First Circuit opinions that are easily distinguishable. The Court's devastating rulings on this issue ended any possible defense for Jody Flynn, and we are left without an understanding of the State's argument and the Court's off the cuff ruling. We reserve the right to address this further in our reply brief, and invite the State to explain how a case with numerous witnesses from

2012 would have properly been relitigated in the present case, especially after four days of trial and long after the submission of witness lists.

4. The Court erred in denying the Appellant's post-judgment motions.

This Court is well aware of the constitutional crisis facing its court system. The defense filed a motion for a new trial pursuant to Rule 33 "in the interests of justice" out of concern that another innocent person has been convicted in a Maine court following another unfair trial. The State's case was based almost entirely on hearsay. The Court failed to apply the proper Rule 403 analysis and exclude a prior conviction that basically gave a slam-dunk conviction to the State in this case. The Appellant's motion for a new trial outlines representations concerning the availability of Icy Gulch CFO David Melina during the trial that raises concerns about an overzealous prosecution.

There is a pervading sense in the Maine defense bar that criminal trials in Maine are just no longer fair. Morale has never been lower. It has come to feel like the defense has become mere foils to the prosecutorial whims of the State; we are the Washington Generals to the Attorney General's Harlem Globetrotters. Those of us who have practiced for many years have seen a shift away from formerly robust due process

constitutional protections. We strongly believe that an innocent 72-year-old woman was convicted in this case. The century-old hearsay rule has been gutted. The state was allowed to prove its case without calling David Melina, Mustafa Ismail, Joe Lionelle, and numerous other players in these out of state businesses that were the focus of the criminal activity that Jody supposedly committed.

Dozens of criminal defendants are sitting in jails in Maine for weeks and months without lawyers. We just got word this week that the executive director of the Maine Commission on Public Defense Services is leaving his post, as we near a winter when indigent defense funding is going to dry up in April – three months before the end of the fiscal year. The State is facing a situation in which hundreds of criminal defense lawyers representing thousands of criminal defendants are not going to be paid for three months, during a time when the state has a billion dollar rainy day fund. And yet there seems to be no plan in place. The governor and legislature do not seem to care. All of this adds to the sense that the Maine criminal court system continues to spiral out of control, now more than three years after the COVID-19 pandemic.

Jody's very complicated trial was on top of four very complicated murder trials litigated by undersigned counsel in the past year and a half,

plus a very complicated “elder abuse” trial that undersigned counsel trial with rising star second chair Mitch Roberge out in Oxford County. We moved to continue her trial when the discovery reached 3,500 pages, much of it provided late by the State, but the Court denied the motion in the go-go climate to clean up the docket that has come to dominate during the post-pandemic era. Justice McKeon is our favorite trial justice, but the Jody Flynn trial process was stacked against the defendant and, in the end, we never had a fair chance to present a zealous defense.

CONCLUSION

For all the foregoing reasons, the Appellant moves that the Court vacate the guilty convictions in the above matter, and for such further and other relief as the Court deems just and appropriate under the circumstances of this case.

Dated: August 8, 2025

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CERTIFICATE OF SERVICE

I, James P. Howaniec, attorney for the Appellant, certify that I have made service of the foregoing Brief of the Appellant by sending a copy via email this date to:

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