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

REPLY BRIEF OF APPELLANT JACOB (JAYDÈ) MILLER

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STATEMENT OF ISSUE

I. **The State misapprehends the arguments of Ms. Miller on appeal—the issue presented before this Court is not whether the complaining witness in this matter is believable or not—it is whether the sentencing court erred and denied Ms. Miller due process when it relied upon an objected-to expert report as well as contested versions of events by the State's key witness in setting the basic sentence near the statutory maximum.**

ARGUMENT

I. **The sentencing court erred—and denied Ms. Miller due process—when it relied upon an objected-to expert report and contested witness account in setting the basic sentence against Ms. Miller near the statutory maximum of 10 years.**

To begin, as a point of clarification, Ms. Miller's application to the Sentence Review Panel was denied—she is proceeding on direct appeal regarding the legality of her sentence only, not its propriety. (Red Brief at 5, "Defendant timely appealed her sentence and was granted leave to appeal her sentence by the Sentence Review Panel."; *see also* Red Brief 12 n.3 and Blue Brief at 13)

The State's statement of issue is also confusing: "Whether the Court properly relied on the State's factual recitation of the case in sentencing the Defendant." (Red Brief at 11) The State's statement of issue does not reflect the issues raised by the defendant—as the "factual

recitation" provided by the State is only one of the issues on appeal. In addition, the sentencing court also relied on information that was not contained in the State's factual recitation—namely purported medical evidence in an attached expert report, no part of which the State adopted in its factual recitation to the court.

In its Summary of the Argument, the State contends that Ms. Miller is appealing the Court's decision to "accept[] the State's recitation of the facts in setting the basic sentence." (Red Brief at 12) This is inaccurate. In addition to expressly contesting versions of events that were provided by the complaining witness the night of the incident, the defense on appeal also argues that the court's unquestioning acceptance of an unsworn, uncrossed purported expert report was improper. (*See, e.g.*, Blue Brief at 43-45)

The State similarly oversimplifies Ms. Miller's main arguments on appeal—that "she did not believe the testimony of the named victim to be reliable." (Red Brief at 15) As defense counsel stated at the hearing, the 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." (Sent. Hrg. Tr. 16:7-11)

Counsel continued, "A lot of the other statements that were made [by the complaining witness] would have 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." (Sent. Hrg. Tr. 16: 12-16)

The court then followed up with Ms. Miller directly, asking, "And so your attorney's just told me that you agree with the version of events that was given on-scene by [the complaining witness]. . . . is that correct?" (Sent. Hrg. Tr. 17:5-9) Ms. Miller agreed and also affirmed to the court that that information was "all true to [her] own personal knowledge." (Sent. Hrg. Tr. 17:11-13)

The complaining witness's first version of events was consented to by the defense as reliable, accurate, and true. What the defense was unwilling to do is to accept without question—or questioning—the shifting, and worsening, versions of events that were given by the complaining witness over the next several weeks and months.

It is unclear to what the State is referring when it argues that Ms. Miller "had an opportunity to provide proof to refute the allegations, which she declined to do." (Red Brief at 15) The version of events that the State was going to proceed on was revealed only through its submission of its sentencing memorandum two days prior to hearing—the State itself never relied on the proffered expert report in its recitation of facts, instead only including it as an exhibit to its memorandum. What reasonable or realistic opportunity did the defense have—both timewise and given the court's position—to contest any of this information beyond what was objected to at the hearing?

The State argues that the defense is trying to "short-circuit" the trial process by requiring the court to undergo some effort to establish the reliability of information that is not expressly assented to by the defendant at a plea hearing and sentencing. (Red Brief at 17) As is clear from the colloquy with the court at hearing, the defense accepted as true a set of facts sufficient to establish the crime of aggravated assault beyond a reasonable doubt. Rather than proceed solely on those agreed-to facts, the court took it upon itself, without explanation, to accept the

contested versions of facts, as well as the expert report, as reliable—thus establishing the basic sentence on factually shaky ground.

Without citation, the State contends that Ms. Miller "gave up her right to challenge the facts of the case through cross examination when she pleaded guilty." (Red Brief at 19) In pleading guilty, Ms. Miller certainly waived certain trial rights—including the right to cross-examine witnesses at trial. What Ms. Miller never did was expressly or impliedly waive her right to contest the information that the State provided through its factual recitation at the Rule 11 proceeding—nor did she waive her right to challenge that information before the court's reliance of this information in support of its sentencing determination. Whether or not the information presented at sentencing was reliable? Ms. Miller certainly never waived her right to challenge this information.

The State's final argument, which it outlines in a footnote, concerns any possible argument that Ms. Miller may have on appeal regarding the propriety of the sentence—which argument was specifically disallowed by this Court's Sentence Review Panel. (Red Brief at 20, n.7) The State argues that "even if this [C]ourt finds that

the sentencing court should not have considered the contested facts in setting the basic sentence in step one of the Hewey analysis, the court was well within its discretionary power to credit those facts as aggravating factors in step two of the Hewey analysis, thereby arriving at the same sentence." (Red Brief at 20, n.7)

This argument demonstrates a fundamental misunderstanding of the *Hewey* sentencing procedure by the State. Step one of the *Hewey* analysis requires a court to "determine 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); *State v. Hewey*, 622 A.2d 1151 (Me. 1993). The facts to be utilized in this step concern only the objective facts and seriousness of the offense. Therefore, the State's suggestion that these same facts could be used in step two of the *Hewey* analysis—namely the consideration of aggravating and mitigating factors—is just wrong.

Step two is concerned with subjective factors, including "the character of the individual, the individual's criminal history, the effect of the offense on the victim, and the protection of public interest." 17-A M.R.S. § 1602(1)(B). The "no harm, no foul" tenor of this argument does

not make much sense when considering that the seriousness of the offense is a separate consideration from the subjective impact of the crime on the victim and the accused's individual characteristics. There should be no "double-counting" of factors, i.e. the seriousness of offense, in these steps. *State v. Chase*, 2025 ME 90, ¶ 25, --- A.3d --- ("Improper double counting occurs when the sentencing court considers the same factor at multiple steps of the *Hewey* analysis.")

In addition, unreliable information is unreliable no matter which step of the analysis it is used in. If the shifting versions of events by the complaining witness are not reliable—if the unquestioning acceptance of an expert report is not reliable—at step one of the *Hewey* analysis in setting the basic sentence, nor would such information be reliable in setting the maximum period of incarceration.

CONCLUSION

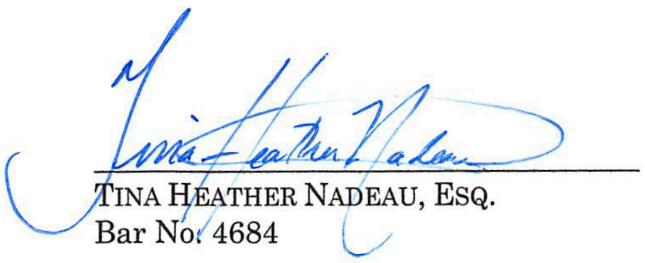
The sentencing court erred when it relied upon contested versions of events that the State provided in its Rule 11 recitation of alleged facts—as well as a proffered, unsworn, and uncrossed expert report in setting the basic sentence for Aggravated Assault at eight years—near the statutory maximum of ten years. Without a process to test the

reliability of the contested-to information, the court's reliance on this information deprived Ms. Miller of due process in sentencing.

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

Dated in Portland, Maine, this 24th Day of October, 2025.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Tina Heather Nadeau, attorney for Appellant Jacob (Jaydè) Miller, hereby certify that on October 24, 2025, I sent a native PDF version of this reply brief to the Clerk of this Court and to opposing counsel at the email address provided in the Board of Bar Overseers' Attorney Directory. Once cleared by the Clerk, I will hand-deliver ten paper copies of this brief to this Court's Clerk's office, and I will hand-deliver two copies to opposing counsel at the address provided on the briefing schedule:

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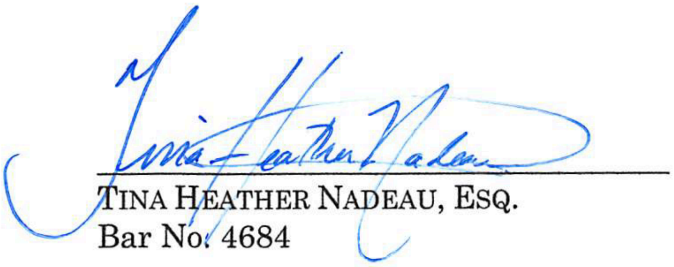
Dated in Portland, Maine, this 24th Day of October, 2025.



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JACOB (JAYDÈ) MILLER	)	
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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).

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