Supreme Judicial Court sitting as the Law Court
Law Court Docket number HAN-25-333

State of Maine v. Jesse Pelletier

Appeal from Unified Criminal Docket in
Hancock County

Brief for Appellant

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Table of Contents

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER

Introduction

The trial court abused its discretion and erred by not excluding testimony by Ms. Cornell as hearsay. Ms. Cornell testified to statements made by victim that cannot be linked in time or perception to the sexual encounter between Mr. Pelletier and Ms. Cornell and should have therefore been excluded as hearsay and not admitted into evidence under the present sense impression exception to the hearsay rule, found in Maine Rule of Evidence 803(1). Additionally, Ms. Cornell lacked personal knowledge, required by Maine Rule of Evidence 602, to testify about victim 's statements she overheard. Also, Ms. Cornell's statements should have been excluded under Maine Rule of Evidence 401 and 403. The record cannot establish that the statements heard by Ms. Cornell occurred at the time of the sexual encounter and, as such, they are irrelevant and highly prejudicial to Mr. Pelletier.

Procedural History

Jesse Pelletier, the appellant, was charged by criminal complaint on July 18, 2022 with one count of Gross Sexual Assault (Class A), under Title 17-A M.R.S. § 253(1)(A)[1]; one count of Gross Sexual Assault (Class C), under Title 17-A M.R.S. § 253(2)(M)[2]; one count of Unlawful Sexual Contact (Class B), under Title 17-A M.R.S. § 255-A(1)(P)[3]; and one count of Unlawful Sexual Contact (Class C),

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[1] Title 17-A M.R.S. § 253(1)(A) states that "[a] person is guilty of gross sexual assault if that person engages in a sexual act with another person and. . . The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E." Title 17-A M.R.S. § 251(1)(E) defines compulsion as "the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being." A sex act is defined by Title 17-A M.R.S. § 251(1)(C) as "(1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; (2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or (3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact."

[2] Title 17-A M.R.S. § 253(2)(M) states that. "[a] person is guilty of gross sexual assault if that person engages in a sexual act with another person and. . . [t]he other person has not consented to the sexual act and the actor is criminally negligent with regard to whether the other person has consented."

[3] Title 17-A M.R.S. § 255-A(1)(P) states that "[a] person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and. . . [t]he other person submits as a result of compulsion and the sexual contact includes penetration." Sexual contact is defined under Title 17-A M.R.S. § 251(1)(D) as "any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact."

under Title 17-A M.R.S. § 255-A(1)(B)[4]. (App. at 3). Mr. Pelletier was indicted on these charges on October 7, 2022. (App. at 4). An arraignment was held on December 15, 2022 and Mr. Pelletier entered not guilty pleas to the charges. (App. at 5). A superseding indictment was filed on August 8, 2024. (App. at 6). Mr. Pelletier was arraigned on the superseding indictment on August 22, 2024. (App. at 7). At his arraignment, Mr. Pelletier again entered not guilty pleas to all charges. (App. at 7).

Mr. Pelletier waived his right to a jury trial on April 15, 2025 and a bench trial was held before the Hancock County Court. (App. at 8); (B. Tr. T. at 5). The trial judged issued a decision on April 29, 2025, finding Mr. Pelletier guilty on two counts (Counts 2 and 4), and not guilty on two counts (Counts 1 and 3). (App. at 8).

On July 2, 2025 Mr. Pelletier was sentenced by the Hancock County Unified Court. (App. at 8-9). On Count 2, the charge of gross sexual assault, the court sentenced Mr. Pelletier to the Department of Corrections for a term of 3 years, with all but 9 months and 1 day suspended. (App. at 8); (Sent. T. at 29). A two year

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[4] Title 17-A M.R.S. § 255-A(1)(B) states that "[a] person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and. . . [t]he other person has not consented to the sexual contact, the actor is criminally negligent with regard to whether the other person has consented and the sexual contact includes penetration."

term of probation was imposed. (App. at 8). On Count 4, a concurrent 9 months and 1 day sentence was imposed.[5] (App. at 9); (Sent. T. at 30).

A timely notice of appeal was filed July 16, 2025. (App. at 10).

[5] While the docket record reflects a 9 month sentence, the sentencing transcript and judgement and commitment reflect a 9 month and 1 day concurrent sentence on Count 4. (App. at 9, 11); (Sent. T. at 30).

Statement of Facts

Both victim and Mr. Pelletier were students at the Maine Maritime Academy in Castine, Maine during March of 2022. (B. Tr. T. at 12, 107). They were acquainted with each other from their time at the school. (B. Tr. T. at 13-14, 37-38, 108-109). On Friday March 18, 2022, they both attended a party at a mutual friend's house (Catherine Cornell) in Castine, Maine. (B. Tr. T. at 12, 14, 23, 50, 108). They spoke a bit during the party. (B. Tr. T. at 50-51). Around 20 to 30 other people attended the party. (B. Tr. T. at 12, 109-110). victim made arrangements with Ms. Cornell to spend the night at her house after the party. (B. Tr. T. at 16, 23). Mr. Pelletier realized after he moved his car for people to leave the party that he should not drive and made arrangements to spend the night at the house as well. (B. Tr. T. at 29-30, 40, 110-111). Both victim and Mr. Pelletier had consumed a significant amount of alcohol.[6] (B. Tr. T. at 13, 70). After everyone else left the party they were seated next to each other on the couch in the living room. (B. Tr. T. at. 14-15, 37, 111). They had a conversation. (B. Tr. T at 38, 111, 112).

[6] victim testified that she consumed one bottle of a margarita wine bottle. (B. Tr. T. at 13, 109-110). victim also stated that "[e]verybody [at the party] was intoxicated." (B. Tr. T. at 36-37, 103). She further stated that she threw up a few times at the party. (B. Tr. T. at 37, 103). Mr. Pelletier told law enforcement that he had drank more than usual that night and was drunk. (B. Tr. T. at 70). He testified that he consumed between "half to three−quarters" of a box of wine by himself. (B. Tr. T. at 110).

At the conclusion of their conversation, victim testified that she closed her eyes to go to sleep and Mr. Pelletier got on top of her, at which point she stated that he kissed her, put his fingers in her vagina, put his penis in her vagina for "a decent amount of time," and performed oral sex on her.[7] (B. Tr. T. at. 15-22, 38-39, 41, 42-43, 44). victim stated that she told Mr. Pelletier no, to stop, and said that she had a boyfriend.[8] (B. Tr. T. at 16, 17, 18, 19, 20, 22, 31-32). vict [redacted] eventually got up from the couch and went into the bathroom and Ms. Cornell's room, which was close by to the living room.[9] (B. Tr. T. at 22, 23, 43, 44-45, 111). Ms. Cornell could not be woken. (B. Tr. T. at 45-46). victim stated that she was trying to locate her car keys and was trying to ask Ms. Cornell where they were. (B. Tr. T. at 46). victim stated that she went back out to the living room to look for her keys and was bent over the couch when Mr. Pelletier approached her and attempted to put his penis in her vagina from behind. (B. Tr. T. at 23-26, 43, 46). She testified that she clenched her legs and he was unsuccessful.[10] (B. Tr. T. at 25). She stated that Mr. Pelletier then stopped and left.

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[7] Mr. Pelletier had laid down on the floor next to the couch. (B. Tr. T. at 39-40).

[8] While her head hit the couch a few times during the encounter, she stated to the SANE nurse that she did not think it was "malicious," and that was what she thought at the time of writing that statement. (B. Tr. T. at 42, 103).

[9] victim testified that Ms. Cornell was "was not really aware of what was going on. She was at the point, I thought, very intoxicated or she was just too tired and I couldn't get her up[,]" noting also that she was "[s]he was kind of incoherent." (B. Tr. T. at 23).

[10] She also testified that at this point she also told him no and to stop. (B. Tr. T. at 26).

(B. Tr. T. at 27, 47). She went into the bathroom and saw his car leaving the driveway. (B. Tr. T. at 27, 47). In the morning victim woke up around 7 a.m., left Ms. Cornell's house around 7:30 a.m., and contacted a friend who encouraged her to go the hospital, which she did on Saturday March 19th.[11] (B. Tr. T. at 30-34, 36, 48, 77, 78-79). victim 's father contacted the police on Sunday March 20th and victim was interviewed by law enforcement on that date as well.[12] (B. Tr. T. at 32-33, 35, 65, 75).

At the hospital a SANE nurse conducted an examination on victim .[13] (B. Tr. T. at 82, 83-84). The physical findings were outlined at trial, noting where victim stated injuries from the encounter were. (B. Tr. T. at 85-87, 89-91, 94-100). The SANE nurse noted that she was relying on what victim told her to identify bruises that were present prior to and after the encounter with Mr. Pelletier. (B. Tr. T. at 102). She also stated that victim said that she did not

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[11] Her friend was never interviewed by law enforcement. (B. Tr. T. at 79).

[12] Mr. Pelletier voluntarily went to the police station on March 21, 2022 and was interviewed by police. (B. Tr. T. at 65, 71, 74, 110). Law enforcement stated at trial that Mr. Pelletier stated that he had digitally penetrated Mr. victim , but not with is penis. (B. Tr. T. at 66, 72-73). He also stated to law enforcement that he believed victim had consented to the contact. (B. Tr. T. at 66-68, 71-72). He stated that he recalled pushing up clothing to access her breasts as well and putting his mouth on them. (B. Tr. T. at 68-69). He also stated that he recalled lowering her pants so he could access her vaginal area. (B. Tr. T. at 69-70). He further told law enforcement "that he didn't remember well what had happened due to intoxication." (B. Tr. T. at 71).

[13] The examination was less than twelve hours after the encounter with Mr. Pelletier. (B. Tr. T. at 102). victim stated that the encounter concluded around 3 a.m. and she was examined at 1:30 p.m. on the same day. (B. Tr. T. at 102).

know "whether she had been penetrated by Mr. Pelletier's penis or a foreign object." (B. Tr. T. at 103).

After the State rested its case, Mr. Pelletier testified that the sexual relations between victim and himself were performed with consent. (B. Tr. T. at 72-73, 104, 106-107, 115). He testified that they kissed, he digitally penetrated her, he performed oral sex on victim, and attempted to have sex, but could not due to the amount of alcohol that he had consumed. (B. Tr. T. at 73, 112-114). He stated that he left because he was embarrassed by this fact. (B. Tr. T. at 73, 115). He also stated that there was only one attempt made to have vaginal sex, and not two as victim asserted. (B. Tr. T. at 74-75, 114-115).

Catherine Cornell also testified at trial.[14] (B. Tr. T. at 49-50). After she went into her bedroom after the party ended, she was asked about what she heard between victim and Mr. Pelletier.[15] (B. Tr. T. at 51). The following exchange took place:

> Q Okay. And what did you hear in terms of an oral interaction between the two of them?
> MR. ASHE: Objection. It's hearsay, Your Honor.
> MR. TOFFOLON: It's an admission of a party opponent.
> MR. ASHE: To the extent that she's talking about statements made by Mr. Pelletier, that would be true, but statements by victim [sic] would not.

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[14] Ms. Cornell was never interviewed by law enforcement. (B. Tr. T. at 76).

[15] She testified that she went to bed around "midnight. Maybe 1" and that she was "fairly" intoxicated. (B. Tr. T. at 63). She also stated that she recalled victim coming into her room that evening but could not recall what she said. (B. Tr. T. at 63-64).

MR. TOFFOLON: Well ––
MR. ASHE: victim .
THE COURT: Well wouldn't it be an exception to the hearsay rule, though?
MR. ASHE: Under what, Your Honor?
THE COURT: Effect on the listener.
MR. ASHE: But it didn't have any effect on her.
THE COURT: I'm going to allow it, and I'll –– I'll determine when I write a decision what weight, if any, to give it. All right?
MR. ASHE: Understood. I just –– just –– my objection is this is hearsay and that there's no applicable exception.
THE COURT: All right.
You may continue.
BY MR. TOFFOLON:
Q All right. So describe for the judge what you heard the oral interaction between Mr. Pelletier and victim consist of.
A So they were having just some casual conversation. You know, victi was talking about stuff back home, and it seemed friendly. And I could tell that Jesse was kind of trying to flirt with her. And then, you know, victi was like, oh, like, nothing's happening. Like, I have a boyfriend. And she brought up her current boyfriend, Mike (phonetic). And they just kept talking casually, and I heard her be like, no, like nothing's happening. Like, no.
Q Okay. So you heard her say no or nothing's happening or reference her boyfriend more than once?
A Yes.
Q Okay. Can you estimate for the judge how many times you heard her say that in response to Mr. Pelletier?
A Maybe three times.
. . .
Q Okay. Now, based on what you could hear victi saying, did you develop some concern about what what might be going on in the living room?
A Yeah.
Q And as a response to your concern, what did you do?
A I texted victim
Q And what was the purpose of the text?
A I wasn't sure if she felt uncomfortable. So I texted her, seeing if she wanted to come into my room just to kind of put herself –– give her some distance between the situation.

. . .
MR. ASHE: Your Honor, just for −− I'm objecting to this. And if he wants to −− Court needs to hear further information, but I believe this is all hearsay.
THE COURT: Well, let's go back to your earlier objection. You objected to this witness testifying about her overhearing victi say words to the effect of −−
MR. ASHE: I have a boyfriend.
THE COURT: −− I have a boyfriend, or no, or this not happening. Whatever those words were, isn't that a present sense impression? Or perhaps even a statement of the existing mental or physical condition? A statement describing or explaining an event or made while the declarant was perceiving the event.
MR. ASHE: I −− one, I don't think that this witness would be in a position to lay that foundation where she's just overhearing a conversation, but I don't believe it would be a then−existing state of mind, because it's just saying I have a boyfriend. And if it's a present sense impression, I don't think that would qualify.
THE COURT: Well, isn't it still describing the event, though? She's involved in the event.
MR. ASHE: It's a −− I mean, it's a −− I don't think a −− I don't think a conversation is an event.
THE COURT: No. This this exception to the hearsay rule is specifically meant -- about at 803(1), specifically aiming at those situations where the declarant experiencing or viewing something, you know, like, oh, my gosh, that car is going to crash, you know, while they're perceiving it and someone else overhears that. So we have this witness that overhears the statement made by the declarant while that declarant is experiencing or perceiving this event.
MR. ASHE: I mean, what I'm hearing −− that sounds more like an excited utterance, and I don't think −−
THE COURT: There's that, too. But −−
MR. ASHE: I don't think that conversation would qualify.
THE COURT: I'm not −− I didn't hear it being −− I just −− this struck me right from the beginning it was a situation declaring −− describing an event, which has always been accepted as an exception to the hearsay rule.
MR. ASHE: I'm sorry, Your Honor.
THE COURT: 803(1).
MR. ASHE: 80− −−

THE COURT: 803(1).
MR. ASHE: 803(1)? A statement describing or explaining an event or condition made while or immediately after the declarant perceived it. I don't think 'I have a boyfriend' is describing or explaining an event or condition. That would be my position.
THE COURT: Well, we've also heard evidence that she's in the middle of this event, and those are the words she's using to protest against it. So ——
MR. ASHE: And I'm —— the —— the objection, I believe —— the Defense's objection is that that exception does not apply.
THE COURT: Okay. All right.
MR. ASHE: Thank you.
THE COURT: I just want to clean up our record.
MR. ASHE: No. Yeah, no. Understood. Certainly.
THE COURT: And I had indicated a moment ago that I was going to be deferring on it, but I'm going to overrule the objection. I think this is squarely 803(1).[16]
(B. Tr. T. at 51-57).

At the conclusion of the trial, the court took the matter under advisement and issued an opinion on April 29, 2025. (B. Tr. T. at 130-131); (App. at 8, 25). The court found Mr. Pelletier guilty of Count 2 (Class C), gross sexual assault, and Count 4, unlawful sexual contact (Class C). (App. at 25). In its written decision the trial court stated that "[f]rom her adjacent bedroom Cornell heard victim state she had a boyfriend and state at least three times 'No, nothing's happening'. Cornell texted victim to ask if she wanted to come into her room but victim did not respond." (App. at 16); (Ct. Decision (April 29, 2025) at 2). In discussing whether victim had expressly or impliedly acquiesced to the sexual act or sexual contact with Mr. Pelletier the court reasoned that:

[16] The trial court excluded text messages between victim and Ms. Cornell after Mr. Pelletier raised an objection on hearsay grounds. (B. Tr. T. at 57-62).

Pelletier testified that notwithstanding that victim told him she had a boyfriends, she never objected in any way to the sexual conduct and appeared to be into it. This does not square with the volume of other evidence, victim testified that she not only told Pelletier she had a boyfriend, she directly told him several times to stop, and that she 'didn't want this to happen'. This detail is corroborated by Catherine Cornell who from her adjacent bedroom overheard victim tell Pelletier three times 'I have a boyfriend, no, nothing's happening'.

. . .

But to the detail of victim telling Pelletier several times to stop, a detail corroborated by Conners [sic], the court finds beyond a reasonable doubt that victim told Pelletier to stop, and further finds beyond a reasonable doubt that she neither expressly nor impliedly acquiesced.

(App. at 23-24); (Ct. Decision (April 29, 2025) at 9-10).

After Mr. Pelletier was sentenced he filed this timely appeal. (App. at 8, 10).

Issues Presented for Review

I. Whether the trial court abused its discretion and erred in allowing statements by Ms. Cornell into evidence under the present sense impression exception to the hearsay rule, found in Maine Rule of Evidence 803(1).

II. Whether Ms. Cornell lacked personal knowledge to provide testimony about the events leading to the charges against Mr. Pelletier.

III. Whether Ms. Cornell's testimony about the conversation she heard between Mr. Pelletier and victim should have been excluded from evidence under Maine Rules of Evidence 403 and 401.

Statement of Issues Presented for Review

Mr. Pelletier asserts that the trial court abused its discretion and erred by not excluding testimony by Ms. Cornell as hearsay. Ms. Cornell testified to statements made by victim. The trial court ruled that the statements were present sense impressions, excluded from the hearsay rule by Maine Rule of Evidence 803(1). However, the hearsay statements do not fit within the 803(1) hearsay exception. There is no ability, based on the record, to temporally link the statements to the actual time of, or immediately after the time of, the sexual encounter occurred between Mr. Pelletier and victim Similarly, the record also fails to provide the ability to link the statements to the time in which victim was perceiving the sexual encounter. As such, Ms. Cornell's testimony was not admissible under Maine Rule of Evidence 803(1).

Secondly, Ms. Cornell lacked personal knowledge, required by Maine Rule of Evidence 602, to testify about victim 's statements she overheard. The trial court attributed the statements overheard by Ms. Cornell to the time of the sexual encounter between victim and Mr. Pelletier, and given that the record cannot establish that the statements were made during the sexual encounter, it was obvious error for the court to admit the statements and rely on the statements to corroborate victim 's testimony in issuing its decision.

Also, Ms. Cornell's statements should have been excluded under Maine Rules of Evidence 401 and 403. The record cannot establish that the statements

heard by Ms. Cornell occurred at the time of the sexual encounter and, as such, they are irrelevant and highly prejudicial to Mr. Pelletier, particularly in a case that pits his credibility against that of [redacted] in order for the court to issue a verdict.

Argument

I. The trial court abused its discretion and erred in allowing statements by Ms. Cornell into evidence under the present sense impression exception to the hearsay rule, found in Maine Rule of Evidence 803(1).

A "trial court's determination of whether a statement falls within an exception to the hearsay rule will not be reversed except for an abuse of discretion. M.R. Evid. 104(a); State v. Williams, 395 A.2d 1158, 1162-63 (Me. 1978)." State v. Ryne G., 509 A.2d 1164, 1168 (Me. 1986); see also State v. Ketcham, 2024 ME 80, ¶ 24, 327 A.3d 1103, 1110 (Me. 2016); State v. Penley, 2023 ME 7, ¶ 15, 288 A.3d 1183, 1190 (Me. 2023); State v. Watson, 2016 ME 176, ¶ 10, 152 A.3d 152, 154 (Me. 2016). This court "'review[s] the court's foundational findings or implicit findings to support admissibility of evidence for clear error, and will uphold those findings unless no competent evidence supports them.' Curtis, 2019 ME 100, ¶ 30, 210 A.3d 834 (alteration and quotation marks omitted).'" State v. Sheppard, 2024 ME 84, ¶ 14, 327 A.3d 1144, 1149-1150 (Me. 2024); see also State v. Taylor, 2011 ME 111, 32 A.3d 440 (Me. 2011)(citation omitted)(this Court "review[s] the court's foundational findings or implicit findings to support admissibility of evidence for clear error, and we will uphold those findings unless no competent evidence supports the findings").

The trial court determined that Ms. Cornell's testimony about victim [redacted]'s statements on the night of March 18, 2022, or early hours on March 19, 2022, fell within the parameters of Maine Rule of Evidence 803(1) and therefore

was not excludable as hearsay and admitted the statements at trial. (B. Tr. T. at 51, 55-57).

Maine Rule of Evidence 801 excludes hearsay from evidence at trial. State v. Ketcham, 2024 ME 80, ¶ 24, 327 A.3d 1103, 1110 (Me. 2024); State v. Thomas, 2022 ME 27, ¶ 20, 274 A.3d 356, 363 (Me. 2022); State v. O'Clair, 292 A.2d 186, 194 (Me. 1972). Maine Rule of Evidence 801(c) states that hearsay "means a statement that: (1) [t]he declarant does not make while testifying at the current trial or hearing; and (2) [a] party offers in evidence to prove the truth of the matter asserted in the statement."

Maine Rule of Evidence 803(1) provides for present sense impressions, excluding them from the hearsay rule, stating that a present sense impression is "not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness," when it is "[a] statement describing or explaining an event or condition, made while or immediately after the declarant perceived it."

"The classic 'present sense impression' is the recounting of an event that is occurring before the declarant's eyes, as the declarant is speaking ('I am watching the Hindenburg explode!'). See 2 K. Broun, McCormick on Evidence 362 (7th ed. 2013)(hereinafter McCormick)." Navarette v. California, 572 U.S. 393, 407, 134 S. Ct. 1683, 1694 (2014)(dissent).

In order to be applicable, three requirements must be fulfilled under Rule 803(1). "First, the declaration must be limited to describing the event in question.

Second, the statement must be made contemporaneously or immediately after the event described. Finally, the declarant must have been describing something that she actually perceived herself, though her participation in the event is not required." United States v. Matta-Quiñones, 621 F. Supp. 3d 264, 266 (D.P.R. 2022)(citations omitted).

Additionally, "[i]t is a preliminary question for the judge under Rule 104(a) to decide whether the statement is sufficiently contemporaneous to qualify." Field & Murray, Maine Evidence, § 803.1, 468 (6th ed. 2007).

The First Circuit has noted that a temporal relationship needs to be established on the record for 803(1) to be used. The Circuit found that the exception did not apply when "[t]he appellant has offered no facts regarding the temporal relationship between Gonzalez-Fonseca's alleged comment and the co-workers' revelations of what ostensibly was said. The appellant's account of the co-workers' disclosures is thus rank hearsay and, as such, inappropriate for consideration on summary judgment. See Lopez-Rosario, 134 F.3d at 33." Davila v. Corporacion De P.R. Para La Difusion Publica, 498 F.3d 9, 18 (1st Cir. 2007).

During the bench trial Ms. Cornell made statements about the conversation she heard between victim and Mr. Pelletier. (B. Tr. T. at 51-53). These statements were heard by her after she had retired to her bedroom for the night. (B. Tr. T. at 51). The record contains the following testimony by Ms. Cornell:

Q Okay. And what did you hear in terms of an oral interaction

between the two of them?
MR. ASHE: Objection. It's hearsay, Your Honor.
MR. TOFFOLON: It's an admission of a party opponent.
MR. ASHE: To the extent that she's talking about statements made by Mr. Pelletier, that would be true, but statements by victim [sic] would not.
MR. TOFFOLON: Well −−
MR. ASHE: victim .
THE COURT: Well wouldn't it be an exception to the hearsay rule, though?
MR. ASHE: Under what, Your Honor?
THE COURT: Effect on the listener.
MR. ASHE: But it didn't have any effect on her.
THE COURT: I'm going to allow it, and I'll −− I'll determine when I write a decision what weight, if any, to give it. All right?
MR. ASHE: Understood. I just −− just −− my objection is this is hearsay and that there's no applicable exception.
THE COURT: All right.
You may continue.
BY MR. TOFFOLON:
Q All right. So describe for the judge what you heard the oral interaction between Mr. Pelletier and victim consist of.
A So they were having just some casual conversation. You know, victi was talking about stuff back home, and it seemed friendly. And I could tell that Jesse was kind of trying to flirt with her. And then, you know, victi was like, oh, like, nothing's happening. Like, I have a boyfriend. And she brought up her current boyfriend, Mike (phonetic). And they just kept talking casually, and I heard her be like, no, like nothing's happening. Like, no.
Q Okay. So you heard her say no or nothing's happening or reference her boyfriend more than once?
A Yes.
Q Okay. Can you estimate for the judge how many times you heard her say that in response to Mr. Pelletier?
A Maybe three times.
(B. Tr. T. at 51-53).

The trial court used these statements to corroborate victim 's testimony about what she said to Mr. Pelletier during the sexual encounter in

issuing its decision. (App. at 23-24); (Ct. Decision (April 29, 2025) at 9-10). However, victim 's statements cannot be linked, based on Ms. Cornell's knowledge at the time of hearing them, to when the actual sexual encounter was occurring.

Ms. Cornell cannot say when the sexual encounter between victim and Mr. Pelletier occurred after the March 18, 2022 party ended. She was in a separate room.[17] (B. Tr. T. at 51, 63). To that point, she cannot say that the statements she heard victim make actually happened during or after the sexual encounter. Additionally, when the event ended around 3 a.m. victim stated that she could not wake up Ms. Cornell.[18] (B. Tr .T. at 23, 46, 102). The record as it stands lacks the details necessary for use of the present sense impression exception to the hearsay rule. Rule 803(1) requires that the statements "must be made contemporaneously or immediately after the event described." There is no ability to say from the record that victim 's statements, overheard by Ms. Cornell, occurred during or after the sexual encounter.

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[17] Ms. Cornell testified that she went into her room sometime around midnight or one in the morning on the night of the party. (B. Tr. T. at 63). victim stated that the encounter concluded around 3 a.m. (B. Tr. T. at 102).

[18] When victim went into Ms. Cornell's room immediately after the sexual encounter had occurred, Ms. Cornell was not awake and victim testified that Ms. Cornell "was not really aware of what was going on. She was at the point, I thought, very intoxicated or she was just too tired and I couldn't get her up[,]" noting also that "[s]he was kind of incoherent." (B. Tr. T. at 23).

Additionally, it cannot be said, based on the record, that victim was perceiving the events of the sexual encounter when Ms. Cornell was overhearing statements. As noted, she was in a separate room and stated that she heard the statements during a conversation Mr. Pelletier and victim were having in the living room. (B. Tr. T. at 51, 53). victim 's testimony, which the court used Ms. Cornell's testimony to corroborate, was that the events of the sexual encounter occurred after they had finished their conversation. (B. Tr. T. at 15-16, 38); (App. at 23-24); (Ct. Decision (April 29, 2025) at 9-10). Moreover, there is no indication from Ms. Cornell that she believed a sexual encounter was occurring when she heard the statements. Logically, she would have most likely reacted differently in such a situation, if she had believed that a nonconsensual encounter was happening.

As such, the requirements of Rule 803(1) have not been met and Ms. Cornell's testimony about victim 's statements should have been excluded from evidence at trial and it was error for the trial court to rely on the statements in issuing it decision.

II. Ms. Cornell lacked personal knowledge to provide testimony about the events leading to the charges against Mr. Pelletier.

Unpreserved errors are reviewed by this Court for obvious error. 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.U. Crim. P. 52(b).

"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).

Ms. Cornell did not perceive the events that occurred between victim and Mr. Pelletier on the evening of March 18, 2022 into the early morning hours of March 19, 2022. She was in her bedroom and observed none of the interaction that led to the charges against Mr. Pelletier. (B. Tr. T. at 51, 63). Her testimony only established that she heard them talking and victim stating that she had a boyfriend and that nothing was going to happen. (B. Tr. T. at 51-53). The statements that Ms. Cornell overheard appear, based on her and victim ;s testimony, to predate any sexual activity that occurred between Mr. Pelletier and victim .[19] (B. Tr. T. at 15-16, 38, 51, 53); (App. at 23-24); (Ct. Decision (April 29, 2025) at 9-10). Also, as previously noted, she cannot provide testimony as to the events of the sexual encounter that occurred and lacks personal

[19] As noted previously, victim stated that no sexual encounter occurred until after their conversation concluded and she closed her eyes to go to sleep. (B. Tr. T. at 15-16, 38).

knowledge of the sexual events that took place between victim and Mr. Pelletier.

Maine Rule of Evidence 602 states that

> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

The Advisers' Note to former M.R. Evid. 602, from February 2, 1976, provide that:

> The burden of laying a foundation that the witness had an adequate opportunity to observe is on the proponent of the testimony. By failing to object the opponent waives the preliminary proof but not the substance of the requirement. If it later appears that the witness did not actually observe a fact as to which he testified, the testimony will be stricken on motion.

This Court has addressed a situation involving an argument that the foundation to a hearsay exception was not properly established on the record by looking towards Rule 602. State v. Franklin, 478 A.2d 1107, 1110 (Me. 1984); see also State v. Duquette, 475 A.2d 1145, 1147 (Me. 1984); State v. Porter, 404 A.2d 590, fn 11 (Me. 1979)(noting that a witness was incompetent to testify under Rule 602 when they did not have first hand knowledge of an event, but had been told of the statement by someone else).

Additionally,

> Although a witness may testify from personal knowledge that a statement was made, testimony about the content of such a

> statement raises hearsay problems. 'If a witness personally hears another make a statement, he is qualified to testify under Rule 602 that such statement was made. He may not, however, testify as to the contents of the out-of-court statement if such statement is offered to prove the truth of the matter asserted and falls within no exception to the hearsay rule.' State v. Duquette, 475 A.2d 1145, 1147 n.1 (Me. 1984); see also 10 J. Moore, Moore's Federal Practice § 602.03 at VI-34 to -35 (1994). State v. Long, 656 A.2d 1228, 1230 (Me. 1995).

Ms. Cornell cannot say what was occurring in the living room between vict [redacted] and Mr. Pelletier while she was behind a door in her bedroom. Furthermore, she cannot say that any sexual activity was occurring when she overheard their conversation. victim stated that the sexual activity occurred after they had completed their conversation and she attempted to close her eyes to go to sleep, suggesting that the sexual activity occurred after the conversation that Ms. Cornell heard. (B. Tr. T. at. 15-22, 38-39, 41, 42-43, 44). Additionally, after the sexual encounter had occurred, victim stated she went directly into Ms. Cornell's room and could not wake her. (B. Tr .T. at 23, 46). The record lacks a foundation to establish that Ms. Cornell actually heard comments by victim during the sexual encounter. Ms. Cornell should not be able, under Rule 602, to testify to the content of victim 's statements.

The trial court used this information to corroborate victim 's testimony, stating in its decision:

> victim testified that she not only told Pelletier she had a boyfriend, she directly told him several times to stop, and that she 'didn't want this to happen'. This detail is corroborated by

> Catherine Cornell who from her adjacent bedroom overheard victim tell Pelletier three times 'I have a boyfriend, no, nothing's happening'.
> . . .
> But to the detail of victim telling Pelletier several times to stop, a detail corroborated by Conners [sic], the court finds beyond a reasonable doubt that victim told Pelletier to stop, and further finds beyond a reasonable doubt that she neither expressly nor impliedly acquiesced.
> (App. at 23-24); (Ct. Decision (April 29, 2025) at 9-10).

Ms. Cornell's testimony included the following:

> Q All right. So describe for the judge what you heard the oral interaction between Mr. Pelletier and victim consist of.
> A So they were having just some casual conversation. You know, victi was talking about stuff back home, and it seemed friendly. And I could tell that Jesse was kind of trying to flirt with her. And then, you know, victi was like, oh, like, nothing's happening. Like, I have a boyfriend. And she brought up her current boyfriend, Mike (phonetic). And they just kept talking casually, and I heard her be like, no, like nothing's happening. Like, no.
> Q Okay. So you heard her say no or nothing's happening or reference her boyfriend more than once?
> A Yes.
> Q Okay. Can you estimate for the judge how many times you heard her say that in response to Mr. Pelletier?
> A Maybe three times.
> . . .
> Q Okay. Now, based on what you could hear victi saying, did you develop some concern about what what might be going on in the living room?
> A Yeah.
> Q And as a response to your concern, what did you do?
> A I texted victim
> Q And what was the purpose of the text?
> A I wasn't sure if she felt uncomfortable. So I texted her, seeing if she wanted to come into my room just to kind of put herself –– give her some distance between the situation.
> (B. Tr. T. at 52-53)

In sum, Ms. Cornell lacked personal knowledge of the events that transpired in the living room between Mr. Pelletier and victim. It is also likely from victim testimony, that Ms. Cornell was asleep when the events took place, because she was asleep when victim went into her room after the encounter and could not wake her. (B. Tr .T. at 23, 46). The testimony by Ms. Cornell should not have been allowed by the trial court, as Ms. Cornell lacked personal knowledge to present testimony that was pinpointed to the time of the sexual encounter.

III. Ms. Cornell's testimony about the conversation she heard between Mr. Pelletier and victim should have been excluded from evidence under Maine Rules of Evidence 403 and 401.

Unpreserved errors are reviewed by this Court for obvious error.[20] 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);

[20] When preserved, this Court "review[s] a court's decision to admit evidence pursuant to Maine Rule of Evidence 403 for an abuse of discretion. See State v. Thompson, 1997 ME 109, ¶ 14, 695 A.2d 1174, 1179 (Me. 1997). See also United States v. Carbone, 798 F.2d 21, 24 (1st Cir. 1986) (admission of audiotape with poor sound quality rests within the discretion of the trial court)." State v. Rizzo, 1997 ME 215, 704 A.2d 339, 344 (Me. 1997); see also State v. Robinson, 2015 ME 77, ¶ 21, 118 A.3d 242, 248 (Me. 2015)(citations omitted)(this Court "review[s] the admission of evidence over an objection of unfair prejudice pursuant to M.R. Evid. 403 for an abuse of discretion. . . '[and a] trial court commits clear error on evidence questions when its findings regarding the foundation for admitting or excluding evidence are not supported by facts in the record.'")

State v. Naoum, 548 A.2d 120, 125 (Me. 1988); State v. Franklin, 478 A.2d 1107, 1110 (Me. 1984); M.R.U. Crim. P. 52(b).

Ms. Cornell's testimony about statements she heard between Mr. Pelletier and victim cannot be temporally related to any sexual events occurring after the March 18, 2022 party ended. As such, the statements are highly prejudicial to Mr. Pelletier and should have been excluded from the record. With victim and Mr. Pelletier telling two different versions of the events from that night, the use of Ms. Cornell's statements by the trial court to corroborate vict 's version of the events was highly prejudicial to Mr. Pelletier and unjust. (App. at 23-24); (Ct. Decision (April 29, 2025) at 9-10).

Maine Rule of Evidence 403 states that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

Maine Rule of Evidence 401 states that "[e]vidence is relevant if: (a) [i]t has any tendency to make a fact more or less probable than it would be without the evidence; and (b) [t]he fact is of consequence in determining the action."

Ms. Cornell's testimony about the statements she heard from victim should not be of consequence in determining whether the sexual activity between Mr. Pelletier and victim was consensual. It should be excluded from evidence because it is not relevant. Her testimony does not provide for the ability

to determine if the comments occurred during the sexual encounter or at some other point. As such, her testimony pertaining to hearing victim state no, that nothing was going to happen, and that she had a boyfriend are irrelevant to establishing if victim made those statements during the actual sexual encounter. (B. Tr. T. at 51-53).

Additionally, Mr. Pelletier and victim testified that they, and Ms. Cornell were all intoxicated.[21] (B. Tr. T. at 13, 23, 70). Given this factor, and the question of whether events were recalled correctly by victim and Mr. Pelletier, it was highly prejudicial to use Ms. Cornell's testimony to corroborate victim 's testimony. (App. at 23-24); (Ct. Decision (April 29, 2025) at 9-10).

It was highly unjust to Mr. Pelletier to use of Ms. Cornell's testimony to corroborate victim 's testimony and cannot be said to not have tipped the scale in favor of victim 's credibility and version of the events from the evening after the March 18th party. As such, the statements are highly prejudicial to Mr. Pelletier and should have been excluded from the record under Maine Rule of Evidence 403. With victim and Mr. Pelletier telling two different

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[21] victim testified that she consumed one bottle of a margarita wine bottle. (B. Tr. T. at 13, 109-110). victim also stated that "[e]verybody [at the party] was intoxicated." (B. Tr. T. at 36-37, 103). She further stated that she threw up a few times at the party. (B. Tr. T. at 37, 103). Mr. Pelletier told law enforcement that he had drank more than usual that night and was drunk. (B. Tr. T. at 70). He testified that he consumed between "half to three−quarters" of a box of wine by himself. (B. Tr. T. at 110).

versions of the events from that night, the use of Ms. Cornell's statements by the trial court to corroborate victim 's version of the events was highly prejudicial and unjust to Mr. Pelletier. (App. at 23-24); (Ct. Decision (April 29, 2025) at 9-10). The probative value of the statements do not outweigh their prejudicial effect, particularly when the record cannot place the statements temporally to the actual occurrence of the sexual encounter between victim and Mr. Pelletier.

Conclusion

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

Dated: November 25, 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, Toff Toffolon, Esq., Office of the District Attorney, 70 State Street, Ellsworth, ME 04605.

Dated: November 25, 2025

_____/s/ Jeremy Pratt_____
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