

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW COURT DOCKET NO: CUM-23-4

**ERNEST WEIDUL
Appellant**

v.

**STATE OF MAINE
Appellee**

**On Appeal from the Cumberland County
Unified Criminal Docket**

BRIEF FOR APPELLANT

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ISSUES PRESENTED FOR REVIEW

I. Whether the Post-Conviction Review Court erred in finding that Appellant’s trial counsel were not ineffective and that their serious errors did not have an adverse impact in causing Appellant’s jury trial guilty verdict.....1

II. Whether the Post-Conviction Review Court erred in granting the State’s motion to allow the newly assigned replacement justice to rely exclusively on the transcripts and audio recordings of the trial counsel who had been formerly

examined in court under oath during Justice Wheeler’s stewardship of this post-conviction review proceeding.....1,2

SUMMARY OF ARGUMENT

On May 5, 2010, the Appellant, Ernest Weidul, got intoxicated one evening with an individual named Roger Downs whom he had just met for the first time earlier that day. Later in the evening, while they were drinking in Down’s apartment, Downs started attacking Appellant and the Appellant defended himself and got into a brief physical fight with Downs. Both men were injured in the fight and went to sleep thereafter. The next morning, upon noticing Roger Down’s facial injuries, Appellant tended to Downs’s injuries and offered to drive him to the hospital. Downs refused and went back to sleep.

Upon awakening later that day Downs felt worse and called the police to bring him to Mercy Hospital. At the hospital, he got little to no care or treatment, and, in fact, Downs would have been discharged if not for the protest of his sister.

After getting almost no treatment in the hospital, about two days after the fight with Appellant, Down’s suddenly died from cardiac arrest.

Appellant had no idea what had happened to Downs. Police had been looking for him since they found a hospital bracelet with his name on it in Downs’s apartment, the day Downs called them.

After appellant's vehicle was stopped and he was questioned about operating a motor vehicle after suspension, law enforcement officers then switched their questioning to what had happened between Appellant and Downs, and Appellant told them everything he knew, and was charged with Aggravated Assault.

About six months later, the Maine medical examiner decided that Roger Downs had eventually died in the hospital as consequence of a non-visible blow inflicted to his neck and Appellant was then charged with manslaughter.

To rebut the medical examiner's opinion, Appellant's first assigned defense attorney had obtained the opinion of a medical expert that Downs had died from Zoloft poisoning. Appellant had reviewed Downs's medical record and thought this opinion of Zoloft poisoning was ridiculous.

Appellant demanded that his counsel keep him apprised as to all events and planning in his case, and he insisted that his counsel undertake investigations and arrange for forensic testing necessary to his defense. When his attorney failed to live up to these expectations, appellant asked him to withdraw and submitted a motion to the court asking to be appointed an attorney from twelve he listed.

The court did not appoint any attorney Appellant approved, and instead appointed an attorney whom he did not trust, who, along with her associate, also completely failed to meet Appellant's demands and expectations. As a consequence, Appellant demanded that they withdraw from his case, as well, and

submitted a motion to represent himself in his looming jury trial. In response, the court denied Appellant's request to fire his attorney, but granted his motion to assume the role of counsel with his appointed counsel. The court then also appointed a third attorney to represent Appellant.

Then, just two days before Appellant's jury trial was to commence, the Defense expert reviewed slides of Down's lungs from Mercy Hospital and issued a report that Downs had died from advanced pneumonia. Based on this report Appellant's attorneys were granted a continuance.

Two days before Appellant's jury trial finally commenced, Mercy Hospital provided the defense a Root Cause Analysis/ Sentinel Study report that admitted among other critical admissions of fault, that Mercy Hospital's violations of standards of care were a cause of Downs's death. Appellant's defense attorneys, who had not retained any expert to testify as to the deficient and negligent medical treatment of Downs at Mercy Hospital, however, did not ask for a continuance to investigate or get further medical opinion or expert testimony as to this exculpatory admission of fault. They did not present any witness to testify as to any of the findings of facts of the sentinel study. They did not even ask a single question about any aspect of this study to any State medical witness.

On appeal of Appellant's condition, Appellant's appellate attorney did not mention the sentinel study, or for that matter, argue on appeal any aspect of the medical care or cause of death of Roger Downs.

STATEMENT OF PROCEDURAL HISTORY AND FACTS

On May 5, 2010, Appellant was charged with Aggravated Assault and Operating After Suspension and, on May 9, 2010, he was indicted on these charges. He pleaded not guilty to these charges. On December 9, 2010, Appellant was charged by superseding indictment with Manslaughter. He pleaded not guilty to this charge.

On December 12, 2011, a hearing on Appellant's Motion to Suppress Evidence was held along with a probable cause hearing. After hearing, Appellant's bail was revoked and his motion to suppress was later denied.

On or about February 1, 2012, a motion to continue the jury trial in this matter was granted. On May 21, 2012, eight days of jury trial ensued, and on May 30, 2012 Appellant was convicted of Manslaughter and Aggravated Assault.

On June 19, 2012, Appellant was sentenced to 20 years in jail, with all but 16 years suspended for manslaughter and 10 years concurrent for Aggravated Assault.

On March 15, 2013, Appellant filed an appeal of his conviction, which appeal was denied.

On July 3, 2014, Appellant filed a Petition for Post Conviction Review, and this Petition was amended on April 16, 2016, and on April 3, 2017. On April 11, 2017, January 3, 2018, and June 8, 2022, a contested post-conviction review hearing was held.

On November 28, 2022, Appellant's petition was denied, and this appeal process has followed.

EVENTS BEFORE CRIMINAL CHARGE

On May 5, 2010, the Petitioner, Ernest Weidul, was living in his Dodge pickup truck after leaving the Milestone residential detox program in Portland, Maine. (January 8, 2022 PCR-20-22) He had left the program to go to Maine Medical center to get treated for a possible case of tuberculosis. (May 23, 2012 TT-160,161) At the time, in addition to polysubstance abuse, he was suffering from depression, anxiety, post-traumatic stress disorder, and, in recent previous years, had been treated at inpatient psychiatric hospitals such as Riverview Psychiatric Hospital in Augusta, Maine. (January 8, 2022 PCR-20-22)

Maine Medical Center assessed Ernest's condition, but would not admit him, and Ernest Weidul quickly relapsed and started medicating himself with alcoholic beverages and excessive doses of his ant-psychotic, anti-anxiety, and mood stabilizer medications. (id.)

On May 5, 2010, Ernest Weidul went to Maine Coastal Trading at 637 Forest Avenue, where he sold some antique stamps for some spending money. (May 23, 2012 TT-160,161) While he was trying to exit the parking lot around another vehicle that was blocking his way, Roger Downs yelled down from his porch at 635 Forest Avenue yelled at the individual whose car was blocking Ernest's. Roger Downs was angry with the person blocking Ernest's way, and he yelled profanities and expletives at this individual. Then invited Ernest Weidul up to his apartment for a drink. (January 8, 2022 PCR-25) (May 23, 2012 TT-161)

Ernest Weidul had never met Roger Downs before. When Ernest Weidul entered Downs's apartment, he noticed that Roger Downs was a large man, and four years younger than Ernest (The medical examiner indicated that by her measurements, Down was 6 foot one inch and weighed 243 pounds. (May 23, 2012 TT-22) Ernest Weidul was then 5 foot 10 inches, 155 pounds.

Ernest Weidul and Roger Downs started drinking white Russian drinks made from coffee brandy. (May 23, 2012 TT-162) They got along well at first, but as Roger Downs drank more, he became aggressive. (January 8, 2022 PCR-26,28,29) Roger Downs told Ernest Weidul about dispensing with people on his fishing boat whom he did not get along with. (id). He started poking Ernest Weidul in his eyes and face and started to hit Ernest on his head. (id.) Ernest Weidul told Roger Downs to stop but he would not. (id)

Ernest Downs's son made a brief visit, and after he left, Ernest Weidul and Roger Downs went to the Hannaford's market to buy another half-gallon of coffee brandy. (May 23, 2012 TT-120,121) They then went to Roger Down's sister's apartment where they resumed drinking. (January 8, 2022 PCR-21-22) After Roger Down's sister left, Roger Downs became aggressive and threatening again, and started to hit at Ernest's head again. (id.) Ernest Weidul told him to stop but Roger Downs would always start up again. At one point Downs yelled out loudly at Ernest Weidul that he would kick his ass. (January 8, 2022 PCR-33)

As the night progressed, the men continued drinking. (May 23, 2012 TT-172) As Roger Downs drank more, his aggression increased, and he swung at and punched Ernest. (May 23, 2012 TT-185-187) A fight then ensued. (January 8, 2022 PCR-31-33) Roger Downs grabbed Ernest, hit him in the head, chest, and shoulders, and pulled Ernest's hair. Ernest Weidul defended himself and punched Roger Downs back repeatedly until Roger Downs stopped attacking him (January 8, 2022 PCR-22.37) (May 23, 2012 TT-185-187) Both men became very intoxicated and passed out and slept through the night (id.)

When they awoke the next day, it was apparent that Ernest Weidul and Roger Downs both had suffered injuries. (id.) Ernest's knees were scraped, and he had a cut on his forehead, bruises on his back, and a mark on his arm. (January 8, 2022 PCR-25) Roger Downs face was swollen, and his lip was bleeding, and he

had blood on him. (January 8, 2022 PCR-22,37) Ernest Weidul cleaned Roger Downs up, and offered to take him to the hospital (id.) He tried to convince Downs to get treatment, but Roger Downs refused and told Ernest Weidul to leave (id.)

The next morning, Ernest Weidul met with the social worker, Todd Prevatt, who helped Ernest with his medical and social issues. (May 22, 2012 PCR-220) Todd Prevatt was going to drive Ernest Weidul that day to a screening for a counseling program. Ernest Weidul was a member of the AMHI consent decree class, and the Department of Health and Human Services was responsible for providing care and treatment of Ernest's mental illnesses and addictions. (id.)

When Ernest Weidul met with Todd Prevatt, he was not in the best shape. His social worker had seen blood on Ernest Weidul's shirt, and Ernest Weidul had to change his shirt for his appointment. (May 22, 2012 PCR-232-237) His social worker asked what was going on Ernest Weidul told had got into a fight and hit the other man 30 to 40 times. (id) The Medical Examiner, Margaret Greenwald actually agreed at trial that there were only seven areas of major impact on Roger Downs body (January 8, 2022 PCR-20,23) (May 24, 2012-41) She also testified that as a result of his clotting condition and taking blood thinner medications, Downs bled and bruised easily (May 24, 2012-24,46)

On May 6, 2010, Roger Downs had slept through the day. (May 18, 2012 PCR-125) Later he felt bad, as his face was swollen and he was in pain. (id) He

called the police and told them he needed transport to the hospital. The police asked what had happened, and Roger Downs told them he had been assaulted by a man he did not know (id) The police then took a statement from Roger Downs and brought him to the emergency room at Mercy Hospital in Portland. (id) Later that day they found Ernest Weidul's medical bracelet in Down's apartment. (id.)

Roger Downs was placed in the hallway of Mercy Hospital's emergency room because the emergency room bays were full. (Mercy Hospital Medical Records) (Mercy Hospital Root Cause Analysis) Because the ER was busy, he was accepted as a patient by an RN who covered for RNs taking breaks. (id.) This covering nurse noted swelling to Down's left side of his neck, and injuries to his teeth, mouth, nose, and eyes. Roger Downs was also nauseous and vomited (id.)

The nurses and doctors noted that Downs has had many serious health problems, including hypertension, chronic obstructive pulmonary disease, emphysema, esophageal reflux, alcoholism, renal failure, depression, and a blood clotting disorder. (May 24, 2012-28,29, 42) Roger Downs's emphysema, esophageal reflux, and, and alcohol usage made it harder for Roger Downs to resist vomiting, and to not aspirate (swallow into the lungs) his vomit or stomach acid. (May 24, 2012-62,63) All of these conditions also put Roger Downs at risk of developing infection and pneumonia. (May 24, 2012-24,64,65)

Mercy Hospital records noted that Roger had a .06 milligram blood alcohol level at his admission, and the medical indicated that this finding would extrapolate to a blood alcohol level of .36 milligrams the previous evening. (May 24, 2012-115,116) The Mercy Hospital radiologist also reported that the CAT scan of Roger Downs's lungs revealed glass opacities, which is an abnormal condition consistent with blood or fluid in Down's lungs. (Mercy Hospital Medical Records) (May 24, 2012-115,116) An Ear, Nose and Throat specialist was called by the hospital, but this specialist chose not to come to the Hospital to evaluate Roger Downs, as he did not engage in "plastics (Mercy Hospital Root Cause Analysis)

After all this testing and observation, Mercy Hospital decided that Roger Downs was in a stable medical condition and decided to discharge Roger Downs to his home and to not keep him for observation. (May 24, 2012-98,99) He was never identified as a patient with a compromised airway, or with laryngeal edema, and was never admitted to the critical care unit of the Hospital or the intermediate level of care of the hospital. Down's sister and brother had arrived at the hospital and learned of this decision. They were adamant that Roger Downs should stay in the hospital, and indicated he could not take care of himself, and they were worried Roger Downs would suffer heart failure. His sister was also very concerned about Roger Downs' breathing, and that he was making "wet gurgly sounds". (April 11, 2017 PCR-151) (Mercy Hospital Medical Records)

Roger Downs was not admitted into Mercy Hospital until the next day, on May 7, 2010, at 1:10 PM to the general medical floor, where he was not attached to any monitors to keep track of his medical condition. He was also placed in a room at the end of the hall, far from the nurse's station, and was placed on periodic checks of his vital signs to monitor his alcohol withdrawal. Shortly after his admission, he vomited after taking an Ativan. (Mercy Hospital Medical Records)

Roger Downs had been admitted the general medical floor, the lowest level of admitted patient care, because he was noncompliant with medical recommendations. (Mercy Hospital Medical Records) Roger Down's sister went home and visited him again at about 4:30 PM on May 7, 2010. She noted that her brother was in a lot of pain and that he sounded "gurgly". She noticed that he vomited up a V8 drink immediately after consuming it. (April 11, 2017 PCR-151)

During the course of the day on May 7, 2010, Roger Downs's condition worsened. His oxygen level went down, and he was supplied supplemental oxygen, as needed. (Mercy Hospital Medical Records) (Mercy Hospital Root Cause Analysis) Later in the shift, after Roger Downs's family had gone home, a nurse taking vitals noted that Roger Downs appeared anxious, that his oxygen level was low, and that his blood pressure and pulse were high. As she was tending to Roger Downs, scanning his bracelet for his medications, Roger Downs suddenly fell backward and lost consciousness. Emergency efforts to resuscitate him and to save

his life were unsuccessful, and Roger Downs was pronounced dead of cardiac arrest at 10:15 PM, May 7, 2010. (Mercy Hospital Medical Records)

A later examination of Mercy Hospital's lung tissue samples revealed that Roger Downs had pneumonia while he was in the hospital. He was, however, not ever diagnosed with, treated for, or monitored for pneumonia while he was in the care of Mercy Hospital. (Mercy Hospital Medical Records) (Mercy Hospital Root Cause Analysis)

After the death of Roger Downs was reported to the police, they intensified the assault investigation, (May 23, 2012 TT-82), and put on an alert to bring Ernest Weidul in for questioning. (id.)

CRIMINAL CHARGES

On May 8, 2010, A Portland police officer pulled over Ernest's vehicle for defective tail lights and confirmed that Ernest's license was suspended. (May 22, 2012 PCR-64,23) He engaged in small talk with Ernest Weidul and waited an hour to arrest Ernest Weidul in order to give the detectives investigating Roger Downs's death time to prepare for Ernest's interrogation. (May 22, 2012 PCR-75)

Ernest's truck was seized and he was brought to the Portland Police Station for interrogation. Ernest Weidul was impaired and under the influence of the medications he was abusing. (January 8, 2022 PCR-22,41) He had not slept at all while abusing these drugs. (id.) He was very anxious and worried about being

charged with OUI and a felony Habitual Offender offense, and of losing his motor vehicle and all his worldly possessions. (id.)

The first officer who interviewed Ernest Weidul at the police station deliberately let Ernest Weidul believe he was only there for the charge of operating his motor vehicle without a license. (January 8, 2022 PCR-42-44 (May 23, 2012 TT-115,116) As Ernest Weidul had no idea that the actual reason for his interrogation was to investigate his possible role in Down's death, he waived his Miranda Rights and agreed to answer questions without a lawyer present. (January 8, 2022 PCR-45-46)

When a Portland detective took over the interrogation, the focus quickly switched to the topic of the incident with Roger Downs. (May 23, 2012 TT-157-158) Ernest's questioning went on for a long time, with three or four officers in the room. (January 8, 2022 PCR-42) Ernest Weidul was continuously led to give answers during this interrogation, and he gave the officers details of the time he spent with Roger Downs, of the fight that Roger Downs started, and of defending himself by repeatedly punching Roger Downs until Downs stopped attacking him. (January 8, 2022 PCR-42-45) (May 23, 2012 TT-183

Following this interrogation, Ernest Weidul was charged with aggravated assault and OAS, and he was assigned Attorney Bob LeBrasseur as his Attorney. (January 8, 2022 PCR-47-50,51) After spending some time in jail, he was bailed

out, and went to work on his defense. (January 8, 2022 PCR-51) During this time the State medical examiner was working on an autopsy to determine the cause of Downs' death. (May 23, 2012 TT-67,69)

Ernest Weidul insisted on being actively involved in every aspect of his case and on being consulted and advised as to all decisions and events undertaken in his defense. (January 8, 2022 PCR-50-58,59) Ernest Weidul demanded that Bob LaBrasseur (and every assigned attorney after Bob LeBrasseur: 1) obtain information and medical records from Milestone, Maine Medical Center, and other inpatient psychiatric hospitals at which he had been treated; 2) retain a psychiatrist or pharmacologist to assess and explain the effects that his medication and alcohol abuse had on his state of mind and voluntariness during his interrogation; 3) obtain the medication vials that were in his truck to corroborate his medication overuse and abuse; 4) arrange for fingerprint testing, and DNA testing to forensically examine the evidence from the crime scene; and 5) retain an expert to examine his recorded interview with the police, as it had skips that omitted parts of Ernest Weidul' s interview. (id.)

Though Bob LeBrasseur was in the process of negotiating a misdemeanor assault conviction for Ernest Weidul, he had also not done any of the things that Ernest expected, and so, Ernest lost faith in him. Bob LeBrasseur, in turn, withdrew from Ernest' case. (January 8, 2022 PCR-58) Ernest Weidul therefore

wrote to the court and named a dozen attorneys he wanted to see appointed to his case. (January 8, 2022 PCR-59) The court ignored Ernest's list and, instead, appointed Amy Fairfield to represent Ernest. (January 8, 2022 PCR-60)

Problems with this appointment quickly arose. When Ernest Weidul first met with Amy Fairfield at her office, he noticed she had the name of her former law partner, Bob LeBrasseur on her door. (id.) He told her this was a conflict and she should withdraw. (January 8, 2022 PCR-60-62,70) Amy Fairfield had also retained the services of a private investigator who had repeatedly harassed Ernest Weidul in his former role as a Kennebunk police officer. (January 8, 2022 PCR-61) She also, without Ernest's knowledge or consent, submitted a motion to have Luke Rioux appointed her co-counsel, and, thereafter, Attorney Rioux took over major parts of Ernest's defense. (January 8, 2022 PCR-62)

As time went on, like Bob LeBrasseur, Attorneys Fairfield and Rioux did none of the things Ernest Weidul had demanded be undertaken in his defense. (January 8, 2022 PCR-62-65) Without consulting Ernest, Attorney Fairfield had also engaged the services of a pathologist, Dr. Robert Beliveau. (January 8, 2022 PCR-72) Ernest Weidul also experienced serious problems getting answers, responses, information, and documents from his attorneys. He was forced to submit his own motions to the court demanding that his attorneys obtain and provide him medical records, information, copies of court documents, and that they

retain the appropriate experts to conduct the forensic and psychiatric testing that he needed for his defense. (January 8, 2022 PCR-70,71)

In the late fall of 2010, Ernest's case became more serious and complicated. Ernest Weidul was charged by superseding indictment with an additional charge of Manslaughter, a class A crime, after the medical examiner, Margaret Greenwald completed her autopsy and determined that Roger Downs had died from Laryngeal Edema – a condition allegedly caused by Ernest Weidul's blows to Roger Down's neck. (May 23, 2012 TT-233,234) At this time Ernest Weidul was also detained in jail for violation of bail and was charged with criminal threatening as a result of allegedly threatening another person who was living in a park that Ernest Weidul was camping out in as part of the Occupy Maine protest movement. (January 8, 2022 PCR-65,66) (April 11, 2017 PCR-127)

On the morning of December 10, 2010, Ernest Weidul's motion to suppress evidence and a probable cause hearing was held. Attorney Rioux had argued the motion to suppress evidence based on the involuntariness of Ernest's interrogation (without obtaining a psychiatrist or any of Ernest's recent or previous medical and psychiatric records), and that motion was later denied. After the December 2010 probable cause hearing, Ernest was also ordered held without bail.

The manner in which these hearings were conducted illustrated the serious problems that Ernest Weidul was experiencing with his attorneys' performance. At

the time of these hearings, he was still not receiving answers, information, or copies of court documents from his attorneys. (January 8, 2022 PCR-88,89) For his motion to revoke bail hearing, Ernest Weidul had also arranged to have several witnesses appear at his scheduled 1:00 PM hearing time to testify that Ernest Weidul did not threaten the individual who had so claimed. (January 8, 2022 PCR-22-25) These witnesses never got the chance to testify, however, as Attorney Fairfield had elected, without informing Ernest, to combine the bail hearing in the morning with a scheduled probable cause hearing. (id.) At his post-conviction review hearing Attorney Fairfield acknowledged that Ernest Weidul had a fair objection as to this lapse. (April 11, 2017 PCR-39,40)

Ernest's jury trial was also coming up in the near future -- January 27, 2012, and he was dissatisfied with the expert pathologist whom Attorney Fairfield had retained -- Dr. Robert Beliveau - as he did not agree with this expert's opinion that Roger Downs had died from Zoloft poisoning. (After obtaining the results of the testing of Roger Downs's lung tissue samples from Mercy Hospital, Dr. Robert Beliveau changed his opinion and opined that he died from advanced pneumonia). (January 8, 2022 PCR-72,75) Roger Downs had been taking Zoloft for a long time, without incident, and Ernest believed this expert opinion was not credible or believable. (January 8, 2022 PCR79,80)

As a result of all of the problems and lack of performance of his attorneys, Ernest Weidul demanded that they withdraw from his case, and he moved to represent himself. The court denied his attorneys' motions to withdraw, and, instead, appointed Attorney Tom Connolly just eleven days before Ernest's jury trial was to commence, to join in the representation of Ernest. (January 8, 2022 PCR-72) After Ernest Weidul's jury trial was continued only two days before it was to commence -- as a result of Dr. Beliveau's discovery that Roger Downs had advanced pneumonia when he died in Mercy Hospital -- Ernest Weidul was finally granted permission to act as counsel with his other appointed counsel. (January 8, 2022 PCR 73-75) (June 3, 2018 PCR-13,21,22)

When Attorney Connolly came into this case eleven days before the jury trial was to begin, he believed that the case had critical problems with the defense. In his Interim voucher request to the Maine Commission of Indigent Legal Services, he explained, at length, the reasons why he had to spend so much time in this case. He declared that the investigation "had not been developed or augmented." (id.) He indicated he had to spend enormous amounts of time to "gain control of a runaway case." (June 3, 2018 PCR-18,24) He averred that when he joined the defense the "AG's office called all the shots, and the case was in the complete control of the AAG, and not the defense". (id.) After the trial was over, in explaining to the Maine Commission of Indigent Legal Services the large

amount of time reflected in his voucher, Attorney Connolly asserted he was brought into this case when it was “in crisis”. (id.)

Attorney Connolly was appointed by the court on January 15, 2012. Following that date, neither Attorney Fairfield or Attorney Rioux ever had another meeting with Ernest Weidul ever again. (January 8, 2022 PCR-23,24) Following this date, though Ernest Weidul was appointed as counsel in his own defense, he was, however, never included in a single defense preparation or strategy session with his other counsel. (April 11, 2017 PCR-70,71, 133)

As the next jury trial date of May 21, 2012 approached, Ernest Weidul was concerned that none of his demands for testing or experts had ever been undertaken by his attorneys. He was also concerned that his opinion had been ignored that his defense needed another expert instead of Dr, Beliveau, as 1) Dr. Beliveau was not an expert in and had no specialized knowledge of laryngeal edema -- the alleged cause of death of Roger Downs, and 2) Dr. Beliveau could easily be cast as not being a credible expert after changing his opinion of Down’s cause of death to advanced pneumonia instead of Zolofit poisoning. (January 8, 2022 PCR-74,83)

In the few months before Ernest’s trial commenced, spurred on by Dr. Robert Beliveau’s discovery that Roger Downs had advanced, undiagnosed and untreated pneumonia while in Mercy Hospital, Attorney Connolly subpoenaed the complete records of Mercy Hospital concerning its treatment and investigation of

its treatment of Roger Downs. (January 8, 2022 PCR-78) (June 3, 2018 PCR-34,40) After motion hearings and an interlocutory appeal as to this production, Attorney Connolly secured an order for Mercy Hospital to provide this information to the Defense. (id.)

Two days before the jury trial commenced on May 21, 2012, Mercy Hospital provided this information to the defense attorneys, in its Root Cause Analysis and Action Plan. It contained substantial and material information of mistakes that Mercy Hospital found in its diagnosis and treatment of Roger Downs, including: that there was a long time delay until the tracheotomy; that the tracheotomy kit had expired; that a lack of anesthesia skills may have contributed to Roger Downs' death; that the physician's assistant was not qualified for their duties; that the hospital violated a standard of care for Roger Downs by not recognizing his level of trauma. Despite this information, Ernest's attorneys did not ask for a further continuance to examine this information or to retain an expert to analyze and critique these revelatory and exculpatory Mercy Hospital records. (June 3, 2018 PCR-63)

JURY TRIAL

The jury trial in this matter was held over eight days. The state medical witnesses from Mercy Hospital testified as to their various observations and findings and conceded that Roger Downs was more susceptible to infection and

pneumonia due to his alcoholism and medical conditions. They also acknowledged that CDC testing revealed that Roger Downs had pneumonia, and agreed that Downs exhibited some testing and symptoms consistent with pneumonia, but they indicated that they detected no condition consistent with compromised breathing prior to or just following Down's admission. On cross-examination, none of these witnesses were ever asked any questions at all about or relating to the findings of Mercy Hospital's Root Cause Analysis. (Mercy Hospital Medical Records)

At trial, the State's major witness supporting the manslaughter charge was the State Medical Examiner, Dr. Margaret Greenwald. Dr. Greenwald testified that Roger Downs died of laryngeal edema – the swelling and obstruction of the airway due to blunt force trauma of the neck. (May 24, 2012 TT-24,25) (January 27, 2012 motion Hearing-55) She conceded that this condition was not present at Down's admission and that she did not know exactly when it developed. (May 24, 2012 TT-24,81) She also admitted that some of the medical studies she cited in support of her opinion questioned whether life-threatening laryngeal edema even existed at all. (May 24, 2012 TT-24,87) (May 23, 2012 TT-96) She agreed that laryngeal edema could be caused by other conditions, including aspiration of stomach contents -- which was the finding of the defense expert Dr. Beliveau, and she indicated that it was uncommon for a person to sustain a blow to their skin without suffering any bruise or injury. (May 24, 2012 TT-24,28,68) (January 27, 2012

motion Hearing-78) Regarding Dr. Beliveau's findings, Dr. Greenwald agreed that she had not made any mention in her autopsy of the pneumonia that Dr. Beliveau identified, but she claimed that she knew of this, but just omitted it from her autopsy report. (May 24, 2012 TT-11,61) she also admitted that Down's medical condition at Mercy Hospital placed him at risk for developing pneumonia. (May 24, 2012 TT-38,65,77,78)

At the close of her testimony, Dr. Greenwald agreed that there were specially trained doctors that focus on injuries and diseases of the neck – ear, nose, and throat doctors or otolaryngologists. (May 24, 2012 TT-96) She admitted that she had never done a residency focusing on that area of study. (April 11, 2017 PCR-159) In her previous motion testimony, she admitted that she had never done a fellowship focusing on that area of medicine and had no specialized training in otolaryngology. (id.) (January 27, 2012 motion Hearing-62,63)

Dr. Greenwald admitted that she was familiar with individuals developing aspirational pneumonia after becoming extremely intoxicated and passing out. In contrast, she agreed, however, that she had never seen a cause of death from laryngeal edema like this, and she admitted that she could not point to a single article or scientific study documenting a case similar to this one. (April 11, 2017 PCR-161) (May 24, 2012 TT-24,86)

As far as the testimony as to the infliction of injuries by Ernest Weidul, the State relied heavily on the admissions that Ernest Weidul made while he thought he was being arrested for a driving offense, and on the injuries that Roger Downs suffered and blood evidence. Ernest's counsel through cross-examination of the officers and witnesses testifying for the State pointed out that the State had only provided the DNA analysis of certain selected samples to test, and that there were many areas where blood was present -- on parts of shirts, pants, shoes or sneakers, socks cushions, the couch, the wall -- where no samples at all were submitted for DNA analysis. Attorney Connolly also elicited evidence that Ernest Weidul had described the incident as a fight initiated by a much larger man than Ernest Weidul had to resist. As to the fact that the incident was a fight, Attorney Connolly had the State witnesses confirm that Ernest Weidul had also been injured and that a long strand of hair was found on the couch of Down's apartment that was not submitted for any DNA testing. The State had photographs that showed Roger Downs hair was short and that Ernest's hair was long at the time of Down's alleged manslaughter.

Upon advice of counsel, Ernest Weidul did not testify in his own defense. His primary witness was Pathologist Dr. Robert Beliveau

Dr. Beliveau had first examined the medical record and autopsy and formed the initial opinion on December 8, 2010 that Roger Downs had died from Zoloft

poison, as that was consistent with the medical record and a common cause of laryngeal edema. (May 24, 2012 TT-177)Dr. Beliveau, however also detected evidence in the CAT scan and Down's presenting medical condition that he had pneumonia, so he requested slides of Mercy Hospital's samples of Downs' lung tissue, and had them tested at the Center for Disease Control. (May 24, 2012 TT-181-184, 210-212) This testing confirmed that Roger Downs indeed did have an untreated and undiagnosed strain of pneumonia in the hospital, and given Down's condition and blood alcohol reading, he declared in late January 2012 that Roger Downs had died from aspirational pneumonia -- as he had likely aspirated his stomach contents into his lungs while he was extremely intoxicated the night before. (May 24, 2012 TT-233,334) Dr. Beliveau, however, like, Dr. Greenwald was not an expert in and had not specialized study in Otolaryngology, and on cross-examination, the State emphasized this, as well as Dr. Beliveau's change of opinion. (April 11, 2017 PCR-163,169)

Over the eight days of trial, there were times that Ernest Weidul was not able to focus or to attend to the proceedings due to not being medicated properly. (April 11, 2017 PCR-43,44) (June 8, 2022 PCR-81-84) At one point the court noticed this and arrangements were made for Ernest Weidul to receive more appropriate dosages of medication. (id.) Ernest Weidul still missed or failed to follow testimony during his trial due to his condition. Further, though he had the status of

co-counsel during the trial, none of his attorneys ever brought this serious situation to the court's attention, as it occurred. For that matter, Attorneys Fairfield and Rioux, who sat in the two seats in front of Ernest, never checked in with him or asked his opinion at all during trial. (id)

Before closing argument, the defense counsel argued for the court to instruct the jury that they could find that as to an intervening cause was the cause of Roger Downs death. After closing arguments in which the Defense argued that Ernest Weidul had acted in self-defense and that Down's death was, in fact, caused by his intervening medical condition and aspirational pneumonia -- and not by an instance of laryngeal edema caused by an invisible injury that had never been identified in any medical study or ever seen before, the jury nevertheless convicted Ernest Weidul of manslaughter, and he was sentenced to 20 years in prison, with all but 16 years suspended.

Attorney Connolly made the closing argument for Ernest Weidul. In his presentation, he primarily argued that the State has failed to prove their case beyond a reasonable doubt and that Ernest Weidul had reasonably defended himself. He did not spend much time on the extensive critique of the medical evidence that State had presented.

Attorney Tom Connolly also took on the appeal of Ernest's conviction, but despite the vigorous battle during trial over medical causation and the unique and

unprecedented testimony of the State medical examiner, who had no training or study in otolaryngology, Attorney Connolly only contested the denial of Ernest's motion to suppress evidence from the motion hearing and its renewal before Ernest's jury trial. He did not contest or brief the sufficiency of evidence or the legal causation of Down's death, and he did not inform Ernest Weidul of this limitation of his appeal or include in his appeal any of the motions Ernest Weidul had wanted him to attach. One of his appeal arguments indicated that the State's conduct was an Unfair Trade Practice.

POST-CONVICTION REVIEW HEARINGS

Over the span of four years, Ernest Weidul's post-conviction review hearing was held on three separate days. At this hearing, the court heard the testimony of Ernest Weidul and attorneys Amy Fairfield, Luke Rioux, and Tom Connolly.

Justice Joyce Wheeler had presided over almost all of this proceeding, including all of the hearing dates and testimony – the live direct and cross-examinations of trial attorneys Fairfield, Rioux, and Connolly. Justice Wheeler had stopped presiding over cases before this post-conviction review proceeding could finish, however, and she was eventually replaced by Justice William Anderson, who heard the testimony of the Petitioner Ernest Weidul

When Justice Anderson took over, there were no verdicts or orders issued concerning Justice Wheeler's thoughts, impressions, conclusions, or findings of fact

concerning any of the witnesses and evidence that was presented previously.

Justice Anderson had not been present in court during any of these hearing dates, and had not witnessed any previous live testimony.

On April 20, 2022, the State moved to have the newly assigned justice to rely exclusively on the transcripts and audio recordings of the important witnesses who had been examined during Justice Wheeler's stewardship of this case.

Petitioner objected to this motion, and over objection, the court granted the State's motion and ruled that Petitioner could not re-call to the stand any of the attorneys who had previously testified concerning any previous examined issue.

During Justice Wheeler's tenure on this case, testimony revealed that Attorney Fairfield was appointed as Ernest Wedul's attorney, and then she had her associate Luke Rioux appointed as counsel. (April 11, 2017 PCR-54) Attorney Fairfield testified at hearing that she was in charge administratively, but she also indicated that she was not in charge of Attorney Rioux, and that she deferred to Attorney Rioux on all matters relating to medical issues. (April 11, 2017 PCR-54,57) She also testified that all the lawyers appointed to represent Ernest Weidul were independent and that she was not in charge of Attorney Connolly. (April 11, 2017 PCR-47) Attorney Rioux testified that he had handled the medical evidence at trial, but that he did not choose the defense expert and that Attorney Fairfield was his boss. (April 11, 2017 PCR-162) Attorney Connolly, in contrast, declared in

his testimony that the case was “runaway” and a “battlefield” when he joined in late January 2012, and he averred that he had to take charge of the defense decisions and took responsibility for the case.

Amy Fairfield also testified as to a problem organizing the defense and scheduling meetings with all three lawyers. Attorney Fairfield testified that this was because Attorney Connolly was a single father with four children. She also agreed that the attorneys had decided late in the case what each attorney was going to do, and she admitted that her billing indicated that there was a meeting of the lawyers just eight days before trial on May 13, 2012, to decide who was going to do what at trial. (April 11, 2017 PCR-16) (January 3, 2018 PCR- 13,22,26,43)

At hearing, Appellant’s attorneys also testified that although Appellant held the status of co-counsel with his them, they never included him in a strategy or case preparation session. Moreover, following January 15, 2012, attorneys Fairfield and Rioux admitted they never met again with Appellant. Attorney Fairfield also understood that appellant was not properly medicated at the Jail and reported hallucination, during trial. (April 11, 2017 PCR-44)

At the post-conviction hearing, beyond not wanting to delay extend the jury trial, the attorneys never presented a specific reason, as to why they did not demand a continuance of Appellant’s jury trial when the new information and admissions of the Mercy Hospital Root Cause Analysis was delivered to them two

days before the jury trial commenced. (April 11, 2017 PCR-20, 64, 106, 117, 170, 197,199) Attorney Rioux agreed that the information in these records was significant, and he agreed there was no downside as to asking questions about this information to the State witnesses he questioned. (id.) Attorney Rioux also agreed that the defense expert, Dr. Beliveau, was not trained in or had any specialty as an ear, nose, and throat doctor, and he agreed “in retrospect” that it would have been a good idea for the defense to have retained an expert with such expertise and training. (April 11, 2017 PCR-64)

The attorneys in their testimony conceded that they had not complied with Appellant’s demands to have his attorneys: 1) obtain information and medical records from Milestone, Maine Medical Center and other inpatient psychiatric hospitals at which he had been treated to prove his medical and mental condition at the time of his interrogation; 2) retain a psychiatrist or pharmacologist to assess and explain the effects that his medication and alcohol abuse had on his state of mind and voluntariness during his interrogation; 3) obtain the medication vials that were in his truck to corroborate his medication overuse and abuse; 4) conduct fingerprint testing, and DNA testing to forensically examine the blood and hair evidence from the crime scene and clothing; and 5) retain an expert to examine his recorded interview with the police, as it had skips that omitted parts of Ernest’s interview. (January 8, 2022 PCR-49,52-58,70,71,76)

The attorneys defended their failure to arrange for DNA, blood, and fingerprint testing by describing these tests as unnecessary, but agreed, that such testing was not difficult to obtain, and that there was absolutely no downside in arranging for such testing. (April 11, 2017 PCR-146-147) Attorney Connolly also explained that by the time he appeared in the case, it was too late for such forensic testing to occur.) (January 3, 2018 PCR-145-147)

The attorneys at hearing also acknowledged that there was an upside in arranging for the forensic DNA testing of blood and hair, as this could confirm that this was indeed a fight in which Appellant bled at the scene and had his hair violently torn out by Roger Downs. (April 11, 2017 PCR-36-38) (January 3, 2018 PCR-30) They also confirmed that fingerprint testing could have shown someone else was at Roger Downs's apartment after Appellant had left, and they conceded that the State did not even have to know of any results they obtained from forensic testing they arranged. (April 11, 2017 PCR-144,147)) (January 3,2018 PCR-30) Further, even if most of the blood tested came back testing as being Downs' blood, this would also be easily explainable by the fact that Roger Downs bled and bruised easily as a result of his medical condition and medications. (April 11, 2017 PCR-142)

ARGUMENT

I. The Post-Conviction Review Court erred in finding that Appellant’s trial counsel were not ineffective and that their serious errors did not have an adverse impact in causing Appellant’s jury trial guilty verdict

The Sixth Amendment to the United States Constitution and article I, section 6 of the Maine Constitution ensure that a criminal defendant is entitled to receive the effective assistance of an attorney." McGowan v. State, 894 A.2d 493; see U.S. Const. amend. VI; Me. Const. art. I, § 6. To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate (1) “that counsel's representation fell below an objective standard of reasonableness” and (2) that “the errors of counsel actually had an adverse effect on the defense”. Ford v. State, 205 A.3d 896 (quoting Strickland, 466 U.S. at 697). The petitioner bears the burden of proving both prongs of the Strickland test. Id. The Maine Supreme Judicial Court reviews the post-conviction court's findings of fact for clear error and its legal conclusions are de novo. (id.)

Pursuant to the first prong of the two-part Strickland test, a petitioner must demonstrate (1) that counsel's representation fell below an objective standard of reasonableness, as measured by prevailing professional norms. Strickland, 466 U.S. at 688. Counsel's representation of a defendant falls below the objective standard of reasonableness if it falls below what might be expected from an ordinary fallible attorney. Fahnley v. State, 188 A.3d 871.

In Strickland, the United States Supreme Court stated:

A number of practical considerations are important for the application of the standards we have outlined. Most important, in adjudicating a claim of actual ineffectiveness of counsel, a court should keep in mind that the principles we have stated do not establish mechanical rules. Although those principles should guide the process of decision, the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results. Strickland v. Washington, 466 U.S. 668, 696 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (emphasis added).

“The primary purpose of the effective assistance of counsel requirement is to ensure a fair trial.” McGowan v. State, 894 A. 2d 493, ¶9 (ME 2006), citing Strickland v. Washington, 466 U.S. 668, 685-86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Aldus v. State, 2000 ME 47, ¶ 15, 748 A.2d 463, 468.

With respect to these above standards, Petitioner would aver that the record persuasively shows that he has established a compelling case of ineffective assistance of counsel by his three trial attorneys, that, deprived him of a fair trial.

To begin with, it is crystal clear that Ernest Weidul's defense attorneys did not know who was in charge of who, and that, as Attorney Connolly revealed, the defense was in absolute crisis and chaos when he joined the other attorneys late in the case. It is also clear that these attorneys ignored Ernest's standing as co-counsel and kept him uninformed and uninvolved with his own defense. Further, given that Ernest Weidul was insightful enough to warn his lawyers that 1) their expert was wrong about Zoloft Poisoning and that they needed to retain another credible expert once their expert has changed his opinion, and 2) that his attorneys needed to request and obtain scientific DNA and fingerprint forensic evidence to corroborate his self-defense -- he was, in fact, way ahead of his attorneys and not disabled intellectually in any way by his mental illness, as Justice Anderson found.

Moreover, from this record, it is clearly not true, as Justice Anderson found, that the self-defense part of the defense was stronger than the attack on the medical, evidence and medical causation. Essentially, and demonstrably, this was a paper-thin case, in which the State had to rely on a novel, unqualified, first-of-its-kind opinion of a medical examiner who !) claimed that Roger Downs had died from an invisible injury that was not present or diagnosed when Roger Downs was admitted to the negligent care of the hospital, and 2) had forgotten to include in her autopsy report the fact that Roger Downs had pneumonia in the hospital -- a condition that the defense expert testified had, in fact, caused his death.

It is also clear, unfortunately, that the defense lawyers failed to reasonably discredit and attack this questionable expert evidence, or to obtain their own qualified expert, -- as their own expert, who changed his opinion as to the cause of death was just as inexperienced and unqualified as to the mechanisms of blunt force laryngeal edema. As a result, during his testimony, the Defense expert actually supported the State's expert by agreeing that the laryngeal edema that killed Roger Downs could have been caused by blunt force trauma.

It is also clear that Justice Anderson had it exactly backward when he opined that A) the attorneys acted reasonably in not utilizing or revealing in any way the blockbuster, exculpatory admissions of fault and negligence by Mercy Hospital, or B) that a continuance could lead to any new evidence of the injuries that Downs suffered that make Ernest Weidul's conduct worse.

The Defense had for months the full and complete medical record of Roger Downs, and in fact, Mercy Hospital withheld, until two days before the jury trial, critical evidence that revealed by its own admission that it had contributed to the cause of Roger Downs's death. Further, the State knew for months that the Defense was going to maintain that Roger Downs died from advanced pneumonia, and, it was the State who had to backtrack and explain why this possible condition and cause of death was not even mentioned in the medical examiner's original reports.

Moreover, the testimony of the medical examiner at trial made his case -revealing that Roger Downs bruised and bled easily and had an invisible neck injury and only seven areas of impact from his fight with Ernest Weidul – facts completely inconsistent with a brutal beating,

Further, even if you can somehow excuse not asking for a continuance or trying to get a new or better expert to address the Mercy Hospital Sentinel Review study, it is absolutely inexplicable and absolutely inexcusable that no Mercy hospital doctor or nurse would be asked a single question by Ernest’s lawyers as to the acts and omissions and negligence that Mercy Hospital admitted could have caused or contributed to the death of Roger Downs.

It is also clear that Ernest’s legal team deliberately chose not to obtain available medical evidence and records and experts who would corroborate and confirm that Ernest Weidul was not at all in his right mind and did not act voluntarily in answering the trick questions of law enforcement in obtaining evidence against him and that Ernest’s legal team deliberately chose not to forensically test any of the blood, hair, and fingerprint, evidence – though there was no risk or downside and only benefit and upside, to conduct such testing.

Finally, in light of the above record and complexities of the medical evidence, it is mystifying as to why Ernest’s appellant counsel chose to ignore the novel, contradictory, and questionable medical testimony of Mercy Hospital

witnesses and the State Medical Examiner and to not appeal the sufficiency and reliability of the medical evidence – focusing instead on a long shot appeal of denied motion to suppress.

II. The Post-Conviction Review Court erred in granting the State’s motion to allow the newly assigned replacement justice to rely exclusively on the transcripts and audio recordings of the trial counsel who had been formerly examined in court under oath during Justice Wheeler’s stewardship of this post-conviction review proceeding

Justice Joyce Wheeler had presided over almost all of this proceeding, including all of the hearing dates presenting the most important evidence and testimony – the live examinations of trial attorneys Fairfield, Rioux, and Connolly. Unfortunately, Justice Wheeler had stopped presiding over cases before this post-conviction review proceeding could finish with Petitioner Ernest Weidul’s testimony, and she was eventually replaced by Justice William Anderson, who only heard the testimony of the last witness in this matter – the Petitioner Ernest Weidul.

When Justice Anderson took over, there were no verdicts or orders issued concerning Justice Wheeler’s thoughts impressions, conclusions, or findings of fact concerning any of the witnesses and evidence that was presented previously. Justice Anderson had not been present in court during any of these hearing dates, had not personally examined the demeanor of the State witnesses, had not reviewed any evidence as it was presented, and had not heard or witnessed any live testimony.

Despite this, on April 20,202, the State moved to have the newly assigned justice to rely exclusively on the transcripts and audio recordings of the important witnesses who had been examined during Justice Wheeler’s stewardship of this case.

Petitioner objected to this motion, explaining that this would not be legal under Maine law and that it would not be possible for any successive judge in this case, or any such case, to listen to recordings or read transcripts and to pretend that he or she could recreate or replicate the live, contested hearing of this matter. The court granted the State’s motion and also ruled that Petitioner could not re-call to the stand any of the attorneys who had previously testified.

Justice Joyce Wheeler had presided over Ernest Weidul’s pre-trial motions, jury trial, sentencing, and, in this proceeding, countless conferences, motions, and days of contested hearing. As such, as Justice Wheeler was the sole finder of fact in this matter, and as she left before any judgment and without leaving any written or recorded findings of fact, it was not possible for any successive judge, in this case, or any case, to listen to recordings or read transcripts and to pretend that can recreate or replicate the live, contested testimony that justice Wheeler heard.

This impossibility is not just argument; it is an an established fact, aptly described by our Law Court in Qualey v Fulton, 422 A.2d 773 (1980):

...the fact-finder has available the indications of truthfulness inherent in the substance of the witness's testimony. Is the witness's version of events believable in the light of general knowledge and common experience? Are the

circumstances he relates extraordinary or suspicious? Are they contradicted by inferences from circumstantial evidence? Is the witness consistent in his testimony? Are any significant variances or inconsistencies reasonably explainable in a manner consistent with the truthfulness of the testimony? When we test the trial court's resolution of the issue of the credibility of the witnesses and of their testimony, we are not in a position to be able to accurately determine the weight the trial court assigned to each of the two sets of factors on which its credibility determination is based. The trial court's weighting of the "evanescent factors" perceptible in the course of oral testimony, and its assessment of the content of the witnesses' testimony, for purposes of a credibility determination, are not nicely compartmentalized, rational exercises but, rather, concurrent elements of a single intellectual equation. There is, here, a synergistic effect arising from a concurrently operating series of considerations which we, as an appellate court, have no factual or perceptual basis to evaluate. Subtleties of meaning are often tied to manner of expression, modes of speech, and turns of phrase, knowledge of which is readily available to the trial court but is denied to the appellate tribunal. Those subtleties of meaning may very well and properly have a significant effect upon the trial court's ultimate decision to believe or disbelieve the witness either generally or on a particular point. Hence, we must accept the trial court's evaluation of both elements of the equation, save where the physical evidence and the written record rationally forbid his conclusion on the credibility issue, "no matter what the unknown factors were."

Qualey v Fulton at 776, E. F. Drew & Co. v. Reinhard, 170 F.2d 679, 684 (2d Cir. 1948).

In light of this acknowledged special perspective of the judge as finder of fact, and the unfair prejudice in forcing Ernest Weidul to waive any reliable and synergistic assessment of fact and credibility, Maine Rule of Unified Criminal Procedure 25(a) can only be read, in this instance, to require a renewed hearing of
Petitioner's Post-Conviction Review Proceeding:

If by reason of death, resignation, removal, sickness, or other disability, a judge before whom a defendant has been tried is unable to perform the duties

to be performed by the court after a verdict or finding of guilt, any other judge assigned thereto by the Chief Justice of the Superior Court or the Chief Judge of the District Court may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because the judge did not preside at the trial or for any other reason, the judge may in the exercise of discretion grant a new trial.

Further, as persuasive precedent from an analogous case concerning a judge's retirement during a trial, Petitioner would refer to and incorporate by reference the court Order in State of Maine v. Raymond Brickett, Docket No. CD-CR-19-12,839.

CONCLUSION

For the foregoing reasons, this Court should reverse the order denying Ernest Weidul's Petition for Post-conviction review and remand for entry of a judgment granting the Petition.

Dated at Lewiston, Maine, this 15th day of August, 2023.



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CERTIFICATE OF SERVICE

I hereby aver that I have sent a native PDF version of this brief to the Clerk of this Court and to opposing counsel, and that I delivered 10 paper copies of this brief to this Court's Clerk's Office and I sent 2 copies to opposing counsel



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