STATE OF MAINE
CUMBERLAND, ss.

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

STATE OF MAINE,
Appellee

v.

JODY FLYNN,
Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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TABLE OF CONTENTS

Section **Page**

TABLE OF AUTHORITIES

Cases

Statutes

Rules

FACTUAL BACKGROUND

Jody Flynn a/k/a Jody Dalvet (Flynn) sold securities in the form of Subscription Agreements and Convertible Promissory Notes to a group of five Maine investors: Kristin Henry, Richard Henry, Patricia Sims, Wyatt Garfield, and Barbara Vanamee – her own friends and acquaintances – purportedly to raise money for business ventures that she was developing. *See generally* State's Exhibits (herein after St. Ex.) 119-127. Instead of using the investors' money to partner with or acquire agricultural businesses as she represented that she would, Flynn spent much of their money on her own personal expenses. St. Ex. 109. She covered her tracks and kept the investments coming by feeding the investors a steady stream of good news and by falsely representing to them that they, through her company Icy Gulch Resources (IGR), had partnered with wealthy and influential individuals Peter Halloran (a successful hedge fund manager) and Richard Swett (a former New Hampshire United States Representative to Congress and former United States Ambassador to Denmark). Tr. T. 113, 234-235, 285-286, 317-318, 362-366, 652, 763-772; St. Ex. 1, 14, 17, 18, 22, 23, 26, 27, 28, 29, 33, 34, 38, 42, 44, 46, 49, 50, 53, 57, 58, 64, 69, 72.

Kristin Henry (Kristin) first met Flynn and fellow investor Barbara Vanamee (Barbara) when Kristin became their neighbor on Woodmont Street in Portland in 2006 (Barbara next door and Flynn across the street). Trial

Transcript (hereinafter Tr. T.) 645-646. In 2011, Kristin began a relationship with her future husband and fellow IGR investor Richard Henry (Richard). Tr. T. 63. Kristin introduced Richard to her neighbors, including Flynn. *Id*.

Flynn began seeking investments from Kristin and Richard soon thereafter. Tr. T. 65. Richard signed his first investor document with IGR on January 18, 2012, a Subscription Agreement for 30 units of IGR. St. Ex. 125 at Bates 679-685. Kristin followed suit, signing an IGR "Convertible Loan for the pre-operating development costs for U.S. Soil acquisition." St. Ex. 121 at Bates 250. Kristin paid her $25,000 investment using three separate checks over a few weeks because she had to liquidate stock to cover the full amount. Tr. T. 659-660; St. Ex. 122. After signing a second investment document, St. Ex. 125 at Bates 698-699, Richard invested $25,000 as well. St. Ex. 126 at Bates 1437-1438.

On March 14, 2012, Flynn emailed Kristin and Richard documents showing projected returns in the millions of dollars for the US Soil and Progreso Produce projects in which they, through IGR, were supposedly invested. St. Ex. 1.

From March to May 2012, Flynn repeatedly encouraged Richard to invest more in Progreso Produce through IGR using Self Directed IRAs, or SDIRAs. St. Ex. 2, 3, 4, 5. In turn, he signed an IGR "Convertible Loan for the pre-operating

development costs for the Progreso Produce transaction" and paid IGR $30,000 by SDIRA. St. Ex. 125 at Bates 700; 126 at Bates 1469.

After further efforts by Flynn (St. Ex. 6, 7), from June through August 2012, Richard invested another $75,000 of SDIRA funds in IGR, primarily for "the acquisition of Progreso Produce." St. Ex. 125 at Bates 686-702; 126 at Bates 1474, 1882, 1884.

In October 2012, Flynn sent Richard positive updates promising imminent deal closings on the Progreso Produce and US Soil projects, as well as a project involving Raybon Tomatoes. St. Ex. 11, 12.

In November 2012, Flynn sent Richard a series of emails representing that Peter Halloran's company, Pharos Financial Group (discussed further below), was a 50-50 business partner with IGR in the acquisition of US Soil, and seeking further investment from Richard. St. Ex. 14, 17, 18. Richard signed another IGR "Short Term Loan," this time "to fund the closing costs for the acquisition of US SOILS" for $40,000. St. Ex. 125 at Bates 703.

In December 2012, Flynn convinced Richard to invest more towards the acquisition of US Soil, assuring him that the closing would occur "by year end." St. Ex. 22, 23. Richard signed another loan document for $10,000 and remitted the now $50,000 that he had agreed to invest since November. St. Ex. 125 at Bates 704; 126 at Bates 2158, 2159. Later that month, Flynn sent Richard a list

of project updates, promising imminent success and adding, "I think I was on the phone with Pete Halloran most of yesterday—that's what it felt like!" St. Ex. 26.

In January 2013, Flynn again assured Richard that everything was on track, adding, "Pete's in Switzerland until next week so we intend to finish up with US Soils upon his return." St. Ex. 27. In another rosy email, she noted, "On with Pete for extra hours homework this week—progreso, Soils and his multi billion $$$ plans—include us….you'll like this." St. Ex. 28.

Soon after, Flynn introduced a Sudanese gum Arabic project to Richard, writing, "Another Pete opportunity has come up. We have a chance to control the gum Arabic market, no, seriously?!lol." St. Ex. 29. She described Mr. Halloran as "the lead partner," saying that "we have been assigned sale rights of 45,000 tons of harvest gum arabic from Sudan." *Id*. Following some back and forth, she drilled down:

> What are you thinking with regard to $$ amount. Remember we have big bang for our buck here as we 'own the opportunity' and Icy Gulch Resources is factored in on Pete's side. So whatever you're thinking will work well for you and Icy Gulch. If you want my thoughts--$10k-$25k as this is smaller group(3). *Id*.

Richard signed a "Convertible Loan for the pre-operating development costs for Guma [sic] Arabic transaction" for $20,000 and paid for it by SDIRA. St. Ex. 125

at Bates 705; 126 at Bates 1885. It would be his final investment with IGR (all told, $200,000). St. Ex. 126.

Flynn's optimistic email updates did not stop when Richard stopped investing. In late January, following a positive update from Flynn about US Soil, gum Arabic, Progreso Produce, and a new project – Clear Springs – Richard asked for more information about when to expect some return on investment and whether he was even invested in Clear Springs. St. Ex. 33. Flynn's response was both obfuscating and overwhelmingly positive. *Id*.

Upbeat reports continued to roll in from Flynn over the next few months: "We have a Contract with permit for Gum Arabic [. . . .] Pete expects us to have sale completed within 30-45 days."; "ramp up time with US Soils!"; "Clear Springs—we have slice of as Progreso Partners will own."; Pete [. . .] wants to come in with $100M for acquisitions in our Progreso silo." St. Ex. 34. "We'll have Progreso Partners wrapped with the $$$(fingers crossed) by Friday."; "US Soils Orders and operations start date within next 30 days or sooner!"; "Gum Arabic first sale within 30-45 days." St. Ex. 38. "Gum Arabic selling actually at $8500/ton; Pete is doing the 'test' contract for 2000 tons with top global buyer,"; "Closing efforts of course underway in Texas."; "Acquisitions: Rio Queen Packing & Onion, Josephons/Ontario, and Clear Springs are pushing forward full speed."; "US Soils getting CHS cooperate approval as we speak." St. Ex. 40.

On March 22, 2013, Flynn asked Richard to confirm that she had the correct wiring instructions for his distribution and assured him that "US Soils is in the final stages of getting done." St. Ex. 42. In fact, IGR never purchased or leased any part of US Soil and never finalized any business deal with them. Tr. T. 638.

In the Spring of 2013, Kristin introduced her mother, Patricia Sims, a schoolteacher from Damariscotta, to Flynn. Tr. T. 403, 404, 429. During Patricia's April vacation, Flynn met with her and convinced her to invest. Tr. T. 405-409. During the pitch meeting, Flynn "represented herself as someone who had been involved in this business, was an expert in this business, knew how to look at an opportunity and move forward with that opportunity." Tr. T. 437. Soon after, Patricia signed a Joinder to Operating Agreement of [IGR]" and a Subscription Agreement for 25 Class A Units of IGR for $25,000. St. Ex. 123. She then paid IGR $25,000 by check. St. Ex. 124 at Bates 2174.

The day before Patricia made her first investment with IGR, Richard wrote to Flynn asking for an update. St. Ex. 44. Flynn responded that she was in New York "with Pete on both US Soils and Progreso" and that "Our distribution is being carved out from the Weiser/Progreso year-end financials as we speak." *Id*.

On May 16, Patricia invested another $15,000, by check made out to IGR with a memo line reading "Clear Springs Investment." St. Ex. 124 at Bates 2176. She had removed $25,000 from the stock market to invest with Flynn, and the total $40,000 that she invested represented a substantial portion of her retirement savings. Tr. T. 434, 436.

On May 28, 2013, Richard sent Flynn a somber email laying out various concerns that he had about his investments with IGR, including missed deadlines, unclear party roles, and unclear equity positions. St. Ex. 46. Flynn responded, "We're moving in the right direction on all fronts." *Id*. As to gum Arabic, she wrote, "Pete's Got the chess board all laid out and his move is going to be 'check mate." *Id*. As to Progreso she wrote, "We're headed to Texas next week to work on Clear Springs and Florida Blueberry farm [. . ..] Pete wants our Texas visit to include meeting some growers. [. . ..] Distributions from Idaho will be put on a set schedule this week I'm hoping." *Id*. As to US Soil, she concluded, "Operations full swing by July 31st." *Id*.

Through 2013 and into Summer 2014, Flynn continued to provide Richard with updates suggesting that all was well with his investments and he should see a return shortly. St. Ex. 49, 50, 53, 57, 58, 64, 69, 72.

Kristin, Richard, and Patricia were not the only investors in IGR. IGR's biggest investor was Wyatt Garfield. Flynn met Wyatt, the former owner of a

trio of Maine home furnishings stores, through Barbara around 2011. Tr. T. 273, 300, 305-306.

In November 2011, Wyatt invested $150,000 with Flynn in a separate venture, Sudan AG Group. St. Ex. 127. He then went on to invest in IGR directly. From January 2012 to April 2014, the same period that she was collecting from Kristin, Richard, and Patricia, Flynn persuaded Wyatt to invest 19 separate times in IGR, a total of $471,000 (this does not include the aforementioned $150,000 Sudan AG Group investment). *Id*. During this time, Flynn showed Wyatt "reams of supporting documents" and "would list people she was in touch with with these companies." Tr. T. 285-286. Flynn provided "term sheets" "promising an 8 percent return." Tr. T. 295-296.

IGR's fifth investor was Barbara. In 2012, Barbara was Flynn's close friend and neighbor. Tr. T. 709-710. On August 13, 2012, Barbara wired $50,000 to Flynn's IGR account at Gorham Savings Bank. St. Ex. 120. On or about August 21, 2012, Flynn provided to Barbara a Subscription Agreement which they both signed for Barbara's purchase of 50 Class A Investor units of IGR for $50,000. St. Ex. 119; Tr. T. 723.

Flynn's five neighbors and friends invested a total of $786,000 in IGR, and with Wyatt's other investment with Flynn of $150,000, the total was $936,000. None of the investors received their initial investments back and they never

received any return on their investments. Tr. T. 219-221, 230-231, 233, 237, 248, 298-299, 368-369, 428-429, 676, 724.

In her initial pitch meeting with Patricia, Flynn had said, "I make money when you make money." Tr. T. 427. Flynn made a similar representation to Kristin. Tr. T. 675. Flynn never disclosed to any of the investors that she was using their money for her personal use, and they never gave her permission to do so. Tr. T. 246, 298, 428, 675-676, 723-724.

Furthermore, although Flynn apparently had a business partner in IGR named David Melina, it was Flynn who recruited the investors, pitched to the investors, provided investment documents to the investors, signed the investment documents on behalf of IGR, advised Richard on how to pay by SDIRA, gave updates to the investors, and controlled the bank accounts in which the investor money was deposited. See, Tr. T. 65-66, 69, 79-80, 84, 96, 98-99, 119-120, 155, 279, 284-286, 295-297, 314, 393-394, 405-407, 410-411, 416, 456, 430-431, 437-439, 647-650, 658-659, 669-670, 686, 696, 711, 714, 718, 723, 728, 730, 909, 1158.

What did Flynn do with the $936,000 that Kristin, Richard, Patricia, Wyatt, and Barbara entrusted to her? She deposited $913,800 of it into three of the 11 bank accounts that she owned and controlled over four banking institutions (the Bank of Maine (BOM), Gorham Savings Bank (GSB), Machias

Savings Bank, and Town and Country Federal Credit Union). Tr. T. 909-912, 1158, St. Ex. 109-115.

In a business account at BOM under the name Sudan AG Group, Flynn deposited $174,352.31, primarily consisting of Wyatt's initial investment of $150,000. Tr. T. 965, 968; St. Ex. 111 at Bates 1594. She withdrew $9,520.00 in cash through teller transactions and approximately $10,500.00 at ATMs (Tr. T. 966-967, 970-971), and she transferred $100,000.00 to her personal account (Tr. T. 971-972). She also spent money directly from the business account at FairPoint, Oasis Nail & Spa, Commercial Street Auto Care, Sephora, Time Warner Cable, and Twist Portland. Tr. T. 971-977. She remitted just $10,000.00 to David Melina directly and none to LMRC (an entity apparently controlled by Mr. Melina (Tr. T. 949)). Tr. T. 974.

In a separate BOM business account named for IGR, Flynn deposited $210,000.00 in investor money and $11,638.90 in non-investor money. Tr. T. 978-979. She withdrew $36,575.00 in cash through teller transactions and approximately $12,000.00 from ATMs, including $1,620.00 from ATMs located in Turks & Caicos. Tr. T. 979-980. She transferred $142,800.00 to her personal account. Tr. T. 982. She also spent money directly from the account at Dodge BMW, CVS, Hannaford, Lee Dodge Chrysler, The Root Kitchen, Linda Taylor Boutique, Motifs, and Whole Foods. Tr. T. 981-984. $6,500.00 was remitted to

LMRC, and nothing to David Melina directly. St. Ex. 109, 110 at Bates 1462 (at P14 of the exhibit).

Flynn's personal account at BOM, into which she transferred $242,800.00 from the BOM business accounts, showed similar types of spending as her other accounts. Tr. T. 985-986. Just $22,000.00 was remitted to Mr. Melina or LMRC. Tr. T. 986-987.

In her IGR account at GSB, Flynn deposited $553,800 in investor money and $176,339.49 in non-investor money. Tr. T. 939-940. She withdrew $126,097.00 via "counter check" withdrawals and approximately $24,000.00 from ATMs, and she transferred $97,957.04 into personal accounts. Tr. T. 944-945, 952-953. She also spent money at or on CVS, Cinemagic, the Common App (for college applications), dental expenses, DirecTV, Duckfat, Hannaford, Home Goods, Nordstrom's, Oasis Nails & Spa, the Paint Pot, the Palms in Turks & Caicos, Portland Mattress Makers, Pottery Barn, Prime Motor Cars, Saks Fifth Avenue Boston, Siano's Pizza, the South Portland Veterinary Hospital, Suntan City, Time Warner Cable, Whole Foods, and Yarmouth Auto Care, among others, not to mention $1,024.00 in overdraft fees. Tr. T. 947-961. Just $83,000 was remitted to David Melina or LMRC. Tr. T. 948, 954.

Flynn's personal account at GSB showed similar spending patterns to the GSB IGR business account. Tr. T. 963. Only $500 was remitted from this account to LMRC, and none was remitted to Mr. Melina. Tr. T. 962-963.

Throughout her communications with the IGR investors, Flynn alluded to IGR partnering with Peter Halloran, whom she often referred to as "Pete." Tr. T. 72-73, 113, 170-173, 176, 182, 191-192, 215-217, 222, 235, 239-244, 362, 382, 648-652; St. Ex. 17, 18, 26, 27, 28, 29, 33, 34, 44, 46. She also referenced the "Ambassador" (i.e., Richard Swett) as a "CPES partner" (St. Ex. 29) and alluded to him in conversations with the investors. Tr. T 113, 234-235, 318, 363-366, 652.

Flynn worked for Ambassador Swett's company, Climate Prosperity Enterprise Solutions (CPES), as a fundraiser from 2010 to 2013. Tr. T. 468-469, 471. Flynn's remuneration structure with CPES was somewhat unusual – a company she owned called Dome Rock (completely separate from IGR) received a small share in CPES. Tr. T. 608, 614-615, 618-619, 1158. Importantly, the IGR investors had no interest in Dome Rock and did not work with Ambassador Swett in any manner. Tr. T. 478, 481-483, 1158. In fact, Ambassador Swett had never heard of "Icy Gulch Resources" prior to this criminal proceeding ("I have never worked with Icy Gulch. I don't know where they come from;" "Question: When's the first time you heard the three words Icy Gulch Resources? Answer:

From you.") Tr. T. 482-483. Still, according to Flynn, she took 48 trips with him on CPES business funded in part by IGR investor money. Tr. T. 1105-1106.

In late 2010, Flynn introduced Ambassador Swett to Mr. Halloran, who was a longtime friend of Flynn's husband and a phenomenally successful hedge fund manager based in New York. Tr. T. 502-503, 743-746. Ambassador Swett was seeking advice regarding a potential gum Arabic project in Sudan. Tr. T. 744-745.

As a result of this meeting, Mr. Halloran became interested in the gum Arabic project himself. Tr. T. 748-749. Although Mr. Halloran's company, Pharos Financial Group (PFG), went on to perform due diligence on the gum Arabic project as well as Progreso Produce and US Soil, his interest was only ever in the possibility of investing PFG funds, not in partnering with Flynn or IGR. Tr. T. 756-759, 761-762, 777-778. In the end, PFG did not invest in any of the projects that Flynn had brought to Mr. Halloran's attention, and Mr. Halloran and PFG certainly never partnered with or invested in any ventures with IGR. Tr. T. 778, 1158. As far as Mr. Halloran was concerned, Flynn was simply a member of Swett's team. Tr. T. 748.

So, when Flynn told Richard that Mr. Halloran had "multi-billion dollar plans" with IGR, that was false. Tr. T. 764. When Flynn said that they (meaning IGR) had "a chance to control the gum arabic market," that was false. Tr. T. 764.

When she said that Mr. Halloran was "partnering" on a deal involving hundreds of millions of dollars with Clear Springs and IGR, that was false. Tr. T. 767-768. When Flynn told Richard that IGR owned five percent of Mr. Halloran's company, Pharos Gum, and that Mr. Halloran was a broker in gum Arabic transactions, that was all false; there was no such named company (there was a company named Sterling Gum), Mr. Halloran was not a broker in a deal with IGR, and IGR did not own any stake in Sterling Gum. Tr. T. 771-772. And so on. *See*, Tr. T. 763-772.

The simple fact is that Mr. Halloran's business model did not involve outside investments or any investments in the range that the IGR investors were paying to Flynn. Tr. T. 777-778.

PROCEDURAL HISTORY

On May 13, 2019, the Cumberland County Grand Jury returned a two count Indictment charging Flynn with one count of Class B theft by deception (17-A M.R.S. § 354(1)(B)(1)(2025)) and one count of Class C knowing or intentional securities violation (i.e. securities fraud) (32 M.R.S. § 16508 (2025)[1]) arising from her theft from and misrepresentations to the IGR investors. Appendix (hereinafter A.) 4, 113-115. On May 30, 2019, Flynn entered pleas of not guilty and was released on her own recognizance. A. 4.

[1] Although the statue was amended during the course of criminal conduct, the amendment does not impact this appeal. See, e.g. P.L. 2013 ch. 39 § 2 (effective October 9, 2013).

On January 17, 2024, the case was specially set for trial during the week of October 28, 2024. A. 8.

On September 4, 2024, the State filed motions in limine (i) to use summaries at trial, (ii) for the admission at trial of certain certified records, and (iii) for the admission at trial of Flynn's material omissions to the investors regarding her prior 2012 indictment and conviction for Class B theft. A. 10. On September 26, 2024, Flynn filed a motion to dismiss on the grounds of double jeopardy and vindictive prosecution and a motion to dismiss or in the alternative for discovery sanctions. A. 10.

On September 30, 2024, a hearing was held on the pending pretrial motions. A. 10; *see generally* Motion in Limine Transcript (hereinafter MIL Tr.) 2-73. The hearing included detailed argument on the State's motion in limine seeking to permit the State to use at trial Flynn's 2012 indictment and subsequent conviction (in 2014) for Class B theft (discussed further below). MIL Tr. 19-42.

On October 1, 2024, the trial court issued an order granting the State's motions in limine, denying Flynn's motion to dismiss for double jeopardy and vindictive prosecution, and keeping under advisement Flynn's motion to dismiss or for discovery sanctions. A. 11; October 1, 2024, Order.

Jury selection took place on October 15, 2024. A. 11.

The trial began on October 28, 2024. A. 12. On the morning of the first day of trial, Flynn waived her right to a jury with respect to Count II (securities fraud). Tr. T. 18-20. The Court also addressed the preliminary nature of its ruling that the 2012 criminal case would not be admitted before the jury on the theft count:

> And you also understand that whether either the indictment itself or perhaps some of the evidence of conduct that may have led to that indictment gets into – gets into trial anyway as part of the State's proof of Count I is a decision the Court's going to have to make on a – on a case by case basis depending on the evidence that's in the case at the time that the evidence of the prior conduct is offered? Do you understand that? Tr. T. 20.

Flynn responded in the affirmative. Tr. T. 20. Thus, the trial was essentially bifurcated, with Count I tried to the jury and Count II to the bench, and the trial court developed a procedure for the victims to testify outside the presence of the jury regarding evidence solely related to Count II (specifically, Flynn's failure to inform them about the 2012 indictment). Tr. T. 17-21.

The trial concluded on November 4, 2024. A. 13. The trial court submitted Count I to the jury and took Count II under advisement. A. 13. Flynn was found guilty on Count I. A. 13.

On November 18, 2024, the State filed its written closing argument as to Count II (A. 14, 43-58) and Flynn filed motions for judgment of acquittal (A. 13,

73-77) and new trial (A. 14, 83-90). On December 2, 2024, Flynn filed her written closing argument as to Count II. A. 14, 59-64. On December 9, 2024, the State filed its rebuttal to Flynn's closing argument as to Count II (A. 14, 65-72) and objections to Flynn's motions for judgment of acquittal (A. 14, 78-82) and new trial (A. 14, 91-112).

On January 15, 2025, the trial court issued a Decision and Order finding Flynn guilty on Count II and denying Flynn's motions for judgment of acquittal and new trial. A. 14, 28-35.

On January 22, 2025, the State filed a motion for clarification and additional findings and conclusions of law in response to the trial court's January 15, 2025, decision. A. 14, 38-41. On February 14, 2025, the trial court issued an Order addressing the State's motion for clarification and additional findings and conclusions of law. A. 15, 36-37. On February 18, 2025, Flynn filed a rebuttal to the State's motion for clarification and additional findings and conclusions of law. A. 15, 42.

On April 7, 2025, following a hearing, Flynn was sentenced and released on her own recognizance pending appeal. A. 15-16, 19-27. She timely filed her appeal. A. 17.

STATEMENT OF THE ISSUES

I. Whether Flynn's convictions are supported by the evidence.

II. Whether the trial court erred in admitting hearsay evidence offered by the State.

III. Whether the trial court erred in ruling that Flynn's prior indictment could be raised before the jury if she testified that she had no knowledge that it was wrong to spend investor money on personal expenses.

IV. Whether the trial court erred in denying Flynn's post-judgment motions.

SUMMARY OF THE ARGUMENT

One, Flynn's convictions for theft and securities fraud are fully supported by the evidence. The State's evidence proved that Flynn used misrepresentations and omissions to convince her victims to invest with her and then misappropriated well over $10,000 of their investment money on personal expenses.

Two, the State's evidence was properly admitted at trial.

Three, the trial court properly ruled that Flynn's prior indictment could be used to rebut a defense of lack of knowledge that spending investor money on unauthorized personal expenses is wrong.

Four, the trial court also properly denied Flynn's motions for judgment of acquittal and for new trial as they were both without merit.

ARGUMENT

I. Flynn's convictions are supported by the evidence.

Flynn's convictions for theft and securities fraud are fully supported by the evidence, contrary to her assertions. Bl. Br. 33. When a defendant challenges the sufficiency of the evidence supporting a conviction, this Court determines, "viewing the evidence in the light most favorable to the State, whether a trier of fact rationally could find beyond a reasonable doubt every element of the offense charged." *State v. MacKenzie*, 2025 ME 79, ¶ 27, --- A.3d ---- (quotation marks omitted). This Court "defer[s] to all credibility determinations and reasonable inferences drawn by the fact-finder, even if those inferences are contradicted by parts of the direct evidence." *State v. Edwards*, 2024 ME 55, ¶ 17, 320 A.3d 387 (quotation marks omitted). "The fact-finder is free to selectively accept or reject testimony based on the credibility of the witness or the 'internal cogency of the content.'" *State v. Williams*, 2012 ME 63, ¶ 49, 52 A.3d 911 (quoting *State v. Mahaney,* 437 A.2d 613, 621 (Me.1981)).

"A person is guilty of theft if: [t]he person obtains or exercises control over property of another as a result of deception and with intent to deprive the other person of the property." 17-A M.R.S. § 354(1)(A) (2025). Where the value of the property stolen is more than $10,000, the person has committed a Class B crime. *Id.* § 354(1)(B)(1) (2025).

A person who intentionally or knowingly violates the Maine Uniform Securities Act, with certain exceptions not applicable here, commits a Class C crime. 32 M.R.S. § 16508(1) (2025). Under the Maine Uniform Securities Act, "It is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly . . .. [t]o employ a device, scheme or artifice to defraud; . . .. [t]o make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or . . .. [t]o engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person." *Id.* § 16501(1-3) (2025).

The verdicts in this case were amply supported by the evidence at trial. Flynn's five victims invested a total of $786,000 with Flynn, believing that she in turn would be investing their money, through her company, IGR, in various agricultural ventures (in addition to Flynn's representation to Wyatt that she would use his separate $150,000 investment for another gum Arabic project investment). St. Ex. 119-127. Flynn convinced them to invest by providing false information and updates and by suggesting that Peter Halloran, a successful hedge fund manager, and Richard Swett, former Congressman and Ambassador, was investing or partnering along with them. Tr. T. 113, 234-235, 285-286, 295-296, 318, 363-366, 426-427, 437, 652, 659-660, 665-666, 675; St. Ex. 1, 14, 17,

18, 22, 23, 26, 27, 28, 29, 33, 34, 38, 42, 44, 46, 49, 50, 53, 57, 58, 64, 69, 72. Flynn's own bank records revealed that, rather than use their money as promised, she withdrew over $218,000 in cash, transferred over $340,000 into her personal accounts, and spent freely from her business and personal accounts on both daily life and shopping sprees. St. Ex. 109.

Flynn's consistent positive updates about the status of her victims' investments were belied by facts of which she was well aware – that Mr. Halloran was not partnering with IGR in any way, that IGR was not purchasing any part of US Soil or taking any stake in an IGR gum Arabic project, and that she had skimmed a substantial portion of the victims' investments for her own personal use. Tr. T. 638, 763-772; St. Ex. 109.

Moreover, Flynn convinced Richard and Kristin to purchase securities in the amount of $95,000 in IGR US Soil and gum Arabic ventures through multiple false statements. Tr. Tr. 74-75, 638, 656-659; St. Ex. 17, 18, 22, 23, 26, 27, 28, 29, 31, 33, 34, 35, 121, 122, 125 at Bates 703-705; 126 at Bates 1885, 2158, 2159. The evidence at trial showed that Flynn obtained or exercised control over property of Richard and Kristin, money in an amount that exceeded $10,000, as a result of deception and with intent to deprive them of their property. *Id*. In addition, Flynn employed a device, scheme or artifice to defraud (a scheme of providing false information), she made untrue statements of material facts or

omitted stating material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading (that there was no IGR gum Arabic agreement and no imminent IGR US Soil deal), and she engaged in an act, practice or course of business that operated or would operate as a fraud or deceit upon Richard and Kristin (Flynn failed to disclose that she intended to compensate herself with investor money and that she did in fact compensate herself with investor money by using it as her personal stash of cash.) Tr. 1158, 1168-1172; St. Ex 109. This evidence of theft and securities fraud Flynn committed upon Kristin and Richard alone supports the convictions.

II. The trial court did not err in admitting any alleged hearsay evidence offered by the State.

Flynn is incorrect that the State's case "was based on improperly admitted hearsay." Bl. Br. 34. This Court reviews a ruling to admit alleged hearsay evidence for an abuse of discretion, "and will find an abuse of discretion if a party can demonstrate that the trial court exceeded the bounds of the reasonable choices available to it." *State v. Lindell,* 2020 ME 49, ¶ 13, 229 A.3d 791 (citing *State v. Fox*, 2017 ME 52, ¶ 29, 157 A.3d 778) (quotation marks omitted). "The trial court has broad discretion in determining the admissibility of evidence ...." *Id.* (quotation marks omitted).

"Hearsay" is generally defined as "a statement [t]he declarant does not make while testifying at the current trial or hearing; and [a] party offers in evidence to prove the truth of the matter asserted in the statement." M.R. Evid. 801(c). The statement of a party opponent is an exception to the rule and is *not* hearsay (*id*. 801(d)(2)) a fact that Flynn herself acknowledges (Bl. Br. 34 (stating that Flynn's victims "testified to the amounts they invested, the documents they signed, and the non-hearsay representations made by the defendant, Jody Flynn")).

Flynn completely fails to identify any specific item of hearsay evidence offered by the State that was allegedly improperly admitted, s*ee*, Bl. Br. 34-36, but contrary to her vague assertions, the State's case was well founded on first person and otherwise admissible evidence.

Each victim testified about their communications with Flynn and the false representations and commitments she made that induced them to invest their money with her. Tr. T. 72, 77, 285-286, 288-290, 295-297, 343, 356-357, 361-362, 415, 649-651, 657, 663, 717-718. Flynn's verbal statements to the victims were admissible as statements made by a party opponent. M.R. Evid. 801(d)(2). Each victim made clear that they did not authorize Flynn to spend their money on her own personal expenses. Tr. T. 246, 298, 428, 675-676, 723-724.

Peter Halloran, Richard Swett, and Albert Lionelle (a co-owner of US Soil) similarly testified about Flynn's statements to them, Tr. T. 625, 637, 745, 746, as well as whether the representations she made to the victims about them or their related business information were accurate. Tr. T. 478, 481, 482, 483, 638, 761, 764-772, 778. None of this was hearsay.

The bank records and spreadsheet summaries were admitted without objection.[2] Tr. T. 911-912, 925; St. Ex. 109-115. These records showed that the checks and wires the victims used to provide Flynn with their investment funds far exceeded $10,000. The bank records also showed Flynn's control of their money and how she spent the victims' funds on unauthorized personal expenses and compensation. These records were all properly admitted.

The State also presented numerous e-mails that were directly from Flynn or between Flynn and a victim or victims, with no other participants in the e-mails. Several of the emails contained "email chains," but these were e-mail discussions with the same victim (as well as one e-mail between Flynn and Mr. Halloran, State's Exhibit 130). *See generally*, State's Ex. 1-8; 10-12; 14; 17-18; 20; 24; 26-31; 33- 35; 38; 42; 44; 46; 49-51; 53; 57; 58; 64; 69; 72; 80; 90; 92-93; 98; 104. The victims' statements in the e-mails (and Mr. Halloran's statements in his e-mail) were not

[2] In any event, the State provided the proper foundation (certificates of authenticity were included with the bank records and a proper foundation was set for the spreadsheet summaries).

inadmissible hearsay, but were properly admitted to place Flynn's statements in context. *See State v. Flynn*, 2015 ME 149, ¶ 22, 127 A.3d 1239 (emails from third parties to Flynn "were not offered for the truth of the matters asserted therein but instead showed the context of Flynn's statements;" court provided jury with proper limiting instruction).

The State also presented the securities (a form of contract) that Flynn presented to the victims herself. Contracts are not hearsay when they have independent legal significance to the case. *State v. Lindell*, 2020 ME 49, ¶ 14, 229 A.3d 791 (words in check memos had independent significance as terms of an agreement or contract between the victim and the defendant and thus were offered for a purpose other than the truth of the matter asserted).

The contracts in this case (term sheets and subscription agreements) between Flynn and the victims are not hearsay because they have independent legal significance and illustrate legally operative acts; the contracts constituted conduct between the parties (Flynn and a victim) and show the agreements Flynn reached with the victims. Similarly, the contracts are agreements between Flynn (a party opponent) and a victim. The contracts contain her words or representations (statements made by a party opponent) and do not constitute hearsay. M.R. Evid. 801(d)(2). Further, the term sheets and subscription agreements were admissible to show their effect on the victims – the victims

gave Flynn money per the terms of the contracts. In any event, the term sheets and subscription agreements were admitted into evidence without objection. Tr. T. 84-85, 411-412, 655, 716.

In addition to all of the evidence the State produced during its case in chief, Flynn decided to testify. She was under no obligation to do so, but she chose to place her credibility before the jury. The jury was entitled to assess the veracity of her statements against the other evidence at trial. "In its assessment of witness credibility…[a]…jury…[is] free to discount…[a defendant's]…testimony and place greater weight on the testimony of the State's witnesses." *State v. Duval*, 666 A.2d 496, 498 (Me. 1995) (internal citation omitted); *U.S. v. Jimenez-Perez*, 869 F.2d 9, 12 (1st Cir. 1989) (the trier of fact is not bound to accept the "self-serving stories of persons accused, but may believe[] the prosecution's evidence" and is entitled to draw reasonable inferences therefrom and reject a defendant's "exotic tales of what had transpired") (internal citation omitted). It is axiomatic that it is the "jury's responsibility to assess the credibility of the witnesses and decide what inferences…[can]…be fairly drawn." *Id*. (internal citation omitted).

"Reduced to bare essentials…[Flynn's]…real complaint is that the jury apparently believed the prosecution's evidence and drew adverse—but reasonable—inferences therefrom..." *Id.* For example, Flynn testified that she spent all investor money appropriately. Tr. T. 1233. This statement flew directly in the

face of the unambiguous evidence that she used IGR investor money to support a lifestyle of pricey retail spending, travel, dining, and everyday expenses, as well as countless cash withdrawals—after initially claiming she did not recall whether she spent investor money on personal expenses. Tr. T. 1192-1193, and *see generally* 1193-1231; St. Ex. 109-115.

Flynn even claimed that she was permitted to use the entirety of Wyatt's initial $150,000 investment for her personal use. Tr. T. 1163-1164. Ultimately, Flynn *specifically* admitted on cross examination that she used Patricia's investment money for her (Flynn's) personal use after initially denied doing so. Tr. T. 1992, 1193, 1232.

Flynn's use of investor money was contrary not only to the terms of the securities she sold to the investors, but to what she told Patricia and Kristin. They testified, in sum and substance, that Flynn told them that she would make money when the investors made money. Tr. T. 427, 625.

Flynn also testified that she had sent David Melina cash via FedEx rather than wire him money, even though she did in fact wire him money. Tr. T. 1202-1203, 1207. Flynn had to try to somehow explain the incredible number of cash withdrawals she made, particularly since she never supplied any of the investors with any kind of regular or periodic reports on how she was spending their funds. Tr. Tr. 1186-1187.

The jury was not only entitled to decide that Flynn's explanations in face of the unambiguous documentary evidence was "absurd and illogical" and not assign any weight to her assertions, but to conclude that she was untruthful and allow this to weigh upon how the jury viewed Flynn's other testimony.

Flynn effectively doubled down on all of the representations she made in her e-mails to Richard and Patricia by testifying about the "thousands of hours" of work she performed for and on behalf of the investors, along with her assertions that she acted appropriately throughout. Tr. T. 1152. The jury heard from Investigator Rebecca Taylor, however, regarding Flynn's admissions during Investigator Taylor's April 2019 interview with her. Tr. T. 989-993. During the interview, Flynn spoke about her limited "hostess" role, her reliance on others to perform the "day-to-day work," and her lack of knowledge about finances. Tr. T. 989. Of course, Flynn's claimed lack of knowledge about finances and minimization of her involvement is directly contradicted by her e-mails. *See generally*, St. Ex. 2-3, 7, 12, 14, 17-18, 22, 24, 26-30, 34, 50. The jury was permitted to credit the testimony of the victims as well as Mr. Halloran, Mr. Swett, and Mr. Lionelle. Likewise, the jury was permitted, particularly in light of all of the documentary evidence, to discredit Flynn's testimony, in whole or in part.

In sum, the State's case was not based on improperly admitted hearsay.

III. The trial court did not err in ruling that Flynn's prior indictment could be used to impeach her if she testified that she did not know it was wrong to spend investor money as if it were her own.

The Court's ruling that the State could, in a very limited set of circumstances, raise Flynn's prior conviction during cross-examination did not unfairly deprive her of the opportunity to defend herself. Bl. Br. 36.

"Evidence 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). "However, evidence of prior bad acts may be admissible for any other permissible purpose, such as motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *State v. Osborn,* 2023 ME 19, ¶ 17, 290 A.3d 558 (quoting *State v. Pillsbury,* 2017 ME 92, ¶ 22, 161 A.3d 690 (quotation marks omitted). This Court reviews a trial court's decision to admit evidence of prior bad acts pursuant to M.R. Evid 404(b) for clear error. *Id.*

On February 9, 2012, a week before Richard made his first payment to IGR, Flynn was indicted for Class B theft by unauthorized taking or transfer, 17-A M.R.S. § 353(1)(B)(1). *State v. Flynn*, 2015 ME 149, ¶ 3, 127 A.3d 1239. The charge against Flynn was based on her failure, in late 2009 and early 2010, to return a good faith payment to the would-be buyer of a paper mill for which Flynn was essentially meant to act as an escrow agent. *Id.* ¶¶ 5-12. "Despite

acknowledging an obligation to return at least $264,604.14 to the prospective purchasers . . . Flynn transferred most of the $500,000 exclusivity deposit . . . to her personal accounts, including an account Flynn shared with her college-age child and an account for her other business." *Id.* ¶ 11. Flynn was ultimately convicted, and her conviction was affirmed by this Court. *Id.* ¶ 39.

Following her February 2012 indictment, Flynn continued to successfully solicit investments into IGR for over two years. All the while she used much of the IGR funds for personal expenses Tr. T. 931-987, 1193-1218, 1227-1233; St. Ex. 109.[3]

The trial court ruled that Flynn's prior conviction, or even the fact of her prior indictment, could not be introduced to the Jury "for modus operandi, for intent, [or] for common scheme." Tr. T. 801; Bl. Br. 40-41. The court also ruled that it would not allow the State to impeach Flynn under M.R. Evid. 609(a). Tr. T. 801.

Instead, the trial court set a bright line rule: if, and only if, Flynn were to testify that she had not known that using investor money for personal expenses was problematic, then the State would be permitted to question Flynn

[3] In arguing the lack of relevance of the February 9, 2012, indictment, Flynn incorrectly states that "[m]ost of the illegal commingling alleged by the State in the case at bar occurred *prior* to that date. Bl. Br. 40. This is incorrect. Flynn obtained, deposited, and comingled the majority of the funds after being indicted. *See* St. Ex 109, 120, 122 (at Bates 1439), 124, 126, 127 (at Bates 1442, 1448, 2145, 2149, 2150, 2153-2155, 2162-2163, 2169-2171, 2183, 2220, 2381, 2388).

regarding her being under indictment for using investor money for personal expenses in the prior case *at the same time that she was using investor money for personal expenses in the present case*. Tr. T. 1047, 1049-1050,1053-1054. In other words, if Flynn were to perjure herself, the State would be permitted to point that out. As it happened, when Flynn testified, she did not "open the door" to the indictment, and so it was never even introduced to the jury. *See* Tr. T. 1070-1233.

Notably, Flynn avers that "at no point prior to the trial had the State raised [this] issue or litigated it as part of a motion in limine." Bl. Br. 36. This assertion is *completely contrary* to the procedural history of the case. As discussed above, the State filed a motion in limine on September 4, 2024, specifically for the admission at trial of evidence of Flynn's material omissions regarding the prior indictment; a hearing on that and other pretrial motions was held on September 30, 2024. A. 10; *see generally* MIL Tr. 2-73.

On the first morning of trial, the trial court specifically noted that evidence of Flynn's prior indictment and/or the underlying conduct might be revealed to the jury "depending on the evidence that's in the case at the time that the evidence of the prior conduct is offered." Tr. T. 20. It is unthinkable that Flynn could not have anticipated that the State might seek to admit evidence of

her prior similar bad conduct at trial or to cross-examine her regarding the 2012 indictment. The trial court committed no error in its ruling.[4]

IV. The trial court did not err in denying Flynn's post-judgment motions.

Flynn incorrectly asserts that the trial court erred in denying her post-judgment motions for judgment of acquittal and for a new trial. Bl. Br. 42. Flynn includes in this argument a political screed regarding the purported state of the criminal defense bar and trial counsel's busy schedule. Flynn does not specify in what way the trial court allegedly erred in denying her motions. For the reasons set out in the State's original objections to the motions, the trial court did not err in denying them.

a. Motion for Judgment of Acquittal.

The trial court "shall order the entry of judgment of acquittal of one or more crimes charged . . . after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such crime or crimes." M.R.U. Crim. P. 29(a) "If a verdict of guilty is returned the court may on such motion set aside the

[4] Flynn incorrectly contends the State improperly suggested the defense implied an associate of Mr. Halloran and Mr. Swett, Mustafa Ismail, was engaged in a "Nigerian Prince" scandal and Ms. Flynn was being improperly "scapegoat[ed]." Bl. Br. 38. *See also* Tr. Tr. 57-58, 490-493, 748-749. This is exactly what the defense stated in its opening ("[w]hen you listen to the evidence, ask yourselves -- you're sitting there and you're saying as you're listening to this, would I in that place be investing in projects that literally involved an African prince? You know, we got these e-mails sometimes from purportedly Nigeria. We have those in this case. We have got an African prince involved, someone tied to the Sudanese government"). Tr. T. at 57-58.

verdict and enter judgment of acquittal." M.R.U. Crim. P. 29(b). This Court "review[s] the denial of a motion for judgment of acquittal by viewing the evidence in the light most favorable to the State to determine whether a jury could rationally have found each element of the crime proven beyond a reasonable doubt." *State v. Williams*, 2020 ME 17, ¶ 19, 225 A.3d 751 (quoting *State v. Adams*, 2015 ME 30, ¶ 19, 113 A.3d 583) (quotation marks omitted).

As explained with regard to Flynn's first argument, above, the jury had ample evidence before it to find Flynn guilty of theft by deception of over $10,000 and the trial court had ample evidence to find Flynn guilty of securities fraud.

b. Motion for New Trial.

"The court on motion of the defendant may grant a new trial to the defendant if required in the interest of justice." M.R.U. Crim. P. 33 "The denial of a motion for a new trial is reviewed for an abuse of discretion, with any findings underlying the decision reviewed for clear error." *State v. Lowery*, 2025 ME 3, ¶ 24, 331 A.3d 268.

Flynn's motion for new trial was based on three grounds: "Timing," "Hearsay," and "Sanction for Statements to Defense Counsel and the Court regarding Witness Availability." A. 83-85.

i. Timing

Flynn had sufficient time and resources to prepare for trial. Flynn's lead trial counsel first entered his limited appearance on February 24, 2023. A. 7. The matter was specially set for trial over nine months in advance at a conference on January 17, 2024, at which Flynn's lead trial counsel appeared. A. 8, 35. At the time, the trial court noted, "Defendant has not applied for court appointed counsel. Defendant should resolve her attorney situation well in advance of trial which possibly may not be continued because of lack of attorney preparation." A. 35.

Flynn's lead trial counsel then accepted appointment in this case as trial counsel during a status conference, which the State had requested, on July 26, 2024. A. 8. All along, the defense understood that this was a financial crimes case involving the sale of securities and a loss to the victims of close to one million dollars. Moreover, on August 16, 2024, the State wrote to defense counsel offering to review the (well-organized) discovery with him. A. 104.

Flynn requested a continuance for the first and only time at the September 30, 2024, argument on her "motion to dismiss or in the alternative for discovery sanctions." A. 10, Motion in Limine Transcript (hereinafter MIL Tr.) 49-64. The "motion to dismiss or in the alternative for discovery sanctions" was a reaction to the State's *prompt provision* to the defense of discovery

provided to the State for the first time by lay witnesses during the State's trial preparations. MIL Tr. 49-53 (*i.e.*, materials the State did not possess or control until provided to it during the pretrial interviews).[5] In response to the motion, the State agreed not to use any of the new discovery at trial (other than the signed version of a document that was already in discovery in its unsigned form). MIL Tr. 62-63. The trial court was well within its right not to continue the trial just because the State had received and timely turned over new discovery over a month before trial where the State did not intend to use nearly any of it at trial in any event.

ii. Hearsay

For all the grounds set forth in response to Flynn's second argument, above, the State's case was not proven with inadmissible hearsay. In her motion for a new trial, Flynn argued that the State should have been required to call additional witnesses. A. 84. Flynn now doubles down on this argument by complaining that the State was "allowed to prove its case" without calling more witnesses. Bl. Br. 43. Flynn is correct both in that State *did* prove its case and in

[5] There was no discovery violation. *State v. Hassan*, 2018 ME 22, ¶¶ 14-23, 179 A.3d 898 (Me. 2018). *See also* generally MIL Tr. 49-64, which addresses the additional discovery the State provided pursuant to its continuing discovery obligation.

that the State was (properly) not required by the trial court to call any specific witness. [6]

iii. Statements to Defense Counsel and the Court regarding Witness Availability

Flynn contended in her motion for a new trial that the State misrepresented to defense counsel whether it intended to call David Melina as a witness. A review of the full email thread between the State, defense counsel, and Mr. Melina prior to trial reveals that this is simply not the case. A. 99, 106-112. The trial court correctly found in its order on the motion that Mr. Melina was available to testify and Flynn chose not to call him. A. 34; Tr. T. 929. The court also correctly noted that Mr. Melina was not involved at all the gum Arabic project, "which, by itself, supports both the jury's and the court's convictions." A. 34.

There simply is no merit to Flynn's assertions.

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[6] Flynn does not proffer what these witnesses would have testified to, why their testimony was supposedly needed, or the identity or relevance of "numerous other players." Bl. Br. At 43. Flynn also omits the fact that *she elected* not to call David Melina. A. 34; Tr. T. 929. Most significantly, Flynn fails to explain how his or anyone else's testimony would have affected: (i) the mountain of e-mails Flynn wrote containing fraudulent representations to the victims or other evidence of her ongoing scheme to defraud the victims (*see* St. Ex. 1, 2, 3, 4, 5, 6, 7, 8, 10,11, 12, 14, 17, 18, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 33, 34, 35, 38, 40, 42, 44, 46, 49, 50, 51, 53, 57, 58, 61, 64 ,69, 72, 82, 90, 91, 93, 98, 104); (ii) the testimony of the victims (*see generally* Richard Henry at Tr. T. 62-194, 212-248, 333-402, Wyatt Garfield at Tr. T. 271-332, Patricia Sims at Tr. T. 402-464, Kristin Henry at Tr. Tr. 644-707, and Barbara Vanamee at Tr. Tr. 704-737); (iii) the admissions Flynn made to the investigator, Rebecca Taylor (Tr. T. 989-993); or (iv) the securities documents, bank records, and bank record summaries, (*see generally* St. Ex. 109-115, 119-127).

CONCLUSION

By reason of the foregoing, the judgments of conviction should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elizabeth T. Weyl, Assistant Attorney General, certify that I have emailed a copy of the foregoing "BRIEF OF THE APPELLEE" to Appellant's attorney of record, James Howaniec, Esq.

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