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

Reply Brief for Appellant

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Argument

I. The statements allowed into evidence by the trial court were not admissible under the Maine Rules of Evidence.

Mr. Pelletier asserts that Ms. Cornell's testimony about victim 's statements at issue here is not admissible under the Maine Rules of Evidence. The trial court specifically based its ruling in Mr. Pelletier's case on Rule 803(1), finding that it "is squarely 803(1)." (B. Tr. T. at 51-57). As a result, Mr. Pelletier addressed the trial court's ruling under that evidentiary rule in his primary brief. The State has asserted in its brief that

> In addition to qualifying as a present sense impression, the trial judge observed that Ms. Cornell's statements could have fallen under the 'existing mental or physical condition[, . . .] exception, or as an "excited utterance", or as rehabilitation of a witness. Appellant's brief at page 16, MRE 803(1), 801(d)(B)(ii). The appellants fails to address these exceptions in any way. The State does recognize that the trial court conducted some of these discussions in the context of the admission of text messages (T-58 to 62), and that it seems to have rejected an excited utterance exception.

The trial court did not make a definitive finding that admitted the evidence under any other hearsay exception. As such, Mr. Pelletier addressed the grounds the trial court used to admit the evidence in his primary brief.

A. Ms. Cornell's testimony about victim 's statements is not admissible as a present sense impression.

The State has addressed Mr. Pelletier's primary argument that the present sense impression exception to the hearsay rule does not apply to Ms. Cornell's testimony about victim 's statements at issue here, asserting that it should apply. (Red Brief at 7).

Mr. Pelletier again asserts that the trial court abused its discretion in admitting Ms. Cornell's testimony under the present sense impression exception to the hearsay rule, Maine Rule of Evidence 803(1).[1] See Blue Brief at 26-27. As stated in his primary brief, Mr. Pelletier notes that

> 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.[2]
> Blue Brief at 26.

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[1] Maine Rule of Evidence 803(1) states that present sense impressions are not excluded from the hearsay rule, noting that a present sense impression is "[a] statement describing or explaining an event or condition, made while or immediately after the declarant perceived it."

[2] "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. (B. Tr .T. at 23, 46, 102)." Blue Brief at 26.

B. victim's statements were not admissible as excited utterances.

The State has asserted that victim's statements, which Ms. Cornell testified she overheard, are admissible as excited utterances under Maine Rule of Evidence 803(2). (Red Brief at 7-8). The State has specifically stated that

> The State understands that the trial court mentioned this exception as possibly applicable, but then rejected it. However, the State contends that it could legitimately form the basis for admission of Ms. Cornell's testimony, when one considers it along with the description of the assaults offered by victim, and the observation of injuries consistent with a traumatic event as described by Ms. Martin.
> (Red Brief at 7).

Maine Rule of Evidence 803(2) states that statements are not hearsay when "[a] statement relating to a startling event or condition[was] made while the declarant was under the stress of excitement that it caused."

This Court has stated that when addressing excited utterances that

> [a] court may admit a hearsay statement pursuant to the excited utterance exception if it finds the following foundational elements: (1) a startling event occurred; (2) the hearsay statement related to the startling event; and (3) the hearsay statement was made while the declarant was under the stress of excitement caused by that event. State v. Sheppard, 2024 ME 84, ¶ 12, 327 A.3d 1144, 1149 (Me. 2024).

When addressing an excited utterance

> '[A] crucial question in determining whether a statement qualifies as an excited utterance is how long the state of excitement may be found to last.' Robinson, 2001 ME 83, ¶ 11, 773 A.2d 445. There is 'no 'bright line' time limit to use in deciding when the stress of excitement caused by a startling event has dissipated.' Watts, 2007 ME 153, ¶ 6, 938 A.2d 21. In making this determination, a

> court must instead consider 'a variety of factors.' Id. The factors include: the nature of the startling or stressful event, the amount of time that passed between the startling event and the statement, the declarant's opportunity or capacity for reflection or fabrication during that time, the nature of the statement itself, and the declarant's physical and emotional condition at the time of the statement.
> State v. Taylor, 2011 ME 111, ¶ 22, 32 A.3d 440, 445 (Me. 2011).

As noted in Mr. Pelletier's prior discussion under Maine Rule of Evidence 803(1), there is no ability to say whether comments resulting from a startling event were overheard by Ms. Cornell. There was no indication as to what was happening between victim and Mr. Pelletier when Ms. Cornell heard them talking. There is no time pinpointed. It cannot be said that what Ms. Cornell stated she overheard occurred during the assault victim testified about. As the State notes, the "statement must be contemporaneously made in reaction to a 'startling event or condition'." (Red Brief at 7-8). It cannot be said that the statements Ms. Cornell testified that she heard were made contemporaneously in reaction to a "startling event or condition" and not at some other, none startling, point. As such, while the events outlined by the State in its brief were testified to by victim, there was no indication as to when the events occurred and whether the statements Ms. Cornell testified that she heard occurred during the assault events victim testified about.

C. victim's statements, which Ms. Cornell testified about, were not admissible as then existing mental, emotional, or physical conditions and were additionally excludable under Maine Rule of Evidence 403.

victim's statements, which Ms. Cornell testified about, are not admissible under Maine Rule of Evidence 803(3) as then existing mental, emotional, or physical conditions.

Maine Rule of Evidence 803(3) states that then-existing mental, emotional, or physical conditions are excluded from the hearsay rule. The rule states that

> A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.[3]

Evidence admitted under Rule 803(3) must "be both highly reliable and highly relevant. Philbrick, 436 A.2d at 862." State v. Atwood, 2010 ME 12, ¶ 28, 988 A.2d 981, 986 (Me. 2010).

This exception is "limited to evidence that is highly relevant and uttered in circumstances indicating its truthfulness above and beyond the reliability presumed of all statements of present mental state.'" State v. Penley, 2023 ME 7, ¶ 15, 288 A.3d 1183, 1190 (Me. 2023)(citation omitted). "In addition to the Rule 803(3) requirement that state-of-mind evidence be "highly relevant," see id., Rule 403 of

[3] The court has noted that "in the context of our rule-making power, we have not seen fit to differentiate the treatment of hearsay questions as between criminal and civil trials." State v. Cugliata, 372 A.2d 1019, 1027 (Me. 1977).

the Maine Rules of Evidence calls for the exclusion of evidence if 'its probative value is substantially outweighed by a danger of . . . unfair prejudice.'" State v. Penley, 2023 ME 7, ¶ 15, 288 A.3d 1183, 1190 (Me. 2023).

This Court has found

> inadmissible hearsay because it would qualify as a fact remembered, not a statement of intent. See M.R. Evid. 803(3); Shepard v. United States, 290 U.S. 96, 105-06, 54 S. Ct. 22, 78 L. Ed. 196 (1933)('Declarations of intention, casting light upon the future, have been sharply distinguished from declarations of memory, pointing backwards to the past. There would be an end, or nearly that, to the rule against hearsay if the distinction were ignored.').
> Cote v. Cote, 2016 ME 94, ¶ 22, 143 A.3d 117, 124 (Me. 2016).

The Advisers' Note to former M.R. Evid. 803 from February 2, 1978 note that

> The rule excludes in general statements of memory or belief to prove the fact remembered or believed. This, as the Federal Advisory Committee said, is necessary to avoid the virtual destruction of the hearsay rule which would result from allowing state of mind, provable by an out-of-court statement, to serve as a basis for inference of the happening of the event which produced the state of mind.

This Court has also stated that

> Maine Rule of Evidence 803(3) incorporates the common law 'present mental state' exception to the hearsay rule of Mutual Life Insurance Company v. Hillmon, 145 U.S. 285, 12 S. Ct. 909, 36 L. Ed. 706 (1892). See State v. Cugliata, Me., 372 A.2d 1019, 1027 (1977); Advisers' Note to M.R.Evid. 803; R. Field and P. Murray, Maine Evidence, supra at § 803(3). Rule 803(3) permits admission of hearsay statements of present intention that are highly relevant and uttered under circumstances indicating a high degree of reliability, in order to show that the declarant acted in conformity

therewith.[4]
State v. Philbrick, 436 A.2d 844, 862 (Me. 1981).

This Court has further found that testimony is "beyond the scope of the exception as a statement of belief [when] offered to prove the fact believed." MacCormick v. MacCormick, 478 A.2d 678, 681 (Me. 1984)(citations omitted).

The State has argued that

> Ms. Cornell's testimony about victim 's statements falls squarely within a description of her 'then existing state of mind', as she tried to dissuade Mr. Pelletier from continuing his unwanted sexual assault upon her. Her repeated cries of 'no' and her multiple entreaties to stop are a clear indication of her 'emotional state' and 'mental feeling', as both terms are explicitly mentioned in the rule.
> (Red Brief at 9).

There is no ability to say what victim 's state was when Ms. Cornell overheard her statements. And, as such, there is no ability to link the events of a sexual assault, testified to by victim , to those statements overheard by Ms. Cornell. There was an extremely large time frame in which the events victim testified about could have occurred that evening, and victim testified that after she was able to get away from Mr. Pelletier that she could not wake Ms. Cornell in her room, presumably due to her level of intoxication.[5] (B. Tr .T. at 23, 46, 102). The evidence is not sufficient to link the events overheard to those events

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[4] "The rule allows evidence of statements of present intention to perform an act as basis for an inference that the act was performed." State v. Mason, 528 A.2d 1259, 1261 (Me. 1987).

[5] Mr. Pelletier asserts that Ms. Cornell's consumption of alcohol should reduce the reliability of her testimony in this analysis.

of an assault testified to by victim. As such, the probative value of Ms. Cornell's testimony about victim's statements "is substantially outweighed by a danger of . . . unfair prejudice" under Maine Rule of Evidence 403 and the testimony should not have been admissible. The case involved the word of vict [redacted] against that of Mr. Pelletier and Ms. Cornell's testimony was highly prejudicial to him, as it was used to corroborate victim's version of events.

D. victim's statements overheard by Ms. Cornell are not admissible for the rehabilitation of a witness.

victim's statements overheard by Ms. Cornell are not admissible under Maine Rule of Evidence 801(d)(1)(B)(ii).

Maine Rule of Evidence 801(d)(1)(B)(ii) states that: "[a] statement that meets one of the following conditions is not hearsay. . . [t]he declarant testifies and is subject to cross-examination about a prior statement, and the statement . . . [i]s consistent with the declarant's testimony and is offered. . . to rehabilitate the declarant's credibility as a witness when attacked on another ground."

The Eight Circuit has noted that "[t]he impeachment must truly be 'on another ground' to qualify, one not covered by the first category. Fed. R. Evid. 801(d)(1)(B)(ii)(emphasis added). Only when a party impeaches a witness on a ground '[]other' than—or in addition to—a motive to lie does the second category kick in. Id." United States v. Begay, 116 F.4th 795, fn 2 (8th Cir. 2024).

The State has argued that

> The trial court observed that this exception might apply if the State '(does) it through victi to use that (exception)'. (T-61) The State believes the court's comment to refer to a recall of victim in rebuttal. But the State argues that Ms. Cornell's testimony was attacked through cross examination as set forth on pages 63 and 64 of the transcript, and that even though victim was not recalled, the testimony of subsequent witnesses Franklin Jennings and nurse Katie Martin can be considered as rebuttal of the defense attempt to discredit Ms. Cornell.
> . . .
> State argues that the order in which the statements were introduced during trial is irrelevant to the concept of rehabilitation, especially in a bench trial.
> (Red Brief at 9-10).

As with Maine Rule of Evidence 801(d)(1)(B)(ii), Mr. Pelletier asserts that Maine Rule of Evidence 801(d)(1)(B)(i) equally fails to provide a ground for admittance of Ms. Cornell's testimony. Maine Rule of Evidence 801(d)(1)(B)(i) provides that

> [a] statement that meets one of the following conditions is not hearsay. . . [t]he declarant testifies and is subject to cross-examination about a prior statement, and the statement . . . [i]s consistent with the declarant's testimony and is offered[] to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying.

This Court has noted that:

> A prior consistent statement by the declarant, whether or not under oath, is admissible only to rebut an express or implied charge against him of recent fabrication or improper influence or motive.
>
> The rule is but a codification of what has long been the law in Maine. A

prior statement of a witness, consistent with his testimony at trial, is admissible. . . to rebut the inference that such statement was a recent fabrication or given with improper motives. Advisers' Note to M.R. Evid. 801. See State v. Franco, Me., 365 A.2d 807, 812 (1976).

The admissibility and scope of a prior consistent statement, rests in the sound discretion of the presiding justice, and depends upon the nature and extent of impeachment efforts. See State v. Lizotte, Me., 249 A.2d 874, 880-881 (1969).
State v. Williams, 395 A.2d 1158, 1164 (Me. 1978).

The Eight Circuit has stated that

The Supreme Court has explained that 'prior consistent statements may not be admitted to counter all forms of impeachment or to bolster the witness merely because she has been discredited.' Tome v. United States, 513 U.S. 150, 157, 130 L. Ed. 2d 574, 115 S. Ct. 696 (1995). Rule 801(d)(1)(B) permits admission of prior consistent statements as non-hearsay 'only when those statements were made before the charged recent fabrication or improper influence or motive' Id. at 167. Following Tome, our court reversed a conviction for aggravated sexual abuse in United States v. Beaulieu, 194 F.3d 918, 920, 922 (8th Cir. 1999), where the district court admitted prior consistent statements of the victim as evidence of her credibility. We observed that the defense asserted that the victim had 'made up [her] story from the start," and concluded that the victim's out-of-court statements were not made before the alleged fabrication, as required by Tome. Id. at 920.
United States v. Kenyon, 397 F.3d 1071, 1079-1080 (8th Cir. 2005).

The Tenth Circuit has noted that

Certainly, Magnan's counsel attempted to discredit Ja.M., Je.M., and R.M. during cross-examination. However, at no point did he expressly or impliedly assert that the victims had recently fabricated their testimony. His attacks were limited to asking whether the victims told others the abuse was occurring, asking about their drug and alcohol use, and asking about their legal troubles. Because Magnan's counsel did not imply that the

> victims' stories were recently fabricated, there was nothing for the government to rebut. 'Prior consistent statements may not be admitted to counter all forms of impeachment or to bolster the witness merely because she has been discredited.' Tome, 513 U.S. at 157.
> United States v. Magnan, 756 F. App'x 807, 817-818 (10th Cir. 2018).

Mr. Pelletier asserts that in order for the constricts of Maine Rule of Evidence 801(d)(1)(B)(i) to be met there would need to be a recent allegation of fabrication by Mr. Pelletier, which does not mesh with his defense at trial. Additionally, the use of Ms. Cornell's testimony was intended to bolster victim [redacted]'s testimony. As such, the necessary elements for use of Rule 801(d)(1)(B)(i) have not been met.

Additionally, the Advisory Committee Note to Rule 801(d)(1)(B), from August 2018, highlights that "[a]s before, to be admissible for rehabilitation, a prior consistent statement must satisfy the strictures of Rule 403." As noted in Mr. Pelletier's primary brief, Ms. Cornell's statements should have been excluded due to their prejudicial effect on Mr. Pelletier's case under Maine Rule of Evidence 403. See Blue Brief at 32-35.

II. An abuse of discretion standard of review is applicable.

The State's second argument is that "[i]n order to reverse the judge's verdict, this Court would have to determine that "there is no competent evidence to support the findings. State v. Taylor, 2011 ME 111". (Red Brief at 12).

Mr. Pelletier asserts that a "trial court's determination of whether a statement falls within an exception to the hearsay rule" is reviewed for an abuse of the trial court's discretion and such a finding of abuse would warrant reversal. State v. Ryne G., 509 A.2d 1164, 1168 (Me. 1986); see Blue Brief at 22.[6]

III. Clarification about the contents of Mr. Pelletier's Statement of the Facts.

The State further states that "[a]s conceded at page 18 of the brief, the judge relied primarily on victim's testimony, and he observed that Ms. Cornell's testimony was corroborative." (Red Brief at 12). Mr. Pelletier simply provided a portion of the court's verbatim ruling on page 18 of its brief in its Statement of the Facts. Mr. Pelletier is appealing the trial court's ruling and not relying on the court's findings or ruling as accurate, he is arguing that the trial court abused its discretion in issuing its decision and that Ms. Cornell's testimony at issue here should not have been admitted. Ms. Cornell's statements provided substantial evidence that the trial court used in issuing its decision, which it used to corroborate victim's version of events to Mr. Pelletier's detriment.

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[6] As noted in Mr. Pelletier's primary brief: "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 Blue Brief at 22.

Conclusion

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

Dated: January 12, 2026

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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 Reply 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: January 12, 2026

_____/s/ Jeremy Pratt_____
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