

**STATE OF MAINE
AROOSTOOK, ss.**

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. ARO-25-177**

**STATE OF MAINE,
Appellee**

v.

**JAYME SCHNACKENBERG,
Appellant**

ON APPEAL FROM THE SUPERIOR COURT

BRIEF OF APPELLEE

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STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Factual Background

In the early morning hours of June 16, 2023, Jayme Schnackenberg shot Kim Hardy, his girlfriend of six years, twice in the head as she tried to leave their home on 9 School Street in Monticello. (Trial Transcript (Tr.T.) Vol. 1 at 168, 202, 212-213; Tr.T. Vol. 3 at 125, 126, 137; Tr.T. Vol. 4 at 200-201.) He attempted to clean the home of the blood, packaged Kim's lifeless body in layers of tarp and garbage bags secured by duct tape and straps, and then disposed of her body off a logging road in a remote section of the Irving forest land. (Tr.T. Vol. 1 at 139-141; Tr.T. Vol. 2 at 60-61, 64, 65-67, 70-73; Tr.T. Vol. 3 at 38-45, 75-88.)

Friends and family did not begin searching for Kim until June 18, 2023, when they noticed that Kim had not been returning their calls or texts. (Tr.T. Vol. 1 at 73, 79-80, 103-105, 131-132.) They had been aware that the relationship between Schnackenberg and Kim had been deteriorating, with Schnackenberg confiding in one friend that it was "looking like they were both ready to call it quits." (Tr.T. Vol. 1 at 102-103.) Facebook messages between Kim and Schnackenberg revealed their conflict over his use of drugs and his lies, with Kim telling him on June 14, 2023, "I'm done." (Tr.T. Vol. 4 at 70-74.)

Kim's friends went to the couple's home on June 18, 2023, after they were unable to reach her by phone, and became increasingly concerned when they noticed that Schnackenberg's inoperable pickup truck—a longtime fixture in the driveway—was gone, Kim's Chevy Impala was parked at the house, and blankets were covering the windows to the kitchen area. (Tr.T. Vol. 1 at 73-78, 107-109.) One of Schnackenberg's coworkers observed that on June 16, 2023, the pickup had been parked under a portable tarp structure, roughly held up with two by fours, and that by June 18, 2023, the structure and truck had been removed. (Tr.T. Vol. 1 at 151-153.) The coworker also related that Schnackenberg routinely carried a Taurus .40 caliber pistol, and that Schnackenberg told him while commuting in the week following Kim's disappearance that he had misplaced some of the parts of the gun but later located them "right where I had cleaned the gun." (Tr.T. at 159-161.)

When friends and family contacted Schnackenberg after Kim's disappearance to ask about her, he claimed that:

I don't know, she just left on Friday...Friday morning I was completely tired, I was exhausted, and I just wanted to go to sleep on the couch, and Kim kept bothering me, come on, we got to go somewhere, we gotta go. And he said, no, I'm going to sleep. And he said he laid back on the couch. Kim grabbed a backpack and she left.

(Tr.T. Vol. 1 at 110.) Schnackenberg told Kim's mother that Kim "left to go on a hike...left with her backpack" on foot, without her car. (Tr.T. Vol. 1 at 133.)

On June 18, 2023, at about 5:40 p.m., Kim's mother called law enforcement to report that Kim was missing. (Tr.T. Vol. 1 at 241-242.) Maine State Troopers Timmy Saucier and Lainey Merchant responded to 9 School Street and spoke with Schnackenberg. (Tr.T. Vol. 1 241-249; Tr.T. Vol. 2 at 6-8). He reiterated the same story, as captured by the audio on Trooper Saucier's Watchguard cruiser camera video (State's Ex. 135): "Friday morning, she packed a bag full of clothes there and took off. I stayed home Friday because I was sick; I was throwing up all night Thursday. I wanted to sleep. She thought I was ignoring her. And she says I don't need to be here then. I can be somewhere else, and she just took off. ...Damnedest thing, she didn't even take her car, man....I don't know how she's going to get anywhere." (Tr.T. Vol. 1 at 243-245, State's Ex. 135.) Schnackenberg told the troopers that Kim left about 5 in the morning and he denied that they had any recent fights. (*Id.*) Trooper Merchant searched Kim's car and found Kim's checking and savings cards. (Tr.T. Vol. 2 at 8.)

On June 20, 2023, Sgt. Jeffrey Clark of the Maine State Police followed up with Schnackenberg, and Schnackenberg told him "that [Kim] had just left at five o'clock Friday morning" with her phone and backpack. (Tr.T. Vol. 2 at 13.)

Schnackenberg “said he couldn’t for the life of him understand why she didn’t take her car.” (Tr.T. Vol. 2 at 14.) Schnackenberg went on to relate that he and Kim had been together for six years and “planned on getting married in August.” (Tr.T. Vol. 2 at 16-17.)

On June 22, 2023, Detective Sgt. Adam Bell followed up with Schnackenberg by phone. Schnackenberg revealed that he and Kim had had a falling out and that she had been looking for an apartment, but she had not mentioned which town she had been looking in. (Tr.T. Vol. 2 at 185, State’s Ex. 125.) According to Schnackenberg, Kim had left behind her bank cards and car, and he could not find her telephone. (*Id.*)

Schnackenberg told a very different story to Brian and Craig Vrieze, brothers who were Schnackenberg’s source of drugs. (Tr.T. Vol. 1 at 182-183, 196.) He told the Vriezes that he shot Kim twice in the head because she was leaving and taking the cat. (Tr.T. Vol. 1 at 168, 202, 212-213, 228.) He told Craig that he had punched Kim with his left hand and injured it, a fact that was corroborated by store surveillance video from June 16 that displayed his bandaged hand, and by photos of the injuries to his hand taken following an interview with law enforcement on June 24. (Tr.T. Vol. 1 at 200; Tr.T. Vol. 4 at 86-87, 92-93; State’s Ex. 140-K.) According to Craig Vrieze, Schnackenberg used fentanyl, methamphetamine and oxycontin, and he and Kim fought

“constantly” about “[h]is drug addiction and him spending money.” (Tr.T. Vol. 1 at 214.)

On the afternoon of June 16, 2023, Schnackenberg arranged for Brian Vrieze to jump his truck and move it to the Vriezes’ residence, ostensibly for Brian to work on. (Tr.T. Vol. 1 at 169, 174.) Schnackenberg discussed selling the truck to Brian and requested that Brian backdate the bill of sale by a month. (Tr.T. Vol. 1 at 175-176.) Schnackenberg also attempted to sell his Taurus .40 caliber pistol with ammunition to Craig Vrieze. (Tr. T. Vol. 1 202-205.) When Brian found out that Craig had obtained the pistol from Schnackenberg, Brian arranged for its return: “I’m not supposed to have guns around me, so I called [Schnackenberg] up immediately and told him, come get this gun out of my house.” (Tr.T. Vol. 1 at 177.) The brothers became even more concerned about the gun transaction when Schnackenberg refused to give them a bill of sale; their solution was to leave the pistol in Schnackenberg’s yard, fully assembled. (Tr.T. Vol. 1 at 177, 179, 202-205.)

On June 22, 2023, law enforcement began searching wooded areas in the Monticello area. (Tr.T. Vol. 2 at 25-27, 32-34, 38-40, 44-46.) They located Schnackenberg’s truck at the home of the Vrieze brothers and towed it to the State Police barracks in Houlton, where two cadaver dogs “alerted” on the bed

of the pickup, indicating the presence of human remains. (Tr.T. Vol. 2 at 27-30, 39-44.)

On June 24, 2023, a search warrant was executed at Schnackenberg's residence at 9 School Street. (Tr.T. Vol. 2 at 110-111.) Officers recovered the Taurus .40 caliber pistol, disassembled, in a plastic red Folgers Coffee can located among construction debris behind the house. (Tr.T. Vol 2 at 118-130; State's Ex. 13 and 15.) Red brown stains were observed throughout the kitchen, and swabs were collected for analysis and sent on to the Maine State Police Crime Lab for testing, along with a mop that was hanging in the stairway to the basement. (Tr.T. Vol. 3 at 67-92.) Officers later recovered a roll of duct tape (State's Ex. 9) from the toolbox at the residence during a subsequent search on June 27, 2023. (Tr.T. Vol. 2 at 138-144.)

While the search warrant was being executed on June 24, Det. Sgt. Bell and Detective Chad Lindsey spoke with Schnackenberg. (Tr.T. Vol. 2 at 186-192, State's Ex. 128.) Schnackenberg continued to assert that Kim had left the house alive, on foot, and without her car. He told them that he had been sick all Thursday night and wanted to sleep on Friday morning. (State's Ex. 128A at P876-877.) He claimed that Kim "got really pissed off because I wanted to go to sleep...And she said, 'Well, you're gonna sleep? Then I don't need to be here if you're just gonna ignore me.'" "I watched her stuff her bag. I said, 'Are

you really leaving?' She's like, 'I'm leaving.'" (*Id.* at P878.) Schnackenberg minimized the argument between him and Kim, asserting that "if we were arguing about something it'd be 'cause me not paying attention to her much." (*Id.* at P879.) He claimed that "She packed her bag, like I said. Stuffed a bunch of stuff in there and walked out the door." (*Id.* at P881.) "I stayed right in bed...I went to sleep and woke up around noontime." (*Id.* at P882.) He admitted that it was not normal for Kim to leave without her car: "I figured she just got picked up by someone...she was too pissed off to...drive or something." (*Id.*) When asked where his gun was, he said, "It's...probably outside...I guess you guys'll probably find it." (*Id.* at P898.) When asked if Kim left alive on Friday, he asserted that she did. (*Id.*)

The detectives confronted Schnackenberg about his statement to the Vrieze brothers that he had shot Kim twice. (*Id.* at P899, P904.) Schnackenberg responded: "You can't prove any of that though...You can't prove those stories...I never told Craig or Brian that ever...Do-do they have it on video tape?...I never said that to [the Vriezes]. I never shot her. *How...can you prove that? You'd have to have a body to prove that. You'd have to have...pretty much....and I dunno how you're gonna have that when she walked out of there.*" (*Id.* at P904-905.) When informed that Kim's "phone says she

didn't walk out of there," Schnackenberg responded, "Yeah, well, If you could prove...any of it, I'd be under arrest right now." (*Id.* at P907.)

Schnackenberg was not arrested that night but was instead dropped at the home of a friend, while the search continued at his home. In response to the friend's questions about his interview with the police, he responded, "[S]omeone reported that I shot Kim twice in the head and that they had blood spatter and all this stuff..." (Tr.T. Vol. 1 at 113.) The friend asked, "[W]ell, did you?" (*Id.*) He answered, "[N]o. But even if I did, prove it. Where's the body?" (Tr.T. Vol. 1 at 114.) He expressed his belief that "without a body, they can't convict." (Tr.T. Vol. 1 at 116.)

A break in the investigation came the following day. Pat Brewer, who owned a camp on the Harvey Siding Road near the Irving forest lands, saw a Facebook post of Kim and Schnackenberg. (Tr.T. Vol. 1 at 139, 144-145.) He recognized Schnackenberg as the man that he had seen driving a gray sedan out on the rough back roads near his camp on the evening of June 17, between 6:00 and 6:30 p.m. (Tr.T. Vol. 1 at 139-144, 146.) He directed law enforcement to the area of the sighting and officers commenced a search. (Tr.T. Vol. 1 at 146-147.) In the dimming light, Warden Charles Brown went down a dead-end dirt road, where he observed some tracks in the turnaround that appeared to be consistent with car tracks and a disturbance in the

woodline “like something had traveled through here.” (Tr.T. Vol. 2. At 65-69.) He walked through the trail with his flashlight and came upon the fan of roots from a blown-down tree about 30 yards from the woodline. (Tr.T. Vol. 1 at 69-70). On the other side of the roots, his flashlight reflected off the duct tape attached to the packaging on Kim’s body. (Tr.T. Vol. 2 at 69, 72-73.) The body was located about a mile and a quarter from where Pat Brewer had seen Schnackenberg. (Tr.T. Vol. 2 at 76.)

Kim’s body was transported to the Office of the Chief Medical Examiner, where evidence response technicians carefully unwrapped the layers of garbage bags and tarp covering her body. (Tr.T. Vol. 3 at 40-45.) The Deputy Chief Medical Examiner observed blunt force trauma consistent with a punch to the face and concluded that Kim died of multiple gunshot wounds to the head. (Tr.T. Vol. 3 at 125,-128, 131-133, 136, 137.)

Duct tape removed from the garbage bag over the upper part of Kim’s body was determined to be a physical match to the roll of duct tape recovered from the toolbox at 9 School Street. (Tr.T. Vol. 3 at 224-231, 251-258.) In other words, “that strip of tape [from the garbage bag on the upper part of the body] came from that roll of duct tape [retrieved from the tool box at Schnackenberg’s house].” (Tr.T. Vol. 3 at 258.) The swabs of blood from the kitchen matched Kim’s DNA. (Tr.T. Vol. 3 at 196-200.)

The disassembled Taurus .40 caliber pistol was missing its barrel so it could not be test-fired to determine that it was the same gun that was used to kill Kim. (Tr.T. Vol. 3 at 244, 247-251.) The State's firearms examiner compared the rifling on the bullet from the autopsy to a rifling data base and concluded that the bullet "could have been fired from the gun or the gun parts that were recovered" from the Folgers Coffee can behind the house. (Tr.T. Vol. 3 at 250.)

While one of the State's lab analysts was handling the mop seized from the house, a triangular-shaped bone dropped out of the mop head. (Tr.T. Vol. 3 at 174-176.) A forensic anthropologist confirmed that the bone was a skull fragment. Using a photograph of Kim's skull from autopsy, the forensic anthropologist was able to line up the fragment with the suture on Kim's skull and place the fragment so that it completed the circumference of the bullet defect. (Tr.T. Vol. 4 at 58-61.) The handle of the same mop was swabbed and tested for DNA; Schnackenberg's DNA was found on the mop handle. (Tr.T. Vol. 3 at 172-174, 200-201.)

During multiple jail calls, Schnackenberg remained consistent in his story that Kim had left the house alive on June 16, leaving her car behind. (Tr.T. Vol. 5 at 44-45.) He even suggested during the calls that the Vrieze

brothers may have been responsible for her death. (Tr.T. Vol. 5 at 43-44, 45-49.)

Detectives located surveillance video that contradicted Schnackenberg's claim that he had slept until noon on the morning that Kim left, showing him instead at a nearby store during the morning hours. (Tr.T. Vol. 4 at 77-91.) Cell phone location information from his phone was consistent with the surveillance video showing Schnackenberg driving Kim's car that day and making trips to Houlton (to cash his paycheck) and to the area of the Vrieze residence. (Tr.T. Vol. 4 at 135-143.) Schnackenberg's phone was connected to the network at all times, except on June 17, 2023, between 6:23 p.m. and 8:08 p.m., around the time that the camp owner, Pat Brewer, noticed Schnackenberg driving Kim's sedan on the remote back roads near his camp and near the location where Kim's body was later recovered. (Tr.T. Vol. 1 at 139-140; Tr.T. Vol. 4 at 150.)

Schnackenberg took the stand at trial and gave a story that he had never told his family or friends: That he had killed Kim in either self-defense or by accident. Indeed, he admitted that prior to his testimony, the only person he had told this story was his lawyer. (Tr.T. Vol. 4 at 214, 258.) He claimed to have been using drugs, "[p]retty heavy, on quite a bender...Hadn't really slept at all in about two weeks' time. I was mixing heroin and fentanyl and meth

and smoking it and sniffing it.” (Tr.T. at 192.) He asserted that Kim was also using oxycontin and methamphetamine on a daily basis. (*Id.*) He testified on the evening of June 15, 2023, he used his last \$20 to buy a “tiny bit of meth.” (Tr.T. Vol. 4 at 193-194.) He said that he and Kim both sniffed a line of meth and he went upstairs to bed. (Tr.T. Vol. 4 at 194-195.) He described himself as “usually pretty chill and relaxed” when he was taking drugs. (Tr.T. Vol. 4 at 207.)

He said that when he went upstairs, Kim became angry, “saying if you’re not gonna talk to me or hang out with me and just ignore me, I don’t need to fucking be here.” (Tr.T. vol. 4 at 196.) He testified that Kim stuffed clothes into her backpack and tried to leave, and he pursued her, armed with his gun on his hip, because she had “what we had left of the meth.” (Tr.T. Vol. 4 at 196-198.) He tried to take the backpack from her, but she refused to give him the bag. (Tr.T. Vol. 4 at 198-199.) He continued to follow her, demanding that she turn over what she had in the bag. (Tr.T. Vol. 4 at 199.)

According to Schnackenberg, Kim threw the backpack at him and reached for a knife. (*Id.*) He “grabbed her arm with my right arm, wrapped around her with my left arm, struggled around trying to turn around...She had her back to me...She was thrashing around and started pulling away from me...I reached with my left hand and grabbed my pistol off my hip, told her,

drop the fucking knife...She slammed her head back into my face...I had [the gun] pointed at her...She slammed into my face and it fired off.” (Tr.T. Vol. 4 199-201.)

According to the State’s firearms expert, the Taurus pistol could only be fired if the trigger were pulled back. (Tr.T. Vol. 3 at 243-244.) When asked by his counsel if he pulled the trigger twice, Schnackenberg responded, “I must of.” (Tr.T. Vol. 4 at 200.)

Procedural Background

On June 26, 2023, the State filed a complaint in the Aroostook County Unified Criminal Docket charging Jayme Schnackenberg with the murder of Kim Hardy. (App. at 3.) The Aroostook County Grand Jury returned an indictment for intentional or knowing murder on July 13, 2023. (App. at 61.) The jury trial took place from January 13 through 17, 2025. (App. at 11.) The jury returned a verdict of guilty of murder after about 40 minutes of deliberation. (Tr.T. Vol. 5 at 138-140.)

On March 31, 2025, the court adjudicated Schnackenberg guilty and sentenced him to a term of 55 years. (App. 14.)

Schnackenberg filed a timely Notice of Appeal and an application to allow an appeal of his sentence on April 1, 2025. On July 16, 2025, the Sentence Review Panel granted leave for Schnackenberg to appeal his

sentence pursuant to M.R. App. P. 20(g) and (h). *State v. Schnackenberg*,
Docket No. SRP-25-178 (Me. Sent. Rev. Panel July 16, 2025).

STATEMENT OF THE ISSUES

- I. Whether the admission of Kim’s toxicology results by stipulation precludes an appeal of the claimed error that the court excluded the results.**
- II. Whether the court’s instructions on self-defense informed the jury correctly and fairly in all necessary respects of the governing law.**
- III. Whether the court abused its discretion in the admission of three photographic exhibits depicting the bullet defects in Kim’s skull and demonstrating how a skull fragment from Schnackenberg’s mop fit into one of the defects like a missing puzzle piece.**
- IV. Whether the court erred in setting the basic sentence for a domestic violence homicide at 45 years and a final sentence at 55 years.**

ARGUMENT

- I. The parties’ stipulation that Kim Hardy had methamphetamine in her system at the time of autopsy precludes an appeal that the court erred in excluding the results.**

A. Procedural history

During the testimony of the Deputy Chief Medical Examiner, Schnackenberg argued that the toxicology results showing that Kim had

methamphetamine in her system should be admitted, because it “goes to the defense in this case with the knife.” (App. 41.) The court ruled that the evidence was not admissible based on the evidence presented at that point; there was *no evidence* that Schnackenberg believed that Kim was about to use unlawful deadly force prior to the shooting or that her alleged methamphetamine use would support Schnackenberg’s reasonable belief that deadly force was necessary. (App. 44.) Moreover, Schnackenberg did not proffer any testimony about the results and their significance through the forensic toxicologist who issued the report, somehow believing he was entitled to simply put into evidence a report from a laboratory based in Pennsylvania. (App. 45.)

Schnackenberg ultimately succeeded in getting the results admitted into evidence through a stipulation with the State. During the testimony of the State’s DNA analyst, Schnackenberg objected that the State had not yet established that the body recovered from the woods was in fact Kim Hardy. (Tr.T. Vol. 3 at 193-195.) Rather than recall the Deputy Chief Medical Examiner to testify that Kim’s identity had been confirmed through fingerprints, the State entered into a compromise with Schnackenberg to stipulate that Kim had methamphetamine in her system at the time of the autopsy in return for the defense’s stipulation that “the body that the autopsy

was performed on and the blood spot card it's associated with is Kim Hardy.” (Tr.T. Vol. 3 at 205.) The stipulation was read to the jury (Tr.T. Vol. 3 at 209) and no further requests were made by the defense relating to the toxicology results. Instead, the defense rested immediately after Schnackenberg's self-serving testimony claiming that the shooting was accidental or committed in self-defense. (Tr.T. Vol. 4 at 263.)

B. Legal Argument

The defense complains that it did not get everything it wanted with the stipulation that Kim Hardy in fact had methamphetamine in her system. Essentially, the defense appears to have offered the results to prove that Kim acted in conformity with the comments on the toxicology reports—that the level of methamphetamine in her system was within the range reported in “users who exhibited violent and irrational behavior.” (App. at 41.) As the court noted below, however, the results would not be admissible for that purpose.

Rule 404(b) of the Maine Rules of evidence provides that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.” In essence, M.R. Evid. 404(b) makes evidence of a victim's violent nature inadmissible to prove that the victim was violent on a given occasion. However, when a defendant raises the defense of self-defense, “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.”

State v. Holland, 2012 ME 2, ¶ 19, 34 A.3d 1130 (citations omitted).

In this case, the defendant and others were allowed to testify to past instances of violence between Schnackenberg and Kim Hardy, since those instances were arguably relevant to the reasonableness of Schnackenberg’s fear of bodily injury. The results from toxicology tests were not known to Schnackenberg and therefore were not relevant to his claim of self-defense. Indeed, Schnackenberg admitted that he too had been ingesting methamphetamine and contended that the drugs made him “pretty chill and relaxed.” (Tr.T. Vol. 4 at 207.) He presented no evidence that Kim’s methamphetamine use caused him to believe that deadly force was necessary; rather, even under his version of the facts revealed at trial, Kim did not grab a knife until Schnackenberg attempted to take her backpack away by force as she was attempting to leave the house.

In addition, even if information about the effects of methamphetamine were relevant, Schnackenberg did not propose the correct vehicle for admitting the results and the commentary in the report. He certainly could have called the forensic toxicologist or chemist who signed the laboratory report. Instead, he just wanted the report admitted. A party “cannot

introduce an absent laboratory analyst's testimonial out-of-court statements to prove the results of forensic testing.” *Smith v. Arizona*, 602 U.S. 779, 783 (2024), citing *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 307, 329 (2009).

Finally, Schnackenberg waived his objection by failing to offer the report into evidence after generating the claim of self-defense through his testimony. *State v. Harding*, 2024 ME 67, ¶¶19-21, 322 A.3d, 1175 (objection is waived if withdrawn). Once Schnackenberg had achieved the goal of publishing the results to the jury by stipulation, he never indicated that he thought he was entitled to anything more. Having failed to bring this issue to the court’s attention, he waived it.

II. The court committed no error in its instructions on self-defense.

A. Procedural history

During the parties’ discussion about the court’s proposed instructions in chambers, Schnackenberg raised a concern with respect to court’s instruction on the duty to retreat in one’s own dwelling because, “I find it, with all due respect, a little confusing, the language.” (App. 47; see also App. 48-51; Tr.T. Vol. 5 at 37.) Specifically, he was concerned “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..." (App. 47.) It was pointed out to Schnackenberg that the instructions already made clear on the previous page that "a person is not required to retreat if that person is in the person's dwelling place and was not the initial aggressor." (App. 48.)

Schnackenberg persisted in his objection, contending that the dwelling place exception on the previous page was "buried"¹ and that "maybe it could be rearranged and put somewhere closer in time....maybe come in after the portion that I just read...so it's more closely in time related to each other so that the juror understands that both options exist." (App. 48, 49-50.) The court responded that it would think about Schnackenberg's comments and provide "a complete copy of what the Court's final [version] is so everybody has that." (App. 51). Schnackenberg made a request that he have "an opportunity...to make a final objection on the record when we see the final version..." (Tr.T. Vol. 5 at 37.) The court asked that Schnackenberg call to the court's attention any additional objections. (Tr.T. Vol. 5 at 37.)

¹ The court pointed out that the so-called "buried" language was only 10 lines before the language Schnackenberg found "confusing." (App. 49-50.)

The final instructions appear to do exactly what Schnackenberg had requested. The instruction that a “person is not required to retreat if that person is in the person’s dwelling person and was not the initial aggressor” was highlighted in italics and moved so that it appeared *on the same page* adjacent to the instruction setting out the four points that the State had to prove beyond a reasonable doubt to disprove self-defense (including the failure to retreat if he was the initial aggressor in his own dwelling). (App. 99). Schnackenberg made no further request on the record for changes to the instruction.

B. Legal Argument

This Court reviews jury instructions “as a whole for prejudicial error, and to ensure that they informed the jury correctly and fairly in all necessary respects of the governing law.” *State v. Lester*, 2025 ME 21, ¶11, 331 A.3d 426. The instructions in this case included all the relevant findings that the jurors needed to make beyond a reasonable doubt to determine whether Schnackenberg was justified in using deadly force against Kim Hardy. There was no error.

Schnackenberg contends that “[t]he instructions invites (sic) the jury to make a finding without taking into consideration the dwelling home exception.” (Blue Brief at 37.) In fact, the dwelling place exception was

referred to twice in the instructions and highlighted in italics. Jurors received a written copy of the instructions on self-defense to further facilitate and reinforce their understanding. Unlike *State v. Bernier*, the instructions did not omit the dwelling-place exception to the duty to retreat. 2025 ME 14, 331 A.3d 398. Schnackenberg's challenge to the instructions is baseless.

III. The court did not abuse its discretion in the admission of three photographic exhibits depicting the bullet defects in Kim's skull and demonstrating how a skull fragment from Schnackenberg's mop fit into the defect like a missing puzzle piece.

A. Procedural history

Prior to the testimony of the Deputy Chief Medical Examiner and the State's forensic anthropologist, counsel for the State previewed with the court and counsel the photographic exhibits that it proposed to show to the expert witnesses to illustrate their testimony and explain their opinions. (App. 18.) The proposed exhibits included two photos of Kim's skull to show the bullet entrance and exit wounds, and a third photo showing the skull fragment fitting into the area of one of the bullet defects. (App. 20-21, 23-25, 29-33.) The court sustained the objection in part with respect to Exhibits 78 and 79, excluding the original color version of those photographs and limiting the State to black and white versions marked as Exhibits 78-A and 79-A. (App.

33-34.) The court overruled the objection to the color version of Exhibit 84, a photo of the victim's skull with the skull fragment lined up with the bullet defect. (App. 34-35.)

B. Legal Argument

The court did not abuse its discretion in admitting black and white versions of Kim's skull displaying the bullet defects (Exhibits 78-A-79-A) and a portion of the color version of Exhibit 79-A superimposed with the skull fragment to show how it fit into a missing piece in the skull (Exhibit 84). The photos depicting the two entrance wounds and single exit wound in Kim's skull were necessary to show that Schnackenberg shot Kim twice, rebutting any suggestion that his shooting was accidental. The color photo was essential to illustrate the forensic anthropologist's conclusion that the skull fragment from the mophead was likely part of Kim's skull. As the forensic anthropologist testified, it was by process of elimination that she placed the fragment by the bullet defect depicted in Exhibit 79-A, and she demonstrated how she reached her conclusion by using the photo with the skull fragment superimposed over it, pointing out to the jury the unique features that connected the fragment to that location in the skull ("It fits right there.") (App. 39.) As she showed the jury using Exhibit 84, she explained "there wasn't any other place on the skull that that would be true...where we have a

piece of the suture and the hole, that it completes the circumference of that hole.” (App. 39).

This court has held that graphic photos of victims are admissible when the probative value outweighs the danger of unfair prejudice.

A gruesome photograph of a victim's body may be admitted provided that its probative value outweighs the danger of unfair prejudice. The critical factor in this balancing test is the significance of the photograph in proving the State's case.

State v. Lockhart, 2003 ME 108, ¶ 46, 830 A.2d 433 (citations and internal quotes omitted). In this case, the photographs were necessary to illustrate the testimony of the Deputy Chief Medical Examiner and the forensic anthropologist. Schnackenberg argues that “a photograph is worth a thousand words.” (Blue Brief at 42.) We agree. But that does not make these photographs unduly prejudicial. Rather it indicates the power of a photograph to facilitate a layperson’s understanding of expert testimony.

IV. The court did not misapply sentencing principles in setting Schnackenberg’s basic sentence at 45 years and his final sentence at 55 years.

A. Procedural Background

At the sentencing proceeding on March 31, 2025, the court considered “only the particular nature and seriousness of the crime in step one” in setting the basic sentence. (App. 54.) It recognized that the crime involved domestic

violence, a factor which the Legislature has directed sentencing courts to assign special weight. (App. 54.) The court found that “[t]his was an execution-style murder” with shots twice to the back of Kim’s head at close range; his expressed motive for killing her was that she was going to leave and take the cat; his claim that he accidentally shot her over an argument about methamphetamine “did not hold up from the Court’s view of the evidence;” and Kim’s “murder was about issues of power and control” and was “the ultimate act of domestic violence.” (App. 55.)

In comparing the facts to other domestic violence homicides, the court set the basic sentence at 45 years.

In determining the maximum sentence in step two of the analysis, the court examined “all the relevant mitigating and aggravating factors.” (App. 56.) The court identified the mitigating factors as Schnackenberg’s “lack of significant criminal record” and his “consistent employment...despite his claims related to struggles with substance abuse.” (App. 56.)

The court concluded that the following aggravating factors outweighed the mitigating factors: “the subjective impact on the victim’s family ... exacerbated by Mr. Schnackenberg’s elaborate scheme to conceal the crime by wrapping the body and discarding the body in a remote location;” his repeated deception in responding to questions from family, friends and law

enforcement as to what happened to Kim; his attempt to deflect blame onto Brian and Craig Vrieze; and his choice to kill Kim rather than letting her leave so they could go on to live their separate lives. (App. 57-58.)

Mr. Schnackenberg has just ice water running through his veins. The sinister will that's required to package and bind Miss Hardy's lifeless body was substantial. The efforts to mislead and misdirect everyone who was trying to find some answer about Miss Hardy, the suspicion again cast on the Vrieze brothers, the game of taunting others with his comments about how do you prove a murder without a body, that is until the body was found, found in a ghastly condition so carefully prepared by Mr. Schnackenberg, his forced contrition fits with his behavior immediately following the murder.

(App. 58-59.)

B. Legal Argument

The court did not misapply sentencing principles in setting the basic sentence at 45 years for a domestic violence homicide and did not abuse its discretion in setting the maximum sentence at 55 years.

In fashioning a murder sentence, a court is required to complete two steps: "First, the court determines the basic term of imprisonment based on an objective consideration of the particular nature and seriousness of the crime. Second, the court determines the maximum period of incarceration based on all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case, including the character of the offender and the offender's criminal history, the effect of the offense on the victim and the protection of the public interest."

State v. Gaston, 2021 ME 25, ¶ 33, 250 A.3d 137, citing *State v. De St. Croix*, 2020 ME 142, ¶ 5, 243 A.3d 880; *State v. Hewey*, 622 A.2d 1151, 1154-55 (Me. 1993).

This Court reviews “the determination of the basic sentence de novo for misapplication of legal principles” (*State v. Nightingale*, 2023 ME 71, ¶ 34, 304 A.3d 264) and the “application of aggravating and mitigating factors in determining the maximum sentence for abuse of discretion.” *State v. Lovejoy*, 2024 ME 42, ¶ 26, 315 A.3d 744, citing *State v. Gaston*, 2021 ME 25, ¶ 36, 250 A.3d 137.

This Court has further stated that it “afford[s] the sentencing court ‘significant leeway in what factors it may consider and the weight any given factor is due when determining a sentence.’ Sentencing courts may ‘refer to the same facts in the various steps of the sentencing analysis *so long as the court is weighing different considerations at each step.*” *State v. Lovejoy*, at ¶ 25 (emphasis in original), citing *State v. Gray*, 2006 ME 29, ¶ 13, 893 A.2d 611.

The trial court did what it was required to do at the first step of the sentencing analysis: it considered “the particular nature and seriousness of the offense as committed by” Schnackenberg, while taking into account the legislature’s directive to give special weight to crimes of domestic violence under 17-A M.R.S. § 1603(2)(C). 17-A M.R.S. § 1602(1)(A). As this Court has

noted, murder “as an act of domestic violence ‘is an objective factor properly considered in the first step of the sentencing analysis.’” *State v. Penley*, 2023 ME 7, ¶ 34, 288 A.3d 1183. The court compared Schnackenberg’s conduct to the conduct described in other domestic violence homicides and came to the reasonable conclusion that 45 years was squarely in the range of the basic sentences in those cases.

The court then went to the second step of the sentencing analyses. It did not abuse its discretion in setting the final sentence at 55 years. Schnackenberg contends that the court “attributed too much weight to the domestic violence aspect of the case and the impact of the victim’s family and community.” (Blue Brief at 44.) We disagree. The trial court took into account the Legislature’s directive to give special weight to the fact that the victim was a family or household member. Its final sentence focused on the appropriate factor of victim impact: Schnackenberg’s packaging and concealing Kim’s body on remote forest land, exacerbating the impact on her friends and family, delaying their discovery of her death and leaving them to wonder about her fate for over a week after he shot her in the head. The court did not double count the factor of domestic violence but rather used that fact for different considerations: in the first step, classifying the murder as a domestic violence homicide for the purpose of comparing it to the basic

sentences of other domestic violence homicides, and then acknowledging it as a senseless act that Schnackenberg committed when he could have simply let Kim go on to live her life separately from him. The court's analysis faithfully followed the analytical framework set forth by the legislature and this Court in determining the final sentence.

CONCLUSION

By reason of the foregoing, this Court should affirm the conviction and sentence below.

Respectfully submitted,

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DATED: October 24, 2025

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CERTIFICATE OF SERVICE

I, Leanne Robbin, Assistant Attorney General, certify that I have emailed the foregoing “BRIEF OF THE APPELLEE” to the Appellant’s attorneys of record, Jeremy Pratt, Esq. and Ellen Simmons, Esq.

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