Supreme Judicial Court sitting as the Law Court
Law Court Docket number ARO-25-177

State of Maine v. Jayme Schnackenberg

Appeal from Unified Criminal Docket in
Aroostook County

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Introduction

Mr. Schnackenberg asserts a number of errors made by the courts below. First, the exclusion of Ms. Hardy's toxicology results and report by the trial court was in error and was an abuse of the trial court's discretion. Secondly, the legal instructions provided to the jury failed to provide a clear and adequate explanation of the State's burden in disproving a self defense claim, as the instructions did not adequately instruct the jury on when to consider the dwelling home exception to the duty to retreat. Thirdly, photographic evidence of Ms. Hardy's skull, presented by the State during trial was cumulative, inflammatory, and gruesome and only served to inflame and prejudice Mr. Schnackenberg in the minds of the jury. Lastly, specific details of domestic violence were considered by the sentencing court in the first step and second step of its analysis, there was a failure by the court to correctly weighed the mitigating and aggravating factors, and Mr. Schnackenberg's maximum sentence was excessive.

Procedural History

Jayme Schnackenberg, the appellant, was charged by criminal complaint on June 26, 2023 with one count of Murder (Class M) under Title 17-A M.R.S. § 201(1)(A).[1] (App. at 1). An indictment was filed with the lower court on July 13, 2023. (App. at 3). A motion to amend the indictment was filed with the trial court

[1] Title 17-A M.R.S. § 201(1)(A) states that "[a] person is guilty of murder if the person. . . [I]ntentionally or knowingly causes the death of another human being."

on January 8, 2025 and granted by the court on January 13, 2025. (App. at 9). Mr. Schnackenberg was arraigned on September 29, 2023 and entered a not guilty plea. (App. at 4).

On December 6, 2024 Mr. Schnackenberg filed a motion in limine to allow for alternative suspect evidence, which the trial court granted in part. (App. at 7, 8). Mr. Schnackenberg also filed three motions for sanctions pertaining to the receipt of late discovery materials, only the first of which was granted in part on December 31, 2024. (App. at 7, 8, 9). Mr. Schnackenberg made an oral motion in limine on January 10, 2025 to exclude evidence of illness and cancer that pertained to the alleged victim, Kimberly Hardy. (App. at 9). The trial court granted the motion on January 10, 2025, but later changed its ruling during trial. (App. at 9); (Tr. T. (vol. 1) at 48-49).

A jury was selected on January 10, 2025. (App. at 9). A trial was held before the Aroostook County Unified Court over five days, on January 13, 14, 15, 16 and 17 of 2025. (App. at 9). The jury returned a guilty verdict on January 17, 2025. (App. at 9).

On March 31, 2025 Mr. Schnackenberg was sentenced by the lower court. (App. at 10). On Count 1, the charge of Murder, the court sentenced Mr. Schnackenberg to the Department of Corrections for a term of 55 years, restitution in the amount of $4,500, and forfeiture of the involved firearm. (App. at 10).

A timely notice of appeal and application to allow an appeal of his sentence was filed by Mr. Schnackenberg on April 2, 2025. (App. at 11). This Court granted his sentence appeal on July 16, 2025 and that appeal was consolidated with Mr. Schnackenberg's direct appeal for consideration by this Court. See Order, Granting Leave, July 16, 2025 at 1.

Statement of Facts

Jayme Schnackenberg and Kimberly Hardy met in August of 2017. (Tr. T. (vol. 4) at 164). At the time of Ms. Hardy's death, they were residing at 9 School Street in Monticello, Maine. (Tr. T. (vol. 2) at 6); (Tr. T. (vol. 4) at 167). They became engaged and were planning on getting married in August of 2023. (Tr. T. (vol. 1) at 132); (Tr. T. (vol. 2) at 17); (Tr. T. (vol. 4) at 169).

However, there was on and off fighting in their relationship for a while before Ms. Hardy's death. (Tr. T. (vol. 1) at 91, 214-215). One of Ms. Hardy's best friends believed that it looked like both were ready "to call it quits" on their relationship, noting that "he was very frustrated with her demands upon him. And it goes both ways though." (Tr. T. (vol. 1) at 99, 102). Their relationship was also described as very bad with constant fighting. (Tr. T. (vol. 1) at 214). The fighting was centered on "[h]is drug addiction and him spending money." (Tr. T. (vol. 1) at 215). A friend testified that there "was always physical violence between them even before the drug addiction." (Tr. T. (vol. 1) at 215). The friend went on to say that he had: "witnessed Jay come downstairs after a physical altercation, yes, years

prior; and he had a black eye and stuff, and he had mentioned he just got beat up by Kim, yes." (Tr. T. (vol. 1) at 218). The friend further stated that he "had a black eye and a busted nose." (Tr. T. (vol. 1) at 219). It was noted after that fight that Ms. Hardy did not have a mark on her.[2] (Tr. T. (vol. 1) at 220). Mr. Schnackenberg was described as being "beaten up a few times" by Ms. Hardy. (Tr. T. (vol. 1) at 219). Mr. Schnackenberg testified that Ms. Hardy was violent in the relationship.[3] (Tr. T. (vol. 4) at 186). A friend also testified that he had never seen him raise a hand to Ms. Hardy before. (Tr. T. (vol. 1) at 188).

Another friend testified that Mr. Schnackenberg told them that Ms. Hardy had pulled a knife on him.[4] (Tr. T. (vol. 1) at 124). Ms. Hardy confirmed that she had to the friend. (Tr. T. (vol. 1) at 124). The friend further stated that the knife event came up in conversation "quite a few times[,]" noting that "[e]veryone was

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[2] It was noted that Ms. Hardy was larger than Mr. Schnackenberg at this time. (Tr. T. (vol. 1) at 220); (Tr. T. (vol. 4) at 176). The medical examiner testified that at her autopsy her weight was 129 pounds and her height was 64 inches. (Tr. T. (vol. 3) at 124).

[3] Mr. Schnackenberg testified that once Ms. Hardy had grabbed him, knocked a beer from his hand, and twisted and wrenched his thumb back when upset with him. (Tr. T. (vol. 4) at 186). He had also been poked in the eye and hit. (Tr. T. (vol. 4) at 187). He also testified that she kicked a bucket of screws at him. (Tr. T. (vol. 4) at 189).

[4] Mr. Schnackenberg testified that Ms. Hardy had pulled a knife on him on multiple occasions. (Tr. T. (vol. 4) at 187-188, 191, 208-209).

asking if she did it, and she confirmed it ."[5] (Tr. T. (vol. 1) at 125). The friend stated that Ms. Hardy pulled the knife because she was "pissed off at him" and the friend recalled Ms. Hardy saying that "he came at me or something, but she made it sound like she provoked it actually. . .".[6] (Tr. T. (vol. 1) at 126). Weeks prior to Ms. Hardy's death, Mr. Schnackenberg told a coworker about a knife incident with Ms. Hardy where Mr. Schnackenberg "said he was sleeping and woke up. He said he's one of those people that if anything changes in his environment while he's asleep, whether somebody turns a radio on or off, he immediately wakes up. And he woke up to her standing over the bed with a knife in her hand." (Tr. T. (vol. 1) at 165).

Friends were familiar with drug use by Ms. Hardy and Mr. Schnackenberg. (Tr. T. (vol. 1) at 93). Both Ms. Hardy and Mr. Schnackenberg used marijuana. (Tr. T. (vol. 1) at 93). Mr. Schnackenberg testified that they could easily go through a 30 pack of beer in a night. (Tr. T. (vol. 4) at 166). Ms. Hardy also had access to drugs prescribed to her. (Tr. T. (vol. 1) at 94). At friends' barbecues she was described at points as "strung out" and seen snorting oxycontin. (Tr. T. (vol. 1)

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[5] When asked why if they recalled why Ms. Hardy pulled the knife on Mr. Schnackenberg, the friend stated that: "Vaguely. Something about she wanted her phone or something, and he threw the phone at her. I really -- to be honest, I don't want to say something that's not -- that's not correct, but something about the phone being thrown and -- and then she came at him and she -- and she came at him, and she told me that she went at him. This was weeks later." (Tr. T. (vol. 1) at 125).

[6] When questioned further about these statements Ms. Hardy's friend acknowledged that she spoke to the police right after Ms. Hardy's death where she stated that "Kim told [her] that she pulled a knife on Jay because he was acting crazy and came at her." (Tr. T. (vol. 1) at 128).

at 119-120). According to her friends, she also used methamphetamines. (Tr. T. (vol. 1) at 95). Mr. Schnackenberg stated that Ms. Hardy used methamphetamines and Oxycontin.[7] (Tr. T. (vol. 4) at 171, 185).

At the time of Ms. Hardy's death, Mr. Schnackenberg was consuming alcohol and drugs.[8] (Tr. T. (vol. 1) at 182, 214, 221). The drugs included fentanyl, heroin, methamphetamines, and OxyContin.[9] (Tr. T. (vol. 1) at 182, 214); (Tr. T. (vol. 4) at 170-171). His friend stated at that time that Mr. Schnackenberg's "consumption was getting to be more and more all the time, um, as it does happen with, you know, addicts." (Tr. T. (vol. 1) at 182). He was getting high before work, on the way to work, when he got to work, throughout the day at work, and then when he got home; essentially using drugs all day by spring of 2023. (Tr. T. (vol. 4) at 175, 178). His physical health was affected by the drug use, at the time of the incident Mr. Schnackenberg weighed 103 pounds and at time of trial he weighed 160 pounds.[10] (Tr. T. (vol. 4) at 175-176). Mr. Schnackernberg attempted

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[7] Mr. Schnackenberg noted that they both started using these in 2022 and within a month they were pretty much using them daily. (Tr. T. (vol. 4) at 172). In 2023, he started to use heroin and fentanyl. (Tr. T. (vol. 4) at 173).

[8] Mr. Schnackenberg stated that in the summer of 2022 he began to do drugs. (Tr. T. (vol. 4) at 170-171, 177).

[9] At first Mr. Schnackernberg was hiding his use of fentanyl and heroin from Ms. Hardy. (Tr. T. (vol. 4) at 177-178).

[10] Mr. Schnackenberg is five feet and seven inches tall. (Tr. T. (vol. 4) at 176).

to stop his drug use, but was not successful for more than six days. (Tr. T. (vol. 4) at 178).

In the spring of 2023 Mr. Schnackenberg and Ms. Hardy were fighting a lot about his drug use and Mr. Schnackenberg was hiding his drug use from her. (Tr. T. (vol. 4) at 177-181, 184-185). During the week of June 12, 2023 Mr. Schnackenberg was calling his friends "nonstop" looking for drugs. (Tr. T. (vol. 1) at 183). Leading up to June 16, 2023 Mr. Schnackenberg's drug use was heavy and he had not really slept in about two weeks. (Tr. T. (vol. 4) at 192). Ms. Hardy was also using drugs during this week. (Tr. T. (vol. 4) at 192).

While Mr. Schnackenberg initially told people and law enforcement that Ms. Hardy had grabbed her stuff and went for a hike Friday morning, which was June 16, 2023, at trial he testified that he had shot Ms. Hardy in self defense.[11] (Tr. T. (vol. 1) at 111, 132-133, 151, 155-156, 201); (Tr. T. (vol. 2) at 13); (Tr. T. (vol. 4) at 199-202, 238, 243, 258). Mr. Schnackenberg stated that there was heavy drug use on June 15, 2023. (Tr. T. (vol. 4) at 193-195). An argument developed with Ms. Hardy, Mr. Schnackenberg wanted to go to sleep, and Ms. Hardy attempted to leave with the last of their drugs. (Tr. T. (vol. 4) at 194-199). An argument developed in the kitchen and Mr. Schnackenberg stated that Ms. Hardy pulled a

[11] The Vrieze brothers did state that Mr. Schnackenberg told them he had shot Ms. Hardy right after the incident. (Tr. T. (vol. 1) at 167-168, 185, 194, 200-202, 212-213). However, some details were added over the course of their police interviews. (Tr. T. (vol. 1) at 185-188, 191-192).

knife on him. (Tr. T. (vol. 4) at 199, 243). Mr. Schnackenberg was scared that Ms. Hardy was going to stab him. (Tr. T. (vol. 4) at 199). A struggle ensued and Mr. Schnackenberg pulled out his gun, which went off when Ms. Hardy hit into him with her head.[12] (Tr. T. (vol. 4) at 200, 254-255). He did not mean to pull the trigger. (Tr. T. (vol. 4) at 201). He did not call 911 after because did not think anyone would believe him. (Tr. T. (vol. 4) at 203). Ms. Hardy was reported, by her mother, as missing to police on June 18, 2023. (Tr. T. (vol. 1) at 130, 133-134).

Photographs of Ms. Hardy's body, as discovered on June 25, 2023 in a wooded area off Harvey Siding Road in Monticello, were entered into evidence over objection. (Tr. T. (vol. 1) at 139); (Tr. T. (vol. 2) at 49-53, 60, 70-77). Ms. Hardy's autopsy was performed on June 26, 2023.[13] (Tr. T. (vol. 2) at 84, 87); (Tr. T. (vol. 3) at 38, 55, 118). Photographs of Ms. Hardy's body from the autopsy were also entered into evidence over objection at trial. (Tr. T. (vol. 23) at 39-45). The medical examiner documented two gunshot wounds to Ms. Hardy's head. (Tr. T. (vol. 3) at 125-131, 134). The State entered Exhibit 80 into evidence through the medical examiner, which showed "a radiograph or an x-ray" of Ms. Hardy's

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[12] Mr. Schnackenberg was noted to carry a firearm on him daily, which was described as a Taurus .40 caliber gun. (Tr. T. (vol. 1) at 159). After Ms. Hardy's death a gun was sold to Craig Vrieze, after which his brother, Brian Frieze, stated that he drove Craig to Mr. Schnackenberg's residence to return the gun. (Tr. T. (vol. 1) at 177, 179, 194, 202-205). Law enforcement discovered a gun in a Folger's can near a shed at Mr. Schnackenberg's residence. (Tr. T. (vol. 2) at 118-125, 130, 158-159); (Tr. T. (vol. 3) at 111-112).

[13] The medical examiner determined her cause of death to be "multiple gunshot wounds." (Tr. T. (vol. 3) at 137).

head wounds. (Tr. T. (vol. 3) at 128-130). The State also entered Exhibit 81 into evidence at trial which was a "diagram" drawn "during autopsy. . . depict[ing] the two, um, entrance defects, the location of the laceration, and the location of the exit defect" in Ms. Hardy's skull.[14] (Tr. T. (vol. 3) at 135).

The School Street residence was searched by law enforcement on June 24, 2023. (Tr. T. (vol. 2) at 187). Swabs from the kitchen area of the School Street residence matched to Ms. Hardy's blood and a blood splatter analysis was done. (Tr. T. (vol. 2) at 154-156); (Tr. T. (vol. 3) at 64-87, 104-110, 196-203). A mop was also discovered at the residence and transported to the crime lab for testing. (Tr. T. (vol. 2) at 158); (Tr. T. (vol. 3) at 91-92). At the crime lab a fragment of skull was discovered in the mop and the handle of the mop was swabbed for DNA, revealing a match from the handle swab to Mr. Schnackenberg. (Tr. T. (vol. 3) at 172, 173-178, 200-201). The trial court allowed the State to enter graphic skull photos into evidence at trial. (Tr. T. (vol. 3) at 131-133). The following objection was lodged in discussing the photographs:

> MR. EVERETT:. . . And then I think, secondly, with respect to the -- with respect to the photos of the skull, um, we would argue that, of course, that they are unfairly prejudicial. Of course, they have probative value. We don't say -- one wouldn't say they don't have probative value. But Mr. Schnackenberg -- I think this would elicit that response from the jury that would outweigh that probative value by prejudice to Mr. Schnackenberg. The State can use different exhibits to get the same point across. I see that Dr. Funte will be here.

[14] Based off of this exhibit, the medical examiner was able to testify to the trajectory and findings of the bullets wounds to Ms. Hardy's head. (Tr. T. (vol. 3) at 135-137).

> We have a nice black and white here with an x-ray of what I'm sure Dr. Funte will be able to testify to is bullet fragments in Miss Hardy's brain. We have a nice diagram Dr. Funte as part of his report drew up that show very clearly entrance and exit wounds. He can testify to this on the stand. Um, and then, finally, with respect to the skull fragment, we have the skull fragment here. I expect it will be introduced into evidence. Dr. Sorg. . . could testify to the fact that they did an evaluation and it lines up with the skull.
> . . .
> [pertaining to State's Exhibit 84] I would argue all of the photos, simply because we have -- again, we have the bone chip here, right? So, we can testify to that. Dr. Sorg will be able to testify to doing the examination and, yes, this is the bone chip and, yes, it matched the decedent's skull, um, that sort of thing. Um, and so the photographs are not necessary for them to establish what they're trying to say. And, of course, the prejudice of seeing the photos. . . The prejudice generated by seeing the photographs.
> . . .
>
> Just that if the Court was inclined for the same reasons, um, on 78 and 79, we ask to exclude them for the same reasons, the color photo here for the same reasons. I think Dr. Sorg can testify to things that are in that photo; and the black and white photo depicts everything the color photo shows.
> (Tr. T. (vol. 3) at 16-18, 28-29).

The trial court ruled that

> THE COURT: All right. And so as I understand the proffered testimony as it relates to these two particular photographs, um, having all the, you know, the color, certainly, I understand why the State would be seeking to introduce them. They're a little gorier than, than -- than the other photos for sure. Um, the Court would be inclined to permit the State and sustain the objection as it relates to the color photos as to these two but not as to the black and whites. And so -- . . . And so that, that would be 78-A and 79-A permitted. 78 and 79, anticipate preliminary ruling would be the objection would be sustained on, um, the prejudicial effect of the — all the stuff in the head there. . . .
> . . .

> All right. And as it relates to 84, um, the Court would, um, anticipate overruling that objection. It's certainly closed in a lot more. You don't have all of the stuff hanging off the skull and bloody detail that are on the other ones, and since it's a more narrow picture, um, related to that. And it certainly -- you can see it better in the color. So, that would be the Court's anticipated ruling on those.
> . . .
>
> If it's the same framing -- because the Court's concern on the other one is the color photo showing part of the skull, which is away from the wound area, has all this stuff hanging off it. It looks a little gnarly.
> (Tr. T. (vol. 3) at 27-28).

Exhibits 78-A, 79-A, and 84 were admitted into evidence at trial over the above noted objection.[15] (Tr. T. (vol. 3) at 131-133). Exhibit 79-A and 84 were also used and displayed by Dr. Sorg in her testimony as to the origin of the bone fragment found in the mop at the School Street residence. (Tr. T. (vol. 3) at 60-61).

During the cross-examination of the medical examiner, Mr. Schnackenberg attempted to discuss the toxicology report that was performed as part of the

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[15] The medical examiner described the photos as: "So, 79-A is a photograph of the skull with the scalp reflected. Um, in this photograph, there are holes in the skull, as well as fractures in the skull. There are two places on the skull that have a nice curve with what's known as internal beveling. So, the skull has two bony plates with kind of a soft middle; and when a bullet goes through that skull, um, at the entrance, the inside plate, bony plate, has a larger fracture area than the outside, and that's called internal beveling. So, you can identify what are entrance defects on a skull just by looking at the way the bone fractures. And 79-A, you're looking at the two entrance defects. Um, and then you will also see that there are fracture -- fractures in the skull. Um, 78-A, um, is the photograph of the exit defect. And with the way the skull fractures, um, instead of being larger or the bony fracture on the inside being larger, this time the bony fracture area is larger on the external side of the skull, the external bony plate. And that's external beveling. So, this photo of the exit defect shows a nice curve where the bullet went through; and that is surrounded by external beveling." (Tr. T. (vol. 3) at 132).

autopsy. (Tr. T. (vol. 3) at 138). The State objected to the information being entered into evidence and the following discussion occurred:

> MS. BOZEMAN: I anticipate the Defendant is going to try to assert that there were drugs found in the victim's system. I don't believe that that has any relevance, and I think anything that is essentially bad character evidence and under a 403 analysis, that is unfairly prejudicial and should not be admitted.
>
> THE COURT: All right. From the Defense?
>
> MR. SWANSON: We do intend to elicit testimony that there were drugs in her system. The toxicology report was incorporated into the expert witness's report. Additionally, the finding was is that there were 530 nanograms per milliliter of methamphetamine found in her blood. Later, there's a comment that blood levels greater than 200 to 600 nanograms per milliliter have been reported in methamphetamine users who exhibited violent and irrational behavior, which goes to the defense in this case with the knife.
>
> THE COURT: All right. From the State?
>
> MS. BOZEMAN: It has not been generated yet, your Honor. And unless the defendant intends to testify and generate that, that is unfairly prejudicial and irrelevant.
>
> THE COURT: All right. And so the -- how does the Defense contend as it is right now that's relevant to the case? Doesn't have anything to do with cause of death.
>
> MR. SWANSON: It does not have anything to do with the cause of death.
>
> THE COURT: All right. And so —
>
> MR. SWANSON: At this point, it is not relevant. I will agree with you.

THE COURT: All right. And so objection is sustained.

. . .

MR. SWANSON: Your Honor, we do expect that the issue is going to be generated that would make this relevant. We'd ask that the Court permit questioning and answers regarding the same and they be conditionally let in. The Judge could defer ruling to a later time to its admissibility and instruct the jury as necessary.

THE COURT: The State take a position on that?

MS. BOZEMAN: Yes, your Honor. They can't unring that bell if the jury hears that. It is unfairly prejudicial. If the Defendant wishes to elicit the testimony that would substantiate the relevance of this, then he can recall the doctor.

THE COURT: All right. Um, even if there was a showing that it was somehow related to the case, how does what this doctor may opine related to general use of substances tie in with this case or any reasonable belief of fear? He would have never talked to the medical examiner before the event, even assuming that the facts show he was a participant in the event. So, you see what I mean? In terms of all the other evidence related to prior bad acts, I'm just not -- I'm not being persuaded at this point by the Defense that it would be permissible.

MR. SWANSON: It's our opinion that it would be permissible in the event that it is generated if Mr. Schnackenberg were to testify that she was using methamphetamine that morning or that night. Um, that would be confirmed by the medical examiner who could -- which was part of his report-- indicate that those high doses would elicit or could elicit violent or irrational behavior that, um, could support Mr. Schnackenberg's testimony that she was going to attack him with a knife; and that then the jury could. . . [d]raw an inference from that.

. . .

MS. BOZEMAN: Yes, your Honor. That toxicology portion does not come from this doctor's report. Specifically, in terms of what effects methamphetamine in certain amounts would have on a person, I don't believe this doctor -- one, I don't believe that this doctor would even

> be the person to testify to that. And if that is going to ever become admissible based on the defendant, for example, testifying that she used methamphetamine and was therefore particularly violent, then the Defendant can elicit that testimony. It is irrelevant at this point and extremely unfairly prejudicial.
>
> THE COURT: All right. And so the Court is not, not convinced that it's appropriate to take testimony on, on a conditional basis. And so to that extent, the objection is -- well, there is an objection pending at this point. In the event there's a request that the witness not be excused, that's another matter. Anything further?
> (Tr. T. (vol. 3) at 139-140, 141-144).

During trial Mr. Schnackenberg objected to testimony about the blood sample taken at Ms. Hardy's autopsy because there had been no evidence entered into trial at that point establishing that the body examined by the medical examiner belonged to Ms. Hardy. (Tr. T. (vol. 3) at 193-195). The trial court ruled that "I'm not hearing that there's any evidence that that's Kimberly Hardy. So, this witness. . . [can] testify. . . [about] the blood sample from the autopsy performed by Dr. Funte," but not identify it as Ms. Hardy's. (Tr. T. (vol. 3) at 195). After which two stipulations were reached by the parties:

> MS. BOZEMAN: So, your Honor, we've had some discussions. I think there are two stipulations that we're agreeing to that would not necessitate Dr. Funte returning. Um, Defendant is going to stipulate that the body that the autopsy was performed on and the blood spot card it's associated with is Kim Hardy.
>
> THE COURT: Okay.
>
> MS. BOZEMAN: The State is going to stipulate to the allowance of it to be presented to the jury that Kim had methamphetamine —

MS. ROBBIN: In her system.

MS. BOZEMAN: -- in her system at the time of the autopsy.
(Tr. T. (vol. 3) at 205).

The stipulations were then submitted to the jury. (Tr. T. (vol. 3) at 207-209); (Tr. T. (vol. 4) at 160).

The jury was instructed on self defense, including the dwelling home exception to the duty to retreat. (Tr. T. (vol. 5) at 92-97). When discussing the jury instructions, Mr. Schnackenberg asserted that the dwelling home language was confusing. (Tr. T. (vol. 5) at 10).

After Mr. Schnackenberg rested, the State called a rebuttal witness to contradict his trial testimony. (Tr. T. (vol. 5) at 42-53). The jury then received instruction from the trial court and was sent to deliberate. (Tr. T. (vol. 5) at 74-101, 138). The jury reached a guilty verdict. (Tr. T. (vol. 5) at 140).

Mr. Schnackenberg received a fifty-five year sentence. (Sent. T. at 56).

After Mr. Schnackenberg was sentenced on March 31, 2025, he timely filed a notice of appeal and application to allow an appeal of his sentence. (App. at 11). This court granted his sentence appeal on July 16, 2025 and that appeal was consolidated with his direct appeal for consideration by this Court. See Order, Granting Leave, July 16, 2025 at 1.

Issues Presented for Review

I. Whether the trial court's rulings to exclude Ms. Hardy's toxicology results and report from evidence was in error and violation of his Due Process rights.

II. Whether the jury's instructions were prejudicial and in error.

III. Whether the trial court abused its discretion in admitting Exhibits 78-A, 79-A, and 84, which are photographs of Ms. Hardy's skull wounds.

IV. Whether the Aroostook County Court erred in imposing both Mr. Schnackenberg's basic and maximum sentences.

Statement of Issues Presented for Review

Mr. Schnackenberg asserts that the exclusion of Ms. Hardy's toxicology results and report by the trial court was in error and was an abuse of the trial court's discretion. The information was highly pertinent to Mr. Schnackenberg's case and claim of self defense. The trial court should have allowed Mr. Schnackenberg to generate testimony about the substances in Ms. Hardy's blood stream and the affects of drugs at the levels displayed in the results. Additionally, exclusion of the information affected Mr. Schnackenberg's ability to present a complete defense and hindered his ability to defend his case in a beneficial way.

Additionally, the legal instructions given to the jury failed to provide a clear and adequate explanation of the State's burden in disproving a self defense claim. As instructed, the jury was invited to make a finding without taking into consideration, at the appropriate point in time, the dwelling home exception to the duty to retreat. In total, the instructions were lengthy and presented the law in a manner that prohibited the jury from being able to adequately interpret the law and insert the duty to retreat exception into its analysis where it was required to do so.

Mr. Schnackenberg further asserts that the photographic evidence of Ms. Hardy's skull, presented by the State during his trial, was cumulative, inflammatory, and gruesome and only served to inflame and prejudice Mr. Schnackenberg in the minds of the jury, which was clearly accomplished through the resulting guilty verdict. The State did not need these photographs to prove any element of its case. Additionally, there were less gruesome methods available to the State to discuss the skull wounds.

In imposing its sentence the sentencing court has erred by incorrectly considering specific details of domestic violence in the first step of its analysis and then considering those same details in the second step of its analysis. The sentencing court further incorrectly weighed the mitigating and aggravating factors and attributed too much weight to the domestic violence aspect of the case and the impact on the victim's family and community. The sentencing court has also imposed a sentence that is excessive when compared to similar crimes.

Argument

I. The trial court's rulings to exclude Ms. Hardy's toxicology results and report from evidence was in error and violation of his Due Process rights.

"[A] trial court's ruling on evidentiary relevance [is reviewed] for clear error. Dolloff, 2012 ME 130, ¶ 24, 58 A.3d 1032." State v. Hassan, 2013 ME 98, ¶ 21, 82 A.3d 86, 92 (Me. 2013). A Rule 403 finding is reviewed by this Court for an abuse of the trial court's discretion. Id., ¶ 24, 92 (Me. 2013). Evidence of prior

bad acts under Rule 404(b) is reviewed for clear error. State v. Williams, 2024 ME 37, ¶ 28, 315 A.3d 714, 721 (Me. 2024).[16]

Review "of an alleged constitutional violation is de novo." State v. Jones, 2012 ME 126, ¶ 35, 55 A.3d 432, 441-442 (Me. 2012); see also State v. Larsen, 2013 ME 38, ¶ 17, 65 A.3d 1203, 1207 (Me. 2013)(quotations and citation omitted). Unpreserved errors are reviewed by this Court for obvious error standard.[17] See State v. Brine, 1998 ME 191, ¶ 13, 716 A.2d 208, 212 (Me. 1998); State v. Thomes, 1997 ME 146, ¶ 7, 697 A.2d 1262, 1264 (Me. 1997); State v. Bedrin, 634 A.2d 1290, 1292 (Me. 1993); State v. Shackelford, 634 A.2d 1292, 1295 (Me. 1993); State v. Naoum, 548 A.2d 120, 125 (Me. 1988); M.R.Crim.P. 52(b).

The exclusion of the toxicology results and report by the trial court was in error was an abuse of the trial court's discretion. The information was highly pertinent to Mr. Schnackenberg's case and claim of self defense. The trial court should have allowed Mr. Schnackenberg to generate testimony about the

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[16] The State raised objection to the admission of the toxicology results and report under Maine Rules of Evidence 401, 403 and 404. (Tr. T. (vol. 3) at 139). Mr. Schnackenberg at one point on the record states that the information is not yet relevant but continues to question the medical examiner about the toxicology report in relation to his findings and moves again for admission of the information. (Tr. T. (vol. 3) at 140-144).

[17] The test for establishing obvious error has been concisely stated to include a showing, by the defendant, of "(1) an error, (2) that is plain, and (3) that affects substantial rights. . . [e]ven if these three conditions are met. . .a jury's verdict [is] only [set aside] if. . . (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." State v. Dolloff, 2012 ME 130, ¶ 35, 58 A.3d 1032, 1043 (Me. 2012)(internal citations and quotations omitted).

substances in Ms. Hardy's blood stream and the affects of drugs at the levels displayed in the results. Additionally, exclusion of the information effected Mr. Schnackenberg's ability to present a complete defense and hindered his ability to defend his case in a beneficial way.

Toxicology results and reports have been admitted into evidence by court in a number of other states.[18] An opinion from Louisiana, involving ten gunshot wounds as the cause of death, had a toxicology report entered into evidence that "showed the presence of methamphetamine and THC" where the examining doctor "testified that the drugs were not a contributing factor in [the victim's] death;" allowing for cross-examination testimony "that abusers of methamphetamine can exhibit violent and irrational behavior." State v. Noyes, 399 So. 3d 694, 698-699 (La. 2024). A second opinion from Louisiana showed that in a case involving gunshot wounds as the cause of death, a toxicology report was entered into evidence. State v. McGinnis, 392 So. 3d 963, 971 (La. 2024).

An Ohio case also had a toxicology report entered into evidence in a case where the cause of death was multiple gunshot wounds, showing that the victim's "blood-alcohol level at the time of death was .173 percent." State v. Trimble, 122 Ohio St. 3d 297, 302, 911 N.E.2d 242, 255 (Ohio 2009). Another Ohio case involving a gunshot wound as the cause of death allowed a toxicology report into

[18] It is a little unclear what the circumstances surrounding the admissions were, but in the cited cases the courts do not find fault in the admissions.

evidence showing the victim was "was drunk and high on cocaine." State v. Gillis, 2024-Ohio-726, ¶¶ 23-24 (Ohio Ct. App. 2024).

Additional cases in other jurisdictions have also shown entry of toxicology reports when drugs were not the source of the cause of death. See Lowery v. State, 310 Ga. 360, 361, 851 S.E.2d 538, 539-540 (Ga. 2020); Parish v. State, 488 S.W.3d 422, 425 (Tex. App. 2016); State v. Pham, 119 So. 3d 202, 206 (La. 2013); State v. Johnson, 2017 Tenn. Crim. App. LEXIS 173 (Tenn. Crim. App. 2017); Commonwealth v. Perez, 444 Mass. 143, 825 N.E.2d 1040, fn. 2 (Mass. 2005).

Additionally, in Mr. Schnackenberg's case, the evidence before the trial court by the time of Dr. Funte's testimony was extensive enough to support admission of the report into evidence. Multiple witnesses had testified at that point to drug use and acts of violence by Ms. Hardy against Mr. Schnackenberg. (Tr. T. (vol. 1) at 93-95, 119-120, 124-126, 165, 214-215, 218-220) Additionally, while not evidence, Mr. Schnackenberg had raised a clear claim of self defense to the jury in his opening statement. (Tr. T. (vol. 1) at 33-36, 39-44).

Moreover, after Dr. Funte's testimony, Mr. Schnackenberg, through his own testimony, raised a claim of self defense and outlined violence against him in the relationship. (Tr. T. (vol. 4) at 166, 171-172, 185-189, 191, 208-209). He specifically testified that he had not intended to shoot Ms. Hardy and that use of the gun was in self defense. (Tr. T. (vol. 4) at 199-201, 254-255).

In Mississippi, "[i]n self-defense cases, the defendant may show the deceased's intoxication as bearing upon the victim's mental state, motive and intention, as well as the defendant's belief in the imminence of his danger."[19] Kuebler v. State, 205 So. 3d 623, 641 (Miss. App. 2015). This concept is very similar to the rationale already used in Maine that allows for evidence of "[a] victim's reputation for violence, if known to the defendant, is admissible on the issue of self-defense for the purpose of showing reasonable apprehension of danger. M.R. Evid. 404 advisers' note."[20] State v. Leone, 581 A.2d 394, fn. 4 (Me. 1990); see also State v. Laferriere, 2008 ME 67, ¶ 4, 945 A.2d 1235, 1236 (Me. 2008). Such logic is easily extendable to the situation at hand to allow for use of the toxicology information in defense of Mr. Schnackenberg's case. As such, the trial court erred in finding that the toxicology information was not relevant and by not allowing it to be entered into evidence at trial through Dr. Funte's initial testimony. The trial court's ruling resulted a compromised stipulation being

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[19] The Supreme Court of Mississippi held in Byrd v. State, 154 Miss. 742, 123 So. 867, 869 (Miss. 1929), "that the defendant can raise the victim's intoxication to demonstrate all the conditions existing at the time of and giving rise to the killing, including the victim's mental state. Specifically, [that Court] explained that: In determining whether the defendant acted in self-defense, it is competent to show all the circumstances under which the fatal difficulty occurred, and which would in any manner have affected the defendant's motives and apprehensions, or indicate the mental state of the deceased. The defendant may show the deceased's intoxication as bearing upon his motive or intention and the defendant's belief in the imminence of his danger." Newell v. State, 49 So. 3d 66, 72-73 (Miss. 2010)(citation omitted).

[20] The Advisory Notes to Maine Rule of Evidence 404 note that: "[I]t should be noted that this rule does not keep out the victim's reputation for violence, proved to have been known to the accused before the event, for the purpose of showing his reasonable apprehension of immediate danger." Advisers' Note to M.R. Evid. 404 (Feb. 2, 1976).

reached and submitted to the jury that only contained the fact that methamphetamines were in Ms. Hardy's system and none of the beneficial, associated information that Mr. Schnackenberg wished to elicit, as he outlined to the trial court. See (Tr. T. (vol. 3) at 140, 205); (Tr. T. (vol. 4) at 160). The record exhibited enough evidence at the time of Dr. Funte's testimony to warrant admission of the toxicology information.

"The Due Process Clause of the Constitution prohibits deprivations of life, liberty, or property without 'fundamental fairness' through governmental conduct that offends the community's sense of justice, decency and fair play." State v. Stade, 683 A.2d 164, 166 (Me. 1996); State v. George, 2012 ME 64, ¶ 33, 52 A.3d 903, 911 (Me. 2012); State v. Mitchell, 2010 ME 73, ¶ 31, 4 A.3d 478, 486 (Me. 2010).[21]

The United States Supreme Court has made it clear that "the Constitution guarantees criminal defendants 'meaningful opportunity to present a complete

[21]State v. Mitchell, 2010 ME 73, ¶ 31, 4 A.3d 478, 486 (Me. 2010)(internal citation omitted), stated "[w]hether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense."

defense.'"[22] Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)(quoting California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984)); see also Holmes v. South Carolina, 547 U.S. 319, 324, 126 S. Ct. 1727, 1731, 164 L. Ed. 2d 503, 509 (2006)(citations omitted). This right to present a defense is "a fundamental element of due process of law." Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1976); see also United States v. Scheffer, 523 U.S. 303, 315, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998) (recognizing that the exclusion of evidence will violate a defendant's constitutional right to present a defense when it "significantly undermine[s] fundamental elements of the defendant's defense").

Moreover, this Court has recognized that "In Holmes the [Supreme] Court indicated that, to protect the accused's opportunity to present a complete defense, there may be instances where evidence must be admitted even if it would normally be excluded pursuant to the applicable evidence rules and common law

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[22] The Supreme Court of Tennessee has noted that: "Although rulings about the admissibility of evidence generally do not rise to the level of constitutional error, Rice, 184 S.W.3d at 673 (citing Crane, 476 U.S. at 689), the erroneous exclusion of evidence that thwarts a criminal defendant's right to present a defense is constitutional error. Id.; see also, e.g., Brown, 29 S.W.3d at 436 (holding that 'depriving the defendant of the right to present critical, reliable hearsay evidence of an alternative explanation for the injury is constitutional error'). To determine whether the erroneous exclusion of evidence violated a defendant's constitutional right to present a defense, we consider whether the excluded proof is critical to the defense; whether it bears sufficient indicia of reliability; and whether the interest supporting exclusion of the proof is substantially important. Rice, 184 S.W.3d at 673; see also United States v. Scheffer, 523 U.S. 303, 315, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998) (recognizing that the exclusion of proof violates the constitutional right to present a defense when it 'significantly undermine[s] fundamental elements of the defendant's defense')." State v. Bell, 480 S.W.3d 486, 509 (Tenn. 2015).

formulations. . .” State v. Mitchell, 2010 ME 73, ¶ 32, 4 A.3d 478, 486 (Me. 2010) (citation omitted). And when an unfair balance is created when, “[t]he application of court-created evidentiary rules will run afoul of this right if it ‘infringe[s] upon a weighty interest of the accused and [is] arbitrary or disproportionate to the purposes [the rules] are designed to serve.’” Id.

The trial court’s exclusion of the toxicology information also affected Mr. Schnackenberg’s Due Process rights under the United States and Maine Constitutions. This error was at the core of Mr. Schnackenberg’s case and essential to his self defense claim. Due to the court’s ruling he was unable to present key information about the affects methamphetamines would have had on Ms. Hardy at the time of her death and at the time when Mr. Schnackenberg was asserting a claim of self defense. Such error was not remedied by the offered stipulation and affected the fairness of the proceedings against Mr. Schnackenberg. (Tr. T. (vol. 4) at 160).

The Supreme Court of Hawaii found a violation of a defendant’s due process right to present a complete defense when the trial court limited a defendant’s

ability to explore the effect of the drugs in a victim's system.[23] State v. DeLeon, 131 Haw. 463, 485-486, 319 P.3d 382, 404-405 (Haw. 2014). A similar limitation affected Mr. Schnackenberg, as he was unable to present evidence about the effects that the methamphetamines in Ms. Hardy system would have had on her behavior. The hindrance prevented Mr. Schnackenberg from presenting a complete defense and such an error warrants a new trial.

II. The jury's instructions were prejudicial and in error.

Jury instructions are reviewed "'as a whole for prejudicial error, and to ensure that they informed the jury correctly and fairly in all necessary respects of

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[23] The Court stated that "'[t]he due process guarantee of the . . . Hawaii constitution [] serves to protect the right of an accused in a criminal case to a fundamentally fair trial.' State v. Kaulia, 128 Hawai'i 479, 487, 291 P.3d 377, 385 (2013)(quoting State v. Matafeo, 71 Haw. 183, 185, 787 P.2d 671, 672 (1990)). 'Central to the protections of due process is the right to be accorded a meaningful opportunity to present a complete defense.' Id. (quoting Matafeo, 71 Haw. at 185, 787 P.2d at 672). To the extent that DeLeon was precluded from introducing Dr. Wong's testimony with regard to the probable effects of cocaine on Powell at the time of the shooting, DeLeon was not able to present a complete defense. DeLeon's self-defense argument relied largely on Powell's actions immediately before the shooting. Although Dr. Wong was able to present testimony at trial as to Powell's 'high degree of alcohol intoxication,' the jury was precluded from receiving information regarding Powell's cocaine use and the combined effects of cocaine and alcohol. . . Because DeLeon's defense depended heavily on Powell's behavior immediately before DeLeon shot him, there is a reasonable possibility that the exclusion of this testimony affected the outcome of the trial. In sum, the exclusion of Dr. Wong's cocaine testimony compromised DeLeon's ability to present a complete defense. Accordingly, the circuit court plainly erred in precluding Dr. Wong's cocaine testimony. Therefore, we vacate DeLeon's convictions for second-degree murder (Count II) and Carrying or Use of a Firearm While Engaged in the Commission of a Separate Felony (Count IV)." State v. DeLeon, 131 Haw. 463, 485-486, 319 P.3d 382, 404-405 (Haw. 2014).

the governing law.'"[24] State v. Hanscom, 2016 ME 184, ¶ 10, 152 A.3d 632, 635 (Me. 2016)(citation omitted).

"When a party challenging the court's instruction has preserved his or her objection at trial, [this Court] will vacate the [trial] court's judgment only if the erroneous instruction resulted in prejudice." Caruso v. Jackson Lab., 2014 ME 101, ¶ 12, 98 A.3d 221, 226 (Me. 2014); see also State v. Sapiel, 432 A.2d 1262, 1270 (Me. 1981).

More succinctly, when an objection is timely raised, this Court "review[s] jury instructions as a whole for prejudicial error, to ensure they informed the jury correctly and fairly. . . consider[ing] the effect of the instruction as a whole and the potential for juror misunderstanding. . . [and e]rrors in criminal cases that affect

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[24] Mr. Schnackenberg, when reviewing the jury instructions with the trial court, asserted that in relation to point 4 of the court's self defense instructions that it was "with all due respect, a little confusing, the language. . . Um, that Mr. Schnackenberg was the initial aggressor in his own dwelling and he failed to retreat from the encounter with Miss Hardy despite the fact that he knew he could do so with complete safety. . . . I find that if I were a juror, I would find it unclear to me that if he is not the initial aggressor, he has no duty to retreat. . . The part that Miss Robbin just quoted, if that could maybe come in after the portion that I just read at four so that it's more closely in time related to each other so that the juror understands that both options exist. . . The only thing that I was suggesting is that I immediately would like it to say something like it is important to note that he had no duty to retreat if he is not the initial aggressor, to put that in their mind right there, because I think it's sort of buried on the previous." (Tr. T. (vol. 5) at 32-35). No further discussion of the instruction was made on the record and the final version was read to the jury without mention of the dwelling home exception to the duty to retreat as part of point four of the self defense instructions. (Tr. T. (vol. 5) at 94-95). This Court has noted that issues are preserved for appeal if the general thrust of the argument is found in the record: "[w]e instead treat Lester's argument as preserved because the general contours of the argument as framed before us were presented to the trial court. See State v. Jandreau, 2022 ME 59, ¶ 22, 288 A.3d 371 ('An issue is raised and preserved if there was a sufficient basis in the record to alert the court and any opposing party to the existence of that issue.' (quotation marks omitted))." State v. Lester, 2025 ME 21, fn.3, 331 A.3d 426, fn. 3 (Me. 2025).

constitutional rights are reviewed to determine that. . . [it is] satisfied, beyond a reasonable doubt, that the error did not affect substantial rights or contribute to the verdict." State v. Gauthier, 2007 ME 156, ¶ 14, 939 A.2d 77, 81 (Me. 2007) (citations omitted).

Additionally, a "jury instruction that 'creates the possibility of jury confusion and a verdict based on impermissible criteria' is erroneous . . . [and s]uch an error is harmless only if the court believes it highly probable that it did not affect the verdict." State v. Soule, 2001 ME 42, ¶ 8, 767 A.2d 316, 319 (Me. 2001)(citation and quotations omitted).

The trial court instructed the jury on self defense. (Tr. T. (vol. 5) at 92-97). In doing so the trial court included a section on the use of deadly force and the dwelling home exception to the duty to retreat. (Tr. T. (vol. 5) at 94-95). However, the way that the court arranged the instruction does not adequately instruct the jury on the exception. As such, the instructions are flawed and do not properly inform the jury on the dwelling home exception to a person's duty to retreat.[25]

The jury instructions provided as follows:

I will now explain the law relative to the use of deadly force and

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[25] Title 17-A M.R.S. § 108(2)(C)(3)(a) provides for a dwelling place exception to the requirement to retreat. Section 108(2)(C)(3)(a) states: "[a] person is justified in using deadly force upon another person. . . However, a person is not justified in using deadly force as provided in paragraph A if. . . [t]he person knows that the person or a 3rd person can, with complete safety. . . [r]etreat from the encounter, except that the person or the 3rd person is not required to retreat if the person or the 3rd person is in the person's dwelling place and was not the initial aggressor."

> self-defense. Maine law provides that a person is justified in using deadly force upon another person when the person reasonably believes it necessary and reasonably believes that such person -- such other person is about to use unlawful deadly force against the person or a third person. However, a person is not justified in using deadly force against another if, with the intent to cause physical harm to another, the person provokes such other person to use unlawful deadly force against anyone, or the person knows that the person can with complete safety retreat from the encounter, **except that the person is not required to retreat if that person is in the person's dwelling place and was not the initial aggressor.**
>
> Applying the law to this case, if the State proves beyond a reasonable doubt at least one of the following four things, one, that Mr. Schnackenberg, with the intent to cause physical harm to another, provoked Miss Hardy to use unlawful deadly force against anyone; or, two, that Jayme Schnackenberg did not actually believe that Kimberly Hardy was about to use unlawful deadly force against him; or, three, that Mr. Schnackenberg did not actually believe that his use of deadly force was necessary to defend himself against Miss Hardy; or, **four, that Mr. Schnackenberg was the initial aggressor in his own dwelling and he failed to retreat from the encounter with Miss Hardy despite the fact he knew that he could do so with complete safety, then the State has met its burden of proving beyond a reasonable doubt the absence of selfdefense, and you should find Mr. Schnackenberg is guilty of either intentional or knowing murder or recklessly -- pardon me, reckless or criminally negligent manslaughter, depending on** which of these crimes you found on the basis of the instructions that I earlier gave to you relative to murder and the lesser-included crime of manslaughter. (Tr. T. (vol. 5) at 94-95)(emphasis added).

This Court has found that "to ensure the jury's proper understanding of the law, a court must provide the jury, as fact-finder, with an appropriate instruction regarding the self-defense justification." State v. Herzog, 2012 ME 73, ¶ 10, 44 A.3d 307, 309 (Me. 2012)(citation omitted). And, as noted, jury instruction cannot

create "the possibility of jury confusion" and a verdict based on such "impermissible criteria" is erroneous. State v. Soule, 2001 ME 42, ¶ 8, 767 A.2d 316, 319 (Me. 2001)(citation and quotations omitted).

The aforementioned portion of the self defense instructions is confusing and hard to follow or comprehend, failing to instruct the jury on exactly what the State needed to do to in order to disprove Mr. Schnackenberg's self defense claim. When the court is instructing the jury on the four things that the State must prove it should have included the exception to the duty to retreat in those points. (Tr. T. (vol. 5) at 95). As written, the instructions favor the State and fail to properly instruct the jury on what it must find. The instructions invites the jury to make a finding without taking into consideration the dwelling home exception.

The instructions encouraged the jury's verdict to be based on a misapprehension or misunderstanding of the law. In State v. Baker, 2015 ME 39, ¶ 15, 114 A.3d 214, 216 (Me. 2015), the trial court's instructions left the jury to guess about how to accurately apply all the applicable concepts of the law it was provided. See also State v. Weaver, 2016 ME 12, ¶ 12, 130 A.3d 972, 77 (Me. 2016). A similar issue is present in these instructions because the trial court does not instruct the jury to consider the dwelling home exception when it is listing the specific four factors it must consider when making its decision. By leaving out the dwelling home exception in that section the jury has not been told to specifically consider that exception in making its ruling under those four factors on self

defense. To this point, it is likely that the jury did not consider the exception and made its finding very literally on just what is stated in those four points.

In all, the instructions were lengthy and presented the law in a manner that prohibited the jury from being able to adequately interpret the law and insert the duty to retreat exception into its analysis where it was required to do so. As such, the trial court's instructions on self defense to the jury were erroneous and confusing and deprived Mr. Schnackenberg of a fair trial.

III. The trial court abused its discretion in admitting Exhibits 78-A, 79-A, and 84, which are photographs of Ms. Hardy's skull wounds.

A trial court's admission of photographs is reviewed for an abuse of discretion by the trial court. State v. Joy, 452 A.2d 408, 412 (Me. 1982); State v. Smith, 472 A.2d 948, 949-50 (Me. 1984); State v. Condon, 468 A.2d 1348, 1351 (Me. 1983); State v. Ernst, 114 A.2d 369, 373 (Me. 1955).

Mr. Schnackenberg asserts that the photographic evidence of Ms. Hardy's skull, presented by the State during his jury trial was cumulative, inflammatory, and gruesome and only served to inflame and prejudice Mr. Schnackenberg in the minds of the jurors, which was clearly accomplished through the resulting guilty verdict. The State sought to admit, and admitted, three photographs that depicted

the gunshot wounds to Ms. Hardy's skull over Mr. Schnackenberg's objection at trial.[26] (Tr. T. (vol. 3) at 16-18, 27-29, 62).

Such photographs are admissible if they meet a three part test. They need to be accurate depictions, relevant, and their probative value needs to not be outweighed by any tendency toward unfair prejudice.[27] State v. Allen, 2006 ME 21, ¶ 10, 892 A.2d 456, 459 (Me. 2006); see also State v. Lockhart, 2003 ME 108, ¶ 46, 830 A.2d 433, 448 (Me. 2003); State v. Crocker, 435 A.2d 58, 75 (Me. 1981); State v. Wardwell, 183 A.2d 896, 899 158 Me. 307 (Me. 1962).

"'The long-standing rule in Maine is that it is within the sound discretion of the trial court to exclude photographs on the basis of unfair prejudice that outweighs the probative value of the exhibit.' State v. Woodbury, Me., 403 A.2d 1166, 1169 (1979)." State v. Conner, 434 A.2d 509, 512 (Me. 1981). This Court has "recognized that a gruesome photograph depicting a murder victim has the

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[26] Black and white versions of the photographs were entered into evidence in relation to Exhibits 78-A and 79-A. (Tr. T. (vol. 3) at 27-28, 131-133). Exhibit 78-A and 79-A show detailed entrance and exit wounds to Ms. Hardy's skull. (Tr. T. (vol. 3) at 23-28). Exhibit 84 was in color, and showed the skull bone fragment superimposed on a skull picture from Ms. Hardy's autopsy. (Tr. T. (vol. 3) at 27-29); (Tr. T. (vol. 4) at 62).

[27] "The third determination in the analysis set forth in Crocker for the admissibility of photographs is a Rule 403 inquiry: whether the 'probative value is substantially outweighed by the danger of unfair prejudice.' M.R. Evid. 403. To sustain a Rule 403 objection, the prejudice 'must be more than simply damage to the opponent's cause.' State v. Ardolino, 1997 ME 141, ¶ 10, 697 A.2d 73, 78 (citations omitted). It must be evidence that has 'an undue tendency to move the tribunal to decide on an improper basis, commonly, though not always, an emotional one.' Id." State v. Allen, 2006 ME 21, ¶ 13, 892 A.2d 456, 460 (Me. 2006).

potential for prejudicially inflaming the emotions of the jury against the defendant, and that under some circumstances its admission would be error." Id.

In balancing the probative value of a photograph against the unfair prejudice to a defendant:

> The critical factor in th[e] balancing test is the significance of the photograph in proving the State's case. Where the photograph has minimal significance, e. g., where it is probative only of uncontroverted facts, or where its value is merely cumulative of other less prejudicial evidence, then it is the responsibility of both the prosecutor and the trial court to examine closely those photographs that are arguably prejudicial; where the photograph has essential evidentiary value, then even a gruesome photograph may properly be admitted into evidence. . . There is a wide range available for the proper exercise of the trial court's discretion, the result depending upon the circumstances in the particular case. In making such a discretionary judgment on admissibility of a photograph, the trial court must strike a rationally justifiable balance between the evidentiary value of the depiction afforded by the photograph in the total circumstances of the trial, on the one hand, and its potential, on the other hand, to cause inflammatory prejudice because of the gruesome aspects of the depiction.
>
> Id. (citations omitted); see also State v. Lockhart, 2003 ME 108, ¶ 46, 830 A.2d 433, 448 (Me. 2003)

In ruling to admit photographs,

> Even where a gruesome photograph is properly admissible, the prosecutor and the trial court should take steps to reduce the potential for prejudice, if possible. Some steps can be taken before the victim is photographed, such as cleansing the blood from the body or the victim's face. See Commonwealth v. Brueckner, 458 Pa. 39, 44-45, 326 A.2d 403, 406 (1974). At trial, portions of the photograph might be excised or covered before the jury is allowed to see it, see id.; People v. McCrary, 190 Colo. 538, 553-54, 549 P.2d 1320, 1332 (1976), or black and white photographs might be substituted in place of color photographs. While

> color makes a photograph more accurate, it may also increase its "gruesomeness." Cf. State v. Duguay, 158 Me. 61, 64, 178 A.2d 129, 131 (1962); Chacko, 480 Pa. at 506, 391 A.2d at 1000; State v. Poe, 21 Utah 2d 113, 116-18, 441 P.2d 512, 514-15 (1968).
> State v. Conner, 434 A.2d 509, 512-513 (Me. 1981).

Admission of Exhibits 78-A, 79-A, and 84 fail the third prong of the test for admission of photographs of this type laid out above: their probative value is not outweighed by any tendency toward unfair prejudice.

Here it is important to note that "[i]n making. . . a discretionary judgment on admissibility of a photograph, the trial court must strike a rationally justifiable balance between the evidentiary value of the depiction afforded by the photograph in the total circumstances of the trial, on the one hand, and its potential, on the other hand, to cause inflammatory prejudice." State v. Conner, 434 A.2d 509, 512 (Me. 1981). The State did not need these photographs to prove any element of its case. Additionally, there were less gruesome methods available to the State to discuss the skull wounds. The State entered Exhibit 80 into evidence through the medical examiner, which showed "a radiograph or an x-ray" of Ms. Hardy's head wounds. (Tr. T. (vol. 3) at 128-130). The State also entered Exhibit 81 into evidence at trial which was a "diagram" drawn "during autopsy. . . depict[ing] the two, um, entrance defects, the location of the laceration, and the location of the exit defect" in Ms. Hardy's skull.[28] (Tr. T. (vol. 3) at 135).

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[28] Based off of this exhibit, the medical examiner was able to testify to the trajectory and findings of the bullets wounds to Ms. Hardy's head. (Tr. T. (vol. 3) at 135-137).

Ms. Hardy's blood was found on numerous swabs taken at the School Street home. (Tr. T. (vol. 2) at 154-156); (Tr. T. (vol. 3) at 64-87, 104-110). Mr. Schnackenberg's DNA was found on the mop handle from which the piece of bone was discovered. (Tr. T. (vol. 2) at 158); (Tr. T. (vol. 3) at 73, 91-92, 172, 174-178, 200-201). The State enlisted an expert witness Dr. Sorg, to match up the skull pieces, alleviating the jury from a need to view the photographs themselves in order to gain insight on the skull injury and mop fragment. (Tr. T. (vol. 4) at 55-64). The extensive focus on the skull fragment and photographs was unnecessary and not essential to the State to prove its case. The photographs had little probative value for the State and prejudice the jury against Mr. Schnackenberg. Photographs are a powerful tool that can leave a lasting impression on a jury. As the saying goes, a photograph is worth a thousand words.

The trial court described the affect of the images contained in 78-A and 79-A as "a little gorier than, than -- than the other photos for sure." (Tr. T. (vol. 3) at 27). The trial court also stated that "the prejudicial effect of the -- all the stuff in the head there" impacted his viewing of the photographs in Exhibits 78-A and 79-A. (Tr. T. (vol. 3) at 28). The trial court also differentiated Exhibit 84, noting that " [y]ou don't have all of the stuff hanging off the skull and bloody detail that are on the other ones [referencing Exhibits 78-A and 79-A)." (Tr. T. (vol. 3) at 29).

As such, the photographs only served to cause "inflammatory prejudice" to Mr. Schnackenberg because of their gruesome depiction of Ms. Hardy's skull.

And, given the other evidence at trial, these photographs were not necessary to prove the State's case. Inclusion of the photographs into evidence was inflammatory, gruesome, sensational, superfluous, and cumulative, and therefore clearly prejudicial to Mr. Schnackenberg. Moreover, the photographs were probative of uncontroverted facts and there was less prejudicial evidence available to the State to establish the desired facts. To that point, there was other evidence entered into evidence at trial that presented the same information to the jury, namely Exhibits 80 and 81. The additions of these photographs to the State's case caused inflammatory prejudice due to the gruesome aspects of their depictions. The trial court committed an abuse of its discretion in admitting the photographs.

IV. The Aroostook County Court erred in imposing both Mr. Schnackenberg's basic and maximum sentences.

The basic term of incarceration is reviewed de novo for misapplication of principle.[29] State v. Carrillo, 2021 ME 18, ¶ 41, 248 A.3d 193, 207 (Me. 2021); State v. Robbins, 2010 ME 62, ¶ 9, 999 A.2d 936, 938-9 (Me. 2010). Review of the maximum sentence imposed by a sentencing court is for an abuse of discretion. State v. Stanislaw, 2013 ME 43, ¶ 17, 65 A.3d 1242, 1248 (Me. 2013). This Court "review[s] a double-counting claim de novo. State v. Plummer, 2020 ME 143, ¶ 11, 243 A.3d 1184." State v. Schlosser, 2025 ME 76, ¶ 43 (Me. 2025).

[29] While "the standard of review of abuse of discretion applies only to the maximum period of imprisonment and the final sentence. . . [the Court is] statutorily mandated to review any part of the sentence, including the basic term, for an abuse of the court's sentencing power." State v. Reese, 2010 ME 30, ¶ 23, 991 A.2d 806, 816 (Me. 2010)(internal citations omitted).

Additionally, review of a sentence is also considered as a whole. This review is based on a "statutory mandate to correct abuses of the sentencing power and to promote the development and application of criteria that are rational and just [and] applies to all. . . steps. . ." State v. Reese, 2010 ME 30, ¶ 23, 991 A.2d 806, 816 (Me. 2010)(internal citations omitted). As a result, although it has been "held that the standard of review of abuse of discretion applies only to the maximum period of imprisonment and the final sentence. . . [the Court is] statutorily mandated to review any part of the sentence, including the basic term, for an abuse of the court's sentencing power." Id., at 2010 ME 30, ¶ 23, 816 (Me. 2010)(internal citations omitted).

On March 31, 2025, the Aroostook County Court imposed a 55 year prison sentence. (Sent. T. at 1, 56). In imposing its sentence the sentencing court has erred by incorrectly considering specific details of domestic violence in the first step of its analysis and then considering those same details in the second step of its analysis. The sentencing court further incorrectly weighed the mitigating and aggravating factors and attributed too much weight to the domestic violence aspect of the case and the impact on the victim's family and community. The sentencing court has also imposed a sentence that is excessive when compared to similar crimes.

"The sentence for murder must be for life or for a term of at least 25 years. 17-A M.R.S. § 1603(1)(2024). In imposing a sentence for murder, the court

undertakes a two-step analysis. 17-A M.R.S. § 1602(1)-(2)(2024). First, the court determines 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). Second, the court determines the maximum term by considering "all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case," including, for example, the defendant's criminal history. 17-A M.R.S. § 1602(1)(B)." State v. Lester, 2025 ME 21, ¶ 18, 331 A.3d 426, 434 (Me. 2025).

In setting the basic sentence "[t]he relevant factors are those relating to 'the objective nature of the crime,' in contrast with second-step factors, which are "peculiar to the individual offender." State v. Plummer, 2020 ME 143, ¶ 13, 243 A.3d 1184 (alteration and quotation marks omitted)."[30] State v. Lester, 2025 ME 21, fn. 6, 331 A.3d 426, 434 (Me. 2025).

The sentencing court stated in discussing the basis sentence that "[b]ecause the case involved domestic violence by Mr. Schnackenberg to Miss Hardy, in setting the basic term of imprisonment, the Court must assign special weight to that factor as it relates to the sentencing procedure." (Sent. T. at 51). The sentencing

[30] Step two of the sentencing analysis requires the sentencing court to consider "whether any mitigating or aggravating factors exist to adjust the sentence upward or downward." State v. Robbins, 2010 ME 62, ¶ 10, 999 A.2d 936, 939 (Me. 2010)(internal citation omitted). When setting the maximum sentence include "the court sentencing for a murder conviction determines the final period of incarceration based on the relevant aggravating and mitigating factors" and it also takes "into account sentencing principles related to rehabilitation, restitution, and differentiation of sentences to account for the individual circumstances of the defendant and to achieve a just outcome." State v. Koehler, 2012 ME 93, ¶ 33, 46 A.3d 1134, 1139-1140 (Me. 2012)(citations omitted).

court also noted in setting the basic sentence that Ms. Hardy was attempting to leave Mr. Schnackenberg and take the cat, finding that the "murder was about issues of power and control[, h]e simply could not let her leave the home." (Sent. T. at 52). The sentencing court further noted that "[m]urder is the ultimate act of domestic violence." (Sent. T. at 52). The sentencing court further stated that "[t]he basic sentence in the comparable domestic violence cases provided by the parties range from 35 years to life in prison, with a case at each end of those spectrums[,]" and set the basic sentence at 45 years. (Sent. T. at 52-53).

In setting the maximum sentence and discussing the aggravating factors, the sentencing court stated that: "they include the subjective impact of the crime on the victim's family as reflected in their words here today. The victim impact is profound. It's substantial. It's significant." (Sent. T. at 54). The court then continued to stated that "Kimberly Hardy did not have to die. She simply could have left with the cat. . . He couldn't let her leave, and he couldn't let her do so with the cat. If he would have simply let her leave, she and Mr. Schnackenberg simply would have gone on living their separate lives." (Sent. T. at 54-55). Finding that the "aggravating factors substantially outweigh the mitigating factors" the sentencing court imposed a maximum sentence of 55 years. (Sent. T. at 55-56).

This Court had stated that "the domestic violence nature of the murder [is] a factor to be given special consideration in sentencing" and "an objective factor properly considered in the first step of the sentencing analysis". State v. Leng,

2021 ME 3, 22, 244 A.3d 238, 244 (Me. 2021); see also State v. Nichols, 2013 ME 71, ¶ 29, 72 A.3d 503, 511 (Me. 2013). As such, there was a misapplication of principle in setting the basic sentence because the sentencing court took into account the subjective fact that Ms. Hardy was attempting to leave Mr. Schnackenberg and take the cat. (Sent. T. at 52). It was also error for this factor to be double counted a second time in setting the maximum sentence where the sentencing court took note of the fact that Ms. Hardy was trying to leave Mr. Schnackenberg and take the cat. (Sent. T. at 54-55).

Additionally, in addition to double counting the domestic violence aspect of the case as an aggravating factor in setting the maximum sentence the court also overweighed and gave "substantial" weight to the effect that the crime had on the victim's family and friends. (Sent. T. at 54). Doing so was an unfair abuse of the court's discretion and resulted in an excessive sentence of 55 years when compared to similar cases of domestic violence deaths that were outlined by Mr. Schnackenberg in his sentencing presentation. (Sent. T. at 31-42).

Conclusion

For the above-reasons, the Appellant asks this Court vacate his conviction and remand his case to the Aroostook County Courts for further proceedings.

Dated: September 19, 2025

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Certificate of Service

I, Jeremy Pratt, Esquire, hereby certify that on this date I sent by electronic mail one copy of the foregoing Brief of Appellant, later to be followed by one printed copy, via the U. S. Postal service, to Leanne Robbin, Esq., Office of the Attorney General, 6 State House Station, Augusta, ME 04333.

Dated: September 19, 2025

_____/s/ Jeremy Pratt_____
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