STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-25-84

STATE OF MAINE,

APPELLEE

v.

JACOB (JAYDÈ) MILLER,

APPELLANT

ON APPEAL FROM THE
CUMBERLAND COUNTY UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLANT JACOB (JAYDÈ) MILLER

Tina Heather Nadeau, Esq., Bar No. 4684
THE LAW OFFICE OF TINA HEATHER NADEAU, PLLC
75 Pearl Street, Suite 430
P.O. Box 7656
Portland, ME 04112-7656
(207) 699-8287
tina@tinanadeaulaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES 4

INTRODUCTION.....8

JURISDICTIONAL STATEMENT.....9

STATEMENT OF THE CASE.....9

I. Procedural History.....9

II. Competing Factual Recitations.....13

III. Imposition of Final Sentence.....23

STATEMENT OF ISSUE 24

I. Was Ms. Miller deprived of due process at her sentencing when the court relied on contested and unconfronted alleged facts by the complaining witness and an unsworn, uncrossed expert report in deriving the facts it used to establish the seriousness of the offense when setting the basic sentence at eight years in this matter?

ARGUMENT.....24

I. The sentencing court deprived Ms. Miller of her due process at her sentencing when, in setting the basic sentence, it explicitly relied on contested and unconfronted alleged facts by the complaining witness and alleged facts and opinions contained in an unsworn, uncrossed expert report. Unlike a sentencing that follows trial, in which a court can make factual determinations based on sworn evidence that had an opportunity for cross-examination, the court cannot make its own determination of what is "reliable" when there are sincere questions regarding the factual recitation provided to the court and no opportunity to cross examine or challenge the proffered evidence.

A. Constitutional Considerations & Standard of Review.....25

B. Sentencing Procedures Must Ensure Due Process 27

i. Maine Supreme Judicial Court decisions concerning "unproven allegations" and "factually unreliable" information at sentencing.....27

ii. Federal versus state sentencing practices.....37

C. Conflicting and Contested Witness Accounts & Expert Report: Not Factually Reliable for Reliance in Sentencing Determination.....41

CONCLUSION 46

CERTIFICATE OF SERVICE 50

CERTIFICATE OF SIGNATURE.....51

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. V……26

U.S. CONST. amend. VI……26-27

U.S. CONST. amend. XIV, § 1……26

ME. CONST. art. I, § 6-A……26

MAINE SUPREME JUDICIAL COURT

Green v. State, 247 A.2d 117 (Me. 1968) ……34

State v. Berube, 1997 ME 165, 698 A.2d 509……28

State v. Burdick, 2001 ME 143, 782 A.2d 319……27

State v. Dobbins, 2019 ME 116, 215 A.3d 769……25

State v. Dumont, 507 A.2d 164 (Me. 1986),,..32, 33, 35, 36, 41, 42, 46, 47

State v. Goncalves, 2025 ME 70, --- A.3d ---…… ……25, 33, 34

State v. Hardy, 489 A.2d 508 (Me. 1985)……31

State v. Hewey, 622 A.2d 1151 (Me. 1993)……22, 28, 29, 34, 35, 29, 41

State v. Lopez, 2018 ME 59, 184 A.3d 880……31

State v. Miller, 2005 ME 84, 875 A.2d 694……27

State v. Moore, 2023 ME 18, 290 A.3d 533……33-34

State v. Mosher, 2012 ME 133, 58 A.2d 1070……26

State v. Reese, 2010 ME 30, 991 A.2d 806……28, 36

State v. Ricker, 2001 ME 76, 770 A.2d 1021……26

State v. Seamon, 2017 ME 123, 165 A.3d 342……35-36

State v. Stanislaw, 2011 ME 67, 21 A.3d 91……28, 42

State v. Ward, 2011 ME 74, 21 A.3d 1033……31

State v. Weir, 600 A.2d 1105 (Me. 1991)……35

State v. Whitten, 667 A.2d 849 (Me. 1995)……30

State v. Witmer, 2011 ME 7, 10 A.3d 806……36

FEDERAL DECISIONS

Betterman v. Montana, 136 S.Ct. 1609 (2016)……25

Gall v. United States, 552 U.S. 38 (2007)……39

Gardner v. Florida, 430 U.S. 349 (1977)……31

United States v. Aliles-Santiago, 558 F.App'x 7 (1st Cir. 2014)……33-34

United States v. Godat, 688 F.3d 399 (8th Cir. 2012)…… ……26-27

United States v. Hudson, 129 F.3d 994 (8th Cir. 1997)……40

United States v. Richey, 758 F.3d 999 (8th Cir. 2014)……39-40

United States v. Wise, 976 F.2d 383 (8th Cir. 1992)……27

MAINE STATUTES

4 M.R.S. § 57 (2020)……9

15 M.R.S. § 1 (2020)……9

15 M.R.S. § 9 (2020)……9

15 M.R.S. § 2115 (2020)……9

15 M.R.S. § 2155 (2020)……29

17-A M.R.S. § 152 (2020)……11

17-A M.R.S. § 201 (2020)……11

17- M.R.S. § 207-A (2020)……10

17-A M.R.S. § 208-D (2020)……10

17-A M.R.S. § 209-A (2020)……10

17-A M.R.S. § 253-A (2020)……39

17-A M.R.S. § 302 (2020)……10

17-A M.R.S. § 1601 (2020)……28, 29

FEDERAL STATUTES

18 U.S.C. § 3661……37

U.S.S.G. § 1B1.4……37

U.S.S.G. § 6A1.3……38

MAINE RULES OF PROCEDURE

M.R. APP. P. 2A……..…..9

M.R. APP. P. 20……..……9

M.R.U. CRIM. P. 11……13, 17, 31, 38, 39

FEDERAL RULES OF PROCEDURE

FED. R. EVID. 1101……..37

FED. R. CRIM. P. 32……..……37

OTHER SOURCES

ABA STANDARDS FOR CRIMINAL JUSTICE (1980)……31

INTRODUCTION

On May 12, 2021, 21-year-old Jacob (Jaydè) Miller[1] attempted to strangle and seriously assaulted her roommate, who was also a prior sexual partner of hers. Ms. Miller was originally charged with Aggravated Assault—for which she was indicted. Two months later, the State asked the grand jury to hand up a superseding indictment for Attempted Murder (Class A).

In March 2023, Ms. Miller entered an agreement with the State whereby she would plead guilty to Aggravated Assault and all other pending charges—including the Attempted Murder charge—would be dismissed.

Ms. Miller entered her guilty plea in January 2025. In its factual recitation, the State alleged many contested facts that were derived from evolving reports by the complaining witness. Ms. Miller objected to these facts being used in her sentencing. The sentencing court relied on them anyway, as well as an expert report included as an attachment to the State's sentencing memorandum, without any meaningful opportunity

[1] Ms. Miller's legal name at the time of her charges and sentencing was Jacob Miller. Her name as a trans woman is Jaydè Evelyn Miller, and her pronouns are she/her. Ms. Miller is currently housed at the Maine Correctional Center's women's prison.

for Ms. Miller to rebut or challenge these sources, setting the basic sentence at 8 years and after considering the panoply of mitigating evidence presented by Ms. Miller, imposed a final sentence of 7 years, all but 4 years suspended, and 3 years of probation. In so doing, the sentencing court violated Ms. Miller's due process rights and her right to confrontation.

JURISDICTIONAL STATEMENT

The trial court had jurisdiction over this criminal prosecution. 15 M.R.S. §§ 1, 9 (2020).

The sentencing court entered a final Judgment and Commitment on January 24, 2025, and Ms. Miller timely filed her Notice of Appeal and Application to Law Court to Allow an Appeal of Sentence on February 14, 2025. M.R. APP. P. 2A & 20.

This Court has jurisdiction over final judgments in criminal cases. 15 M.R.S. § 2115 (2020); 4 M.R.S. § 57 (2020).

STATEMENT OF THE CASE

I. Procedural History

On May 14, 2021, Ms. Miller was charged by complaint with four crimes stemming from an incident in Cape Elizabeth that was alleged to

have occurred on May 12, 2021. (A. 4, 36-37) She was charged with (1) Aggravated Assault (Class B), in violation of 17-A M.R.S. § 208-D(1)(D) (2020); (2) Domestic Violence Criminal Threatening with a Dangerous Weapon (Class C), in violation of 17-A M.R.S. §§209-A(1)(A), 1604(5)(A) (2020); (3) Domestic Violence Assault (Class D), in violation of 17-A M.R.S. §207-A(1)(A) (2020); and (4) Criminal Restraint (Class D), in violation of 17-A M.R.S. §302(1)(B)(1) (2020). (A. 36-37)

At her initial appearance on May 14, 2021, Ms. Miller did not enter a plea to these charges; the court (Unified Criminal Docket, Cumberland, *Warren, J.*) set her bail at $2,500 cash with the condition that she obtain a Maine Pretrial Services supervision contract. (A. 4-5) On May 25. 2021, the court (*O'Neil, J.*) granted Ms. Miller's motion to amend bail to allow for personal recognizance bail along with the Maine Pretrial Services supervision contract and conditions that included no direct or indirect contact with the complaining witness, not be in Cape Elizabeth, and no use or possession of illegal drugs or dangerous weapons, subject to random searches and testing. (A. 5) A subsequent motion to amend bail to allow Ms. Miller to go to the property in Cape Elizabeth to retrieve her

belongings, while accompanied by police officers, was granted by the court (*O'Neil, J.*) on June 2, 2021. (A. 6)

On June 11, 2021, the grand jury handed up an indictment against Ms. Miller, alleging the same four charges that were outlined in the initial complaint. (A. 6, 38-39)

On August 5, 2021, the grand jury handed up a superseding indictment, now adding a count of Attempted Murder (Class A), in violation of 17-A M.R.S. §§152(1)(A), 201(1)(B) (2020)—alleging that Ms. Miller, with the intent to commit the crime of murder, engaged in "conduct that manifested a depraved indifference to the value of human life by applying pressure to [the complaining witness]'s neck multiple times to the point where she lost consciousness." (A. 6, 40-41)

At her arraignment before the court (*Woodman, J.*) on November 9, 2021, Ms. Miller entered "not guilty" pleas to all charges. (A. 7)

Following a dispositional conference with the court (*O'Neil, J.*) on April 7, 2022, the parties agreed to engage in a judicially assisted settlement conference, given the gravity of the charges and the complex legal and personal issues at play. (A. 7)

The parties worked with the court (*Hunter, A.R.J.*) at this settlement conference in March 2023 and came to an agreement: Ms. Miller would plead guilty to the singular count of Aggravated Assault (Class B) and all other counts would be dismissed. (A. 8)

On August 14, 2024, the State filed a motion for the case to be set for plea and sentencing, as it had not yet been scheduled in the intervening year and a half. (A. 8)

The Rule 11 and sentencing proceeding was scheduled for January 7, 2025, and continued by the court to January 24, 2025. (A. 8)

The parties submitted sentencing memoranda and exhibits on January 23, 2025, and the court (*Lipez, J.*) presided over the contested sentencing the next day. (A. 8-9) At hearing, the State requested that Ms. Miller be sentenced to 10 years in prison, with all but 6 years suspended, and 3 years of probation. (A. 196; ST 19:18-20) Ms. Miller, through counsel, argued that the appropriate sentence should be 3 years in prison, with all but 14 days suspended, and 3 years of probation. (A. 70-71; ST 56: 5-8)

Following argument, and after hearing from both the complaining witness and Ms. Miller, the court sentenced Ms. Miller to 7 years of

imprisonment, with all but 4 years suspended, and 3 years of probation with various conditions. (A. 9-10)

Ms. Miller timely filed her notice of appeal and application for sentence panel review on February 14, 2025. (A. 11)

On April 7, 2025, this Court denied leave for Ms. Miller's to appeal her sentence.

On March 20, 2025, the Court (*Connors, J.*) ordered that Ms. Miller file a memorandum showing cause for why her direct appeal should not be dismissed. On April 10, 2025, Ms. Miller filed her memorandum to show cause with this Court. On April 14, 2025, the Court issued its order, allowing Ms. Miller's direct appeal concerning the illegal imposition her sentence to proceed "in the usual course."

II. Competing Factual Recitations

Given the subject of this appeal, it is important that this Court be able to review the proposed findings of fact presented by the defense, the factual recitation provided by the State on the record at the Rule 11 proceeding—as well as counsel's objection to that recitation, as well as the facts that were relied upon by the court in setting the basic sentence

in this matter—the step that asks the court to determine the objective seriousness of the offense.

The following statement of facts is derived from the discovery and was included in the memorandum in aid of sentencing that was submitted to the court on behalf of Ms. Miller on January 23, 2025:

> At approximately 3:49 a.m. in the early morning of May 12, 2021, Cape Elizabeth police officers were dispatched to the area of 60 Woodland Road for a report of a woman screaming "Help!" and "Call 911!" in the parking lot. When police arrived, witnesses told them that the suspect had just ran down the road---and that he looked like a white male with "surfer like blond hair and an orange shirt."
>
> Then-twenty-two-year-old [name], the complaining witness, was found in the hallway of her apartment with neighbors. She reported to police that her roommate, 21-year-old Jaydè Miller, had assaulted her around 2:30 a.m. [complaining witness] confirmed that she and Jaydè had engaged in sexual relations in the weeks leading up to the assault.
>
> [Complaining witness] had told her neighbors that she had been choked, hit, and had her fingers bent backwards by her roommate. She reported nothing about a knife, nothing about repeated strangulation or being "knocked out" repeatedly, nothing about alleged threats of rape or murder to her neighbors or police that night.
>
> Although upset and crying, [complaining witness] informed officers that Jaydè had become angry when she noticed pills on the floor in their apartment and that Jaydè then "suddenly bit [complaining witness], grabbed her, bent her fingers back and punched her." [Complaining witness]

told the police that Jaydè "eventually placed both hands around her neck and squeezed until [complaining witness] became unconscious." Police observed red marks on the left and right sides of [complaining witness]'s necks—they took photographs of those injuries as well as other bruising.

[Complaining witness] further reported that when she came to, Jaydè was punching her in the face. [Complaining witness] used pepper spray to get Jaydè off her, and Jaydè fled the apartment.

[Complaining witness] later reported that at one point during the assault, Jaydè had a knife and stated she was going to kill herself. "[Complaining witness] believes that [Jaydè] made a comment about stabbing her as well but wasn't sure the exact context of the conversation."

Police located Jaydè very close to the apartment. Once Jaydè was in custody, police Mirandized her. She remembered becoming upset with [complaining witness] for the pills on the floor, but she did not remember anything after that. She said that she was on several medications that affected her ability to remember events.

After Jaydè washed the pepper spray out of her eyes, she began to bang her head on the roof of the cruiser, crying, and screaming that she wanted to kill herself and just wanted to die. Police transported her to Maine Medical Center for an evaluation. MMC medically cleared Jaydè for release, finding that she was "actively suicidal," but further noted that "given concern for psychiatric decompensation with potential risk for harm to the patient or others, patient will require acute psychiatric evaluation in jail." Jaydè was brought to Cumberland County Jail later that day, where she was kept on suicide watch.

Later that week, [complaining witness] reported to police on May 17, 2021, that she had gone to Southern New

Hampshire Hospital on May 14, 2021, where she was diagnosed with a concussion. Police took follow-up photographs of bruising on her left arm and breast. In the medical records provided, it appears as though [complaining witness] made a self-report that she had been diagnosed with a concussion two days prior (May 12, 2021) to her trip to the New Hampshire hospital, and that she came to the hospital for complaints of vomiting, headaches, and a sore throat. No medical records from May 12 were provided to confirm a diagnosis of concussion (nor any imaging or evaluations performed) nor any care that would comprise an extended period of convalescence.

Nearly a full month later, [complaining witness] made an additional report to police that contained much more detail and more serious allegations against Jaydè. We [the defense] do not consent or accept as factual much of the recitation of events by [complaining witness] in her June 11, 2021, statement emailed to Cape Elizabeth police.

On July 10, 2021, again police followed up with [complaining witness], who reported that she was experiencing nightmares and flashbacks from the assault. She also complained of headaches linked to the assault. She alleged that she was experiencing seizures "in her sleep" due to the assault (no medical documentation was provided to confirm this self-diagnosis). [Complaining witness] once again added more detail to her original report, namely that Jaydè threatened to kill her.

Jaydè does not admit to these later disclosed allegations—nor will she be responding to the various versions of events [complaining witness] provided to friends and family, as well as the version testified to at grand jury that ultimately handed up a superseding indictment or the version provided to the State's tendered expert witness, in the weeks following this assault.

(A. 54-57, emphasis added)

The following is the "summary of evidence" that was presented to the court by the State during the Rule 11 proceeding:

> Had this case proceeded to trial, the State would expect to prove the following facts beyond a reasonable doubt, that on May 12th of 2021, residents of the Woodland South Apartments in Cape Elizabeth, Maine, called 911 to request police assistance with a disturbance in the parking lot.
>
> Neighbors reported to police hearing a woman scream for help and saw what they described at the time as a male holding a female in the lot with his arms around her. Two neighbors approached to help and that individual later identified as the Defendant before you, Jayde Miller, fled down a nearby path.
>
> There w—the woman screaming for help in the parking lot was identified as [complaining witness birth name], also known as [complaining witness]. She was ushered inside the apartment building by neighbors and waited there to speak with the police.
>
> When speaking with police, she reported she was visibly upset—I'm sorry. They reported she was visibly upset and emotional. She reported that her roommate, the Defendant, assaulted her. And further reported that the Defendant and [complaining witness] had lived together for about a month before this incident and were sexually intimate a handful of times during that period.
>
> In her initial report on scene, she explained that the Defendant attacked her when she arrived home around 2:30 that morning. She—the Defendant was angry that she left pills or pill bottles on the ground. The Defendant

bit her, bent her fingers back and punched her. She also reported on scene that the Defendant put her hands around her throat and squeezed, so she was unable to breathe, and at some point lost consciousness.

In a later report, [complaining witness] outlined additional details of the assault. In a written statement, she detailed, again that there was a—an argument when she arrived home. She attempted to apologize, and that's when she was attacked by the Defendant.

He (sic)—the Defendant put her hand around [complaining witness]'s neck whyile they were both on the bed in her bedroom. When the Defendant released her, [complaining witness] tried to get away from her by going into the kitchen. The Defendant grabbed her and pushed her up against the closet door and again put her hand around her neck. The Defendant applied pressure to her neck and sh—[complaining witness] reported that she felt dizzy and was unable to stand, so slid to the floor.

At that point, [complaining witness] indicates that she believes she lost consciousness because the next thing she remembers was that she woke up on the floor of her bedroom in the doorway leading into the hallway of the apartment. She then detailed at that point that the Defendant's hands were still around her neck and the Defendant lifted her head off the ground and slammed it into the floor. At that point, the Defendant also punched her and bit her while she was on the ground.

At this point, [complaining witness] believes she lost consciousness again, because the next thing she remembers, she was in a different bedroom of the apartment with the Defendant trying to move her from

the floor onto the bed. While on the bed, she was able to kick the Defendant away and ran into the kitchen.

She was again stopped by the Defendant and strangled again to the point of unconsciousness. She was—when she woke up for the third time, she was able to retrieve pepper spray and deployed that against the Defendant, but also did suffer some of the effects of the pepper spray.

[Complaining witness] was asking for the Defendant to put milk on her face to stop the burning from the pepper spray, and that's when the Defendant grabbed her again by the hair, dragged her into the kitchen. And in the kitchen, again, strangled [complaining witness] to the point of unconsciousness on the kitchen floor.

She was then—once she regained consciousness, she was able to escape through the front door and go outside to the parking lot. She was screaming for help hoping her neighbors would hear, and they did hear and called 911, and that is when the police arrived.

When she was outside in the parking lot, she detailed that the defendant did catch up to her, grabbed her, pulled her to the ground by her hair, and when the neighbors intervened, that's when the Defendant was standing her up trying to take her back inside to the apartment.

[Complaining witness] was evaluated by EMS on scene and then later at Maine Medical Center. The Defendant was also taken to Maine Medical Center and cleared. And those are essentially the facts, Your Honor.

(ST 12:18-15:22)

Counsel for Ms. Miller noted for the record, following this recitation, that as was already noted and preserved in the defense memorandum:

> [Complaining witness] gave multiple statements over the course of months. And I just want to be clear that the version of events that she provided in the moment back on May 12th, 2021, that is the version of events that my client is admitting to, accepting responsibility for. A lot of the other statements that were made would been fully contested ha[d] this case gone to trial. But we do consent to the, I guess, the first version of the allegations, and we agree that those are sufficient to establish the crime of aggravated assault as charged.

(ST 16:6-16)

The court responded that it would "have the ability to make my own factual findings and might decide to accept the version of events that the State just made." (ST 16:19-23)

The State, during its sentencing argument, remarked, "[I]f the Defendant wants to dispute the facts, that's a trial issue. . . . . [A]nd I say that, because the State's version of the facts, which at this point are the accepted facts, are the reason for the State's recommendation. If this were a case of only one instance of

strangulation, I do not think ten all but six is appropriate." (ST 23:7-15)

The court replied, "Right. And that's what I'm trying to sort out, is that you have different views of the facts." (ST 23:16-17) The court continued, "But I think what Ms. Miller has agreed to is sufficient to sustain the guilty plea. The question is what the sentence should be . . . based on the facts. So—and I'll have to make that determination." (ST 23:16-21)

The court commented that as it "understand[s] the law, I think at sentencing . . . ***I can consider any information that's sort of reliable. So you have provided me with an expert report. And so I do have that.***" (ST 24:1-4) (emphasis added) (referencing report at A. 198-213)

In setting the basic sentence, the court began: "In this case, there has not been a trial. And so the Court has to make some factual findings." (A. 23; ST 60:24-25) The court remarked that "[t]here's some disagreement of the nature of the assault, and ***I am entitled in determining the facts to rely on any—to consider any reliable information.***" (A. 23-24; ST 60:25-61:1-3) (emphasis added)

The court continued, "I've reviewed what's been provided to me and ***in particular the expert report that the State provided,*** which incorporates a bunch of [complaining witness]'s statements as well as a review of the medical records and the like." (A. 24; ST 61:3-7) (emphasis added)

The court's factual findings, in relevant part, during its step one of the Hewey analysis, were "According to [complaining witness], the Defendant strangled her to the point of unconsciousness four separate times. Each time [complaining witness] was not able to breathe and the blood flow to her brain was impeded." (A. 24; ST 61: 13-16)

Moving to the "expert forensic report prepared by a physician" (A. 198-213), the court remarked that "the evidence he reviewed in the case is consistent with multiple near fatal strangulations that presented a grave risk of death to [complaining witness]. The report documents the injuries [complaining witness] suffered because of the assault, among them an anoxic brain injury; a traumatic brain injury or concussion; petechial hemorrhages; [] contusions and

abrasions; and human bites on both of her arms." (A. 24-25; ST 61:25-62:1-7)

Immediately following these references to the expert report, the court found: "In short, I find that this was a brutal, senseless, and completely unprovoked act of violence. And I find this is among the more serious ways this offense can be committed. And so I set the basic sentence at eight years [out of a statutory maximum of ten years]." (A. 25; ST 62:8-11)

III. Imposition of Final Sentence

Following its setting of the basic sentence—based on the complaining witness's contested version of events and the expert report that was not part of the State's factual recitation or anything that was consented to by the defense—at eight years, the court weighed both the aggravating factors—the impact on the complaining witness—and the mitigating factors—which were numerous—and decided that the mitigation only slightly outweighed the aggravating factors, and thus set the maximum period of incarceration at 7 years of imprisonment. (A. 28; ST 65:12-15)

After outlining various factors it considered regarding what portion of the sentence to suspend, the court arrived at a final sentence of 7 years of imprisonment, with all but 4 years suspended, and 3 years of probation, with various conditions. (A. 12-17, 30; ST 67:15-22)

Ms. Miller was granted a stay of execution until March 29, 2025. She reported to the Cumberland County Jail and remained there until approximately one week later, where she was classified by the Department of Corrections and housed in the women's unit at Maine Correctional Center, where she continues to serve her sentence today. Her earliest date for release from incarceration, per the DOC's website, is August 20, 2028.

STATEMENT OF ISSUE

I. Was Ms. Miller deprived of due process at her sentencing when the court relied on contested and unconfronted alleged facts by the complaining witness and an unsworn, uncrossed expert report in deriving the facts it used to establish the seriousness of the offense when setting the basic sentence at eight years in this matter?

ARGUMENT

I. The sentencing court deprived Ms. Miller of her due process at her sentencing when, in setting the basic sentence, it explicitly relied on contested and unconfronted alleged facts by the complaining witness and alleged facts and opinions contained in an unsworn, uncrossed expert report. Unlike a sentencing that

follows trial, in which a court can make factual determinations based on sworn evidence that had an opportunity for cross-examination, the court cannot make its own determination of what is "reliable" when there are sincere questions regarding the factual recitation provided to the court and no opportunity to cross examine or challenge the proffered evidence.

"We have made clear that the consideration of improper information at sentencing undermines due process."

State v. Goncalves, 2025 ME 70, ¶ 46, --- A.3d ----.

A. Constitutional Considerations & Standard of Review

A criminal defendant has the right to due process at sentencing. *Betterman v. Montana*, 136 S.Ct. 1609, 1617 (2016) ("After conviction . . . [a defendant] retains an interest in a sentencing proceeding that is fundamentally fair.") Sentencing proceedings are part of the criminal prosecution against the accused, and thus the due process and fairness afforded to all criminal defendants through the trial stages are also afforded to those who stand to be sentenced.

Sentencing errors of federal constitutional proportion are viewed by this Court de novo. *State v. Dobbins*, 2019 ME 116, ¶ 51, 215 A.3d 769 ("On direct review such as this, we review only the legality, and not the propriety, of the sentence, and we do so de novo.")

"A sentence of any length may be appealed as a matter of right where the defendant claims that the sentence is illegal, imposed in an illegal manner[,] or beyond the jurisdiction of the court, where the illegality appears plainly in the record." *State v. Ricker*, 2001 ME 76, ¶ 18, 770 A.2d 1021.

The Maine Constitution guarantees that "[n]o person shall be deprived of life, liberty or property without due process of law." ME. CONST. ART. 1, § 6-A. This provision is coextensive with the Fourteenth Amendment to the United States Constitution. *State v. Mosher*, 2012 ME 133, ¶ 11, 58 A.2d 1070. Both the Maine Constitution and federal Constitution protect Ms. Miller's, and all criminally accused's rights, as they are prosecuted.

"The Due Process Clause of the Fifth Amendment is implicated when a sentencing court considers evidence that the defendant 'had no meaningful opportunity to rebut,' and only then when that consideration results in 'a sentence based on material misinformation.'" *United States v. Godat*, 688 F.3d 399, 401 (8th Cir. 2012)

"The Confrontation Clause of the Sixth Amendment is implicated when consideration by the sentencing court of evidence that the

defendant was not given an opportunity to rebut results in a defendant being 'sentenced on the basis of misinformation of constitutional magnitude.'" *Id.* (internal quotations omitted)[2]

If this Court determines that the issues regarding the legality of the sentence—and the information the court upon which the court relied—were not raised or preserved during the sentencing proceeding, then this Court reviews the proceeding for obvious error. *State v. Burdick*, 2001 ME 143, ¶ 13, 782 A.2d 319. "An error is 'obvious and reversible if the error affects 'substantial rights' or results in a substantial injustice.'" *State v. Miller*, 2005 ME 84, ¶ 11, 875 A.2d 694.

B. Sentencing Procedures Must Ensure Due Process

i. Maine Supreme Judicial Court decisions concerning "unproven allegations" and "factually unreliable" information at sentencing

[2] "[S]urely defendants in sentencing proceedings enjoy the protection of those portions of the [Sixth] Amendment relating to notice, [], the assistance of counsel, and compulsory process for the attendance of witnesses. I have heard no one argue, to take one example, that defendants have no constitutional right to counsel at the time of sentencing. So why not confrontation? It seems to me that the words of the Amendment at least point in the direction of recognizing the right to confront adverse witnesses." *United States v. Wise*, 976 F.2d 393, 407 (8th Cir. 1992) (*Richards, CJ, dissenting*)

This Court has established the process by which a judge must evaluate a defendant for felony sentencing, a process later codified by the Legislature. When determining a sentence for a felony crime, courts conduct a *Hewey* analysis, a three-step process codified at 17-A M.R.S § 1602 (2020). *See State v. Hewey*, 622 A.2d 1151, 1154-55 (Me. 1993).

First, the Court "determine[s] a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual." 17-A M.R.S. § 1602(1)(A) (2020). This process requires the Court "to measure the defendant's conduct on a scale of seriousness against all possible means of committing the crime in order to determine which acts deserve the most punishment." *State v. Berube*, 1997 ME 165, ¶ 3, 698 A.2d 509 (emphasis added; quotation marks omitted). This determination is based on a court's consideration of "the objective facts of the offense" based on "factually reliable" information. *State v. Nichols*, 2013 ME 71, ¶¶ 26, 31, 72 A.3d 503. At the first step of the analysis, in setting the basic sentence, courts may also consider other comparable sentences for similar offenses. *State v. Stanislaw,* 2011 ME 67, ¶ 8, 21 A.3d 91; *State v. Reese,* 2010 ME 30, ¶ 28, 991 A.2d 806.

Second, the Court "determine[s] the maximum period of imprisonment to be imposed by considering all relevant sentencing factors, both aggravating and mitigating, appropriate to the case." 17-A M.R.S. § 1602(1)(B). Such factors include "the character of the individual, the individual's criminal history, the effect of the offense on the victim, and the protection of public interest." *Id.*

Third, the Court "determine[s] what portion, if any, of the maximum period of imprisonment . . . should be suspended, and, if a suspension order is to be entered, determine[s] the appropriate of probation . . . to accompany that suspension." 17-A M.R.S. § 1602(1)(C).

It is the first step of the *Hewey* analysis that is at issue in this appeal.

Although this is a direct appeal from Ms. Miller's sentence, concerned with the legality of the sentence imposed, the goals for this Court's review of sentences in the discretionary realm are instructive here: "In reviewing a criminal sentence, the Supreme Judicial Court shall consider . . . [t]he manner in which the sentence was imposed, including *the sufficiency and accuracy of the information* on which it was based." 15 M.R.S. § 2155(2) (2020) (emphasis added). It should always be a

concern of this Court, whether through the discretionary sentence review process or the direct appeal challenging the legality of the sentence, as to the type of information used by the sentencing court to arrive at a particular sentence—particularly if that information runs afoul of the Constitution.

This Court has previously addressed its concerns regarding sentencing court's use of disputed, factually unreliable information in sentencing defendants.

In *State v. Whitten*, this Court held that when the defendant at sentencing contested unproven allegations raised during the course of the proceedings, "[T]he [sentencing] court exceeded the bounds of its discretion and violated Whitten's right to due process by considering the letter [that contained allegations by an alleged victim of uncharged criminal conduct] without taking any steps to ensure its factual reliability." 667 A.2d 849, 852 (Me. 1995). For those reasons, the Court vacated the sentence imposed and remanded the matter for resentencing. *Id.*

Unlike in typical factual recitations that are reviewed by this Court in connection to Rule 11 proceedings, the factual recitation in this case

was explicitly disputed. (*See e.g., State v. Lopez*, 2018 ME 59, ¶ 2, 184 A.3d 880 ("The following ***undisputed*** facts are set forth in the State's Rule 11 summary of evidence that, absent Lopez's guilty plea, would have been presented at trial. *See* M.R.U. Crim. P. 11; *State v. Ward*, 2011 ME 74, ¶ 2, 21 A.3d 1033)") (emphasis added)

This distinction is important, particularly when comparing case law that focuses on the factual reliability of information presented in support of mitigation or aggravation, rather than in setting the basic term of imprisonment.

According to the ABA *Standards for Criminal Justice* Standard 18-6.4(b) (1980), "The guiding principle should be provision of an effective opportunity for both parties to rebut all allegations likely to have a significant effect on the sentence imposed."

"To meet due process requirements the sentencing procedure must afford a defendant the opportunity to deny or explain information considered in determining the appropriate sentence . . . . The purpose of this requirement is to provide the defendant with an opportunity to dispute inaccuracies." *State v. Hardy*, 489 A.2d 508, 512 (Me. 1985), *citing Gardner v. Florida*, 430 U.S. 349, 362 (1977).

As this Court, nearly 40 years ago, emphasized why unproven—or unadmitted—allegations should be subject to increased scrutiny:

> The rationale for such a requirement is that when the sentencing proceeding deviates from its primary investigatory function and becomes accusatorial as a result of the State's attempt to show aggravating circumstances to warrant the enhancement of a sentence, *fundamental fairness requires that the defendant be provided an opportunity to challenge the State's information*. However impartial a prosecutor may mean to be, he is an advocate, accustomed to stating only one side of a case.

State v. Dumont, 507 A.2d 164, 167 (Me. 1986) (emphasis added).

Although the *Dumont* Court "decline[d] to adopt a *per se* rule requiring that information offered by the State or the defendant be subject to cross-examination[, as s]uch a rule would cause unnecessary delay in a sentencing proceeding and is not necessarily required to ensure that the information considered is factually reliable," the Court did recommend that the sentencing judge thoughtfully employ a procedure to determine the factual reliability of disputed information. *Id.* at 167.

To determine the reliability of information presented by the prosecutor, "[t]he appropriate procedure to accomplish this goal in any given case should largely be left to the discretion of the sentencing justice.

He is in a far better position to determine the procedures to be utilized if factual information is disputed by either party." *Id.* at 167.

The Court recommended, "One option would be that he not consider the disputed information; another possibility would be that he require the party offering the information to present it in open court subject to cross-examination. The guiding principle is that a sentence must be based on reliable factual information." *Id.*

As this Court recently determined,

> When a defendant challenges the validity of information that a court considers in its sentencing analysis, '[t]he reviewing court must examine the record to see whether the sentencing judge gave specific consideration to the questionable information.' Thus, a sentence will be vacated if the record shows that the court's reliance on consequential misinformation "is explicit and incontrovertible." (analyzing whether the court, in its articulation of the basis for the sentence, explicitly relied on an improper factor).

State v. Goncalves, 2025 ME 70, ¶ 45, --- A.3d ---- (internal citations omitted).

In the same opinion, this Court continued, citing *State v. Moore*, 2023 ME 18, ¶ 25, 290 A.3d 533:

> ([S]tating that 'a sentence based in part on an impermissible consideration is not made proper simply because the sentencing judge considers other permissible factors as well'); *United States v. Avilés-Santiago*, 558 F. App'x 7, 10 (1st Cir.

> 2014) ("[A] sentence based on an unsupported fact cannot stand.").
>
> We have made clear that the consideration of improper information at sentencing undermines due process. *See Green v. State*, 247 A.2d 117 at 121 (Me. 1968) ("True, a sentence substantially predicated upon assumptions concerning past criminal activity untrue in fact or upon misinformation as to other material facts, either as a result of carelessness or design, would be in violation of due process.")

Id. at ¶ 46.

Although in this case, the facts that are disputed have not been determined to be actually false, unlike the circumstances in *Goncalves*, the court's explicit reliance on these unreliable assertions by the State in the form of the evolving and conflicting accounts by the complaining witness, as well as the court's reliance on this expert report, have the same effect: this is improper information that was relied upon at Ms. Miller's sentencing and thus denied her due process.

There is also a difference contemplated in this Court's caselaw to suggest that the court's discretion regarding the quality of the evidence used to support the just individualization of sentences (which occurs at the second step of the *Hewey* analysis, whereby a court weighs aggravating and mitigating factors when determining the maximum period of incarceration) is not the same as that used to establish the basic

sentence—the objective severity of the crime when set against other ways the crime could be committed.

This Court has recognized that, "A sentencing court has wide discretion in selecting sources of *mitigating circumstances and aggravating factors*, provided they are factually reliable. In addition, we accord the sentencing court great deference in weighing these factors in order that it may *appropriately individualize* each sentence." *State v. Weir*, 600 A.2d 1105, 1106 (Me. 1991) (internal citations omitted) (emphasis added). Facts regarding uncharged criminal conduct may be considered during sentencing "in order to obtain a complete and accurate picture of the person to be sentenced." *Dumont*, 507 A.2d at 166. A "complete and accurate picture of the person to be sentenced" is squarely within the analysis of step two of the *Hewey* analysis—not in setting the basic sentence based on the objective seriousness of the crime.

The present case is unlike *State v. Seamon*, 2017 ME 123, 165 A.3d 342, in which a sentencing judge credited testimony by a child victim after the child was cross-examined during trial, even though the jury hung on that charge because here, there is no sworn or crossed testimony for a court to rely on. *Seamon* is instructive, however, because the

sentencing court used the crossed testimony of the child witness in setting the basic sentence in the case—determining the objective seriousness of the offense.

As the *Seamon* Court explained:

> We have held that courts "have broad discretion in determining what information to consider in sentencing; they are limited only by the due process requirement that such information must be factually reliable and relevant." *State v. Witmer*, 2011 ME 7, ¶ 20, 10 A.4d 728; *see also State v. Reese*, 2010 ME 30, ¶ 28, 991 A.2d 806 ("The court has wide discretion in determining the sources and types of information to consider when imposing a sentence.").
>
> Facts regarding uncharged criminal conduct may be considered during sentencing "in order to obtain a complete and accurate picture of the person to be sentenced." *Dumont*, 507 A.2d at 166. Information derived from the trial process "is factually reliable because it is derived from sworn testimony of witnesses subject to cross-examination and observation by the court." *Id.* at 166-67. In this case, the child testified at the trial and was subject to cross-examination, and the court was able to observe the child as a witness; therefore, the court was entitled to find that the child's testimony was factually reliable. See *id.*

Seamon, 2017 ME 123 at ¶ 24.

The lynchpin for whether a sentencing court can rely on any particular fact in crafting its sentence comes down to factual reliability: absent testimony or evidence that was subject to cross-examination at trial or facts that were assented to by a defendant in the course of a Rule

11 proceeding, the alleged facts do not meet the standard of reliability that is necessary to ensure the due process rights of the defendant who stands to be sentenced.

ii. Federal versus state practice

Although basic principles between federal and state sentencing practices may align, procedural differences are important to note regarding the types of information upon which courts can rely in crafting sentences.

The broad discretion federal courts have in finding facts to help decide upon an appropriate sentence seems to be constrained information about the offender himself and his history—not the conduct for which he stands to be sentenced. See 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court . . . may receive and consider for the purpose of imposing an appropriate sentence."); FED. R. EVID. 1101(d)(3) (rules of evidence do not apply at sentencing); U.S.S.G. § 1B1.4 ("In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information

concerning the background, character and conduct of the defendant, unless otherwise prohibited by law."); U.S.S.G. § 6A1.3(a) ("In resolving any reasonable dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information *has sufficient indicia of reliability* to support its probable accuracy.") (emphasis added).

It should be emphasized that a guilty plea in State court, and the process leading up to the "Rule 11 proceeding," is unlike the procedures laid out in federal court, where, typically, the Government and the defense go back and forth with objections to the allegations and facts that would form the basis of the charge to which the defendant is pleading guilty—in federal prosecutions, presentence investigation reports developed by probation officers to assist the court are also heavily contested, with objections noted by both sides. FED. R. CRIM. P. 32(c)(d)(e).

This is not the case here in state court. There is not an established procedure for lodging objections to facts, allegations, and history that may be used by the State in presenting its sentencing argument to the court in advance of the sentencing proceeding itself.

Our state courts, by and large, depends on the assent of the accused to find the necessary facts on the record to determine that there is a sufficient factual basis to the plea. M.R.U. CRIM. P. 11(e) ("Before accepting a plea of guilty or nolo contendere in a case involving a Class C or higher crime, the court shall make such inquiry of the attorney for the State as shall satisfy it that the State has a factual basis for the charge.")

Additionally, our state court judges are not beholden to any United States Sentencing Guidelines, so that the setting of the basic sentence at step one of the *Hewey* analysis is largely left to the individual judge's discretion, absent legislative enactments to the contrary. *See, e.g.*, 17-A M.R.S. § 253-A(2) (2024) ("In determining the basic term of imprisonment as the first step in the sentencing process specified in section 1602, subsection 1, paragraph A, the court shall select a definite term of at least 20 years.")

The Eighth Circuit has emphasized that "a district court commits procedural error [] by basing a sentence on unproven, disputed allegations rather than facts." *United States v. Richey*, 758 F.3d 999, 1002 (8th Cir. 2014), *quoting Gall v. United States*, 552 U.S. 38, 50, 128 S.Ct. 586 (2007) (requiring district courts to "make an individualized

assessment based on the facts presented"). "[A] district court finding 'without record support [is] clearly erroneous.'" *Richey* at 1002, *quoting United States v. Hudson*, 129 F.3d 994, 995 (8th Cir. 1997).

The *Richey* Court explained, "For this reason, when a defendant specifically disputes facts contained in a report prepared by the probation office 'and the relevant responsive evidence has not already been produced at trial, the government must present evidence at the sentencing hearing to prove the existence of the disputed facts.'" *Id.* at 1022. (citations omitted)

Because federal procedure requires pre-sentencing litigation over the disputed facts of the crime to which a defendant is pleading—as well as information included in a presentence investigation report by probation—the defendant has ample opportunity to dispute these alleged facts prior to any sentencing hearing. If the Government wishes to pursue a sentence based on contested facts in the presentence investigation report, as described above, they must present that evidence at the hearing itself—unless the evidence was already generated during a trial.

This distinction is important to highlight, particularly when the issue of a defendant's "fair opportunity to rebut" alleged facts comes into

play. The federal system builds such process in: Maine has no such established process, apart from what is recommended in *Dumont*.

C. Conflicting and Contested Witness Accounts & Expert Report: Not Factually Reliable for Reliance in Sentencing Determination

The information relied upon by the sentencing court in Ms. Miller's case was not factually reliable—it was not subject to confrontation or cross-examination, and its use was challenged by the defense.

Similar to the situation in *Dumont*, in which the sentencing court relied on hearsay information contained in two affidavits—in alleged violation of Mr. Dumont's constitutional rights to due process and confrontation—in Ms. Miller's sentencing, the court relied on contested facts alleged by the prosecution during the Rule 11 and explicitly relied on sections of an expert report that was submitted as an exhibit to the prosecution's sentencing memorandum—a report that was not consented to and was not able to be crossed or challenged at any way during the Rule 11 proceeding.

Again, as in *Dumont*, which focuses on the sentencing court's use of hearsay statements as aggravating factors in increasing a sentence (that case was decided pre-*Hewey*, but this would be analogous to relying on such information at "step two" of the analysis today), Ms. Miller's

sentencing court considered hearsay that was not obtained through the trial process—it was not "derived from sworn testimony of witnesses subject to cross-examination and observation by the court." *Dumont*, 507 A.2d at 166-167. Because it was not obtained through trial process, i.e through sworn testimony, such information is ***not*** "factually reliable." *Id.* at 166.

Here, in Ms. Miller's sentencing proceeding, contrary to the recommendations of the *Dumont* Court, there was no procedure employed regarding this proposed evidence: the sentencing court explicitly relied upon this problematic information in supporting its setting of the basic sentence near the statutory maximum. As this Court has stated previously, "[I]t will be rare for a basic sentence, determined in the first step of the sentencing analysis, to be appropriately set at or near the statutory maximum." *State v. Stanislaw*, 2011 ME 67, ¶ 13, 21 A.3d 91. There was no attempt by this sentencing court to ensure the reliability of the information upon which it based its setting of the basic sentence. That alone makes the sentencing proceeding—and the sentence handed down—problematic at best.

The nature and quality of the information relied upon by the sentencing court here is even more problematic, as the evidence relied upon by the sentencing court in setting the basic term of imprisonment was objected to by counsel at the sentencing hearing—and it was based additionally, not upon a sworn affidavit, but, rather, an expert report drafted by a State-hired expert, the conclusions of which and the alleged factual basis of which would also have been heavily contested at trial. This is not an objective source of information.

To accept the expert report as reliable absent cross-examination or assent by the defense resulted in a significantly higher sentence than what Ms. Miller's established conduct warranted—all while depriving her a fair opportunity to challenge the problematic aspects of the State's recitation of alleged evidence.

Ms. Miller's rights to due process and confrontation were violated when the sentencing court relied on allegations that were neither consented to nor adjudicated by any factfinder. And, as Ms. Miller only stipulated to a particular set of allegations that comprised the agreed-upon charge of Aggravated Assault, the court's acceptance of those

additional allegations as established fact to impose the sentence it arrived at was in error.

In addition, in the sentencing court's unquestioning crediting of a proffered expert witness report that was not agreed to or subject to any cross-examination when determining the basic sentence was also in error. Had this case actually proceeded to trial, the defense would have certainly retained their own expert to challenge the findings and opinions of the State-designated expert—because the parties agreed to the initial charge of Aggravated Assault, that was not necessary for purposes of this plea.

However, this case resolved by mutual understanding of a plea agreement in March 2023—nearly two years prior to the final plea and sentencing in this matter. The expert report that was sought out by the State was in their attempt to establish a factual basis for the Attempted Murder charge they presented to the grand jury back in August 2021. The agreement reached at the conclusion of the judicially assisted settlement conference was for Ms. Miller to plead guilty only to one count of Aggravated Assault.[3]

[3] The State, in the superseding indictment, charged Ms. Miller with Attempted Murder, arguing that she attempted to murder the complaining witness due to depraved indifference.

In addition, the defense, at trial, would have had the opportunity to confront and cross-examine the expert, particularly as the State's designated expert relied heavily on the complaining witness's unreliable, conflicting, and shifting narratives of events. The very basis of this expert's opinion was the contested versions of the event offered by the complaining witness over weeks' and months' time. The sentencing court's unquestioning reliance on this contested hearsay, both through the State's recitation of facts and the facts as relied upon by the expert witness, deprived Ms. Miller of due process.

As the superseding indictment read: "On or about May 12, 2021, in Cape Elizabeth, Cumberland County, Maine, JACOB MILLER, with the intent to complete the commission of the crime of murder, did intentionally engage in conduct, which, in fact, constituted a substantial step toward its commission. *JACOB MILLER did engage in conduct that manifested a depraved indifference to the value of human life* by applying pressure to [complaining witness]'s neck multiple times to the point where she lost consciousness." (emphasis added)

Given that attempted murder is a specific intent crime that the State was attempting to shoehorn "depraved indifference" into, counsel raised the issue repeatedly with the State's prosecutors that this was a legally deficient charge.

After consulting with the Attorney General's Office's then-appellate criminal prosecutor, the State agreed that the charge was legally deficient—a fact that was discussed during the settlement conference and before. Thus, the dismissal of the Attempted Murder charge was not out of the goodness of the State's hearts, but, rather, a fair acknowledgement of the legal insufficiency of bringing a specific intent charge for a "depraved indifference" act—it would be akin to bringing an "Attempted Manslaughter" charge, which makes no sense given our understanding of mens rea and specific intentionality. Aggravated Assault, particularly in its subsection regarding strangulation, was the legally sufficient and appropriate charge in this case.

Interestingly, during its own sentencing presentation, the State did not even rely upon evidence adduced from its own expert report when making its factual recitation to the court. The State had included the report as an exhibit to its memorandum but made no reference to the findings and opinions of that report (which were based in large part on the complaining witness's ever-evolving recitation of events) when it presented the facts it said it would have proven at trial on the record.

CONCLUSION

As Justice Glassman argued in her blistering dissent in *Dumont*, "The sentencing process is the culmination of a criminal prosecution. A criminal prosecution is the procedural vehicle by which an individual can legally be deprived of his liberty. To zealously enforce our constitutional safeguards throughout the procedure leading up to the deprivation of liberty and then to abandon them at that critical point, is to produce a result that clearly signals a radical defect in the system of justice." *Dumont*, 507 A.2d at 168 (*Glassman, J., dissenting*).

Justice Glassman fought against the majority's opinion that giving a defendant the opportunity to read sworn affidavits during a sentencing proceeding "and deny their contents" was sufficient to ensure due

process: "In the guise of 'obtaining a complete and accurate picture of the person to be sentenced," the court cannot justify this violent impairment of an individual's constitutional rights." *Id.* at 169.

Without a fair process for contesting and confronting disputed information presented at a sentencing, particularly when that information is used to set the basic sentence in a serious case such as this, we abandon the considerations of due process at the door in the name of expediency and finality. This is not justice.

In setting the basic sentence against Ms. Miller, the sentencing court erred when it accepted as fact, and relied upon such as fact, the contested complaining witness statements tendered by the prosecution in its recitation of facts during the Rule 11 proceeding in this matter and purported expert opinion that was attached as an exhibit to the State's sentencing memorandum.

Ms. Miller timely objected to these alleged, unconfronted facts and expressly stated that she was not in agreement with that part of the State's factual recitation—she had no opportunity to contest the mistaken reliance by the court of the expert opinion. She did note in her

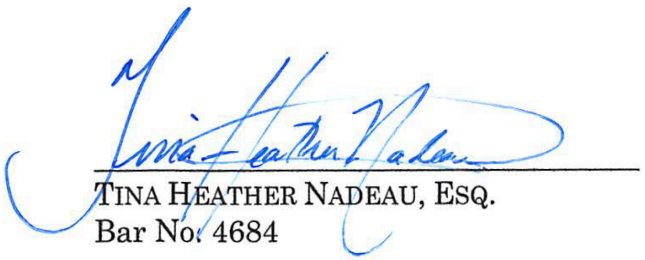
sentencing memorandum, however, that she did not adopt the findings of the proposed expert. (A. 57)

By denying her an opportunity to confront this contested testimony, as well as accepting as fact expert opinion for which there was no opportunity to contest, the court deprived Ms. Miller of due process when it set the basic sentence so high, near the statutory maximum for a Class B crime, relying explicitly on these alleged facts in setting the sentence.

Because of these errors by the sentencing court, this Court should vacate Ms. Miller's sentence for Aggravated Assault and remand the matter to the Unified Criminal Docket for further proceedings before a new sentencing judge.

Dated in Portland, Maine, this 15th Day of August, 2025.

Respectfully submitted,



TINA HEATHER NADEAU, ESQ.
Bar No. 4684

Attorney for Appellant Jacob (Jaydè) Miller
THE LAW OFFICE OF TINA HEATHER NADEAU, PLLC
75 Pearl Street, Suite 430
P.O. Box 7656

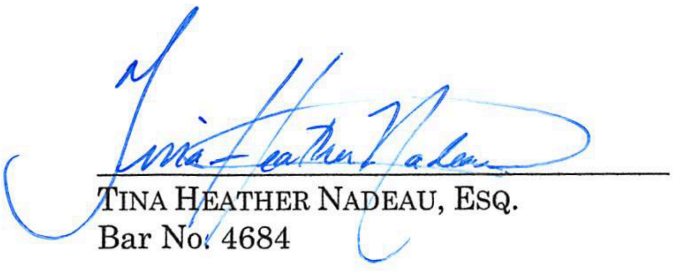
Portland, ME 04112-7656
(207) 699-8287
tinanadeaulaw@gmail.com

CERTIFICATE OF SERVICE

I, Tina Heather Nadeau, attorney for Appellant Jacob (Jaydè) Miller, hereby certify that on August 15, 2025, I sent a native PDF version of this brief to the Clerk of this Court and to opposing counsel at the email address provided in the Board of Bar Overseers' Attorney Directory. I hand-delivered ten paper copies of this brief to this Court's Clerk's office, and I hand-delivered two copies to opposing counsel to the address below:

ASSISTANT DISTRICT ATTORNEY KRISTEN HUGHES
Cumberland County District Attorney's Office
142 Federal Street
Portland, ME 04101
khughes@cumberlandcounty.org

Dated in Portland, Maine, this 15th Day of August, 2025.



TINA HEATHER NADEAU, ESQ.
Bar No. 4684

Attorney for Appellant Jacob (Jaydè) Miller
THE LAW OFFICE OF TINA HEATHER NADEAU, PLLC
75 Pearl Street, Suite 430
P.O. Box 7656
Portland, ME 04112-7656
(207) 699-8287
tinanadeaulaw@gmail.com

STATE OF MAINE		**SUPREME JUDICIAL COURT** **Sitting as the Law Court** **Docket No. Cum-25-84**
STATE OF MAINE	)	
	)	
v.	)	**CERTIFICATE OF SIGNATURE**
	)	
JACOB (JAYDÈ) MILLER	)	
	)	

I am filing the electronic copy of this brief with this certificate. I will file the paper copies as required by M.R. App. P. 7A(i).

I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R. App. P. 7A(f), and conform to the form and formatting requirements of M.R. App. P. 7A(g).

Name of party on whose behalf the brief is filed: **Jacob (Jaydè) Miller**
Attorney's name: **Tina H. Nadeau**
Attorney's Maine Bar Number: **004684**
Attorney's email address: **tinanadeaulaw@gmail.com**
Attorney's mailing address: **P.O. Box 7656, Portland, ME 04112**
Attorney's business telephone number: **(207) 699-8287**
Date: **08/15/2025**