

**STATE OF MAINE**

**SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT  
DOCKET NO. WAL-24-181**

**MATTHEW PENDLETON**

**Appellant,**

**v.**

**STATE OF MAINE**

**Appellee**

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**BRIEF OF APPELLANT**

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**ON APPEAL BY MATTHEW PENDLETON  
FROM THE UNIFIED CRIMINAL COURT**

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## **STATEMENT OF FACT AND INCORPORATED PROCEDURAL HISTORY**

Matthew Pendleton and the decedent, Kevin Curit, were long-time best friends. (Trial Tr. I 131-132.) Later in life, when Kevin was experiencing challenges and difficulties, including health troubles and securing a place to live, Matthew tried to help Kevin and allowed Kevin to live on his property with him. (Trial Tr. I 60-61, 123-124, 132, 135-136.) Kevin was a profound alcoholic. (Trial Tr. I 61- 62,134.) Kevin sustained many self-caused injuries during his time living with Matthew, including many that resulted from self-intoxication. (Trial Tr. I 60-61, 123-124, 134-135; Def.'s Exs. 20-A – 23-B.) During this time frame, Kevin was seen in the Emergency Room multiple times, occasionally arriving still in a drunken state. (Trial Tr. I 135; Def.'s Exs. 20-A – 23-B.)

On the night of January 5, 2023, Kevin was in extremely poor health following a recent hospital visit. (Trial Tr. I 124; Def.'s Exs. 20-A – 23-B.) That evening, Matthew returned home from errands to find that Kevin had discharged a fire extinguisher inside his house. (State's Ex. 4.) Matthew asked Kevin to leave his house and sleep in the camper. (State's Ex. 4.) The next morning, Matthew found Kevin dead. (Trial Tr. I 150.) He contacted his ex-wife, to whom he was still very close, (Trial Tr. I 113, 103, 137), and called 911. (Trial Tr. I 149-150; State's Ex. 3.) Sometime later, officers of the Waldo County Sheriff's office arrived at his home. (Trial Tr. I 165, 180-181.) The officers looked inside the camper and saw Kevin

deceased. (Trial Tr. I 170.) An officer walked into Matthew's home and an officer remained with him inside until he was escorted out. (Trial Tr. 175, 183; State's Ex. 4.) The officers asked Matthew questions inside his house, and Matthew explained that his friend Kevin was always drinking and getting into accidents; was very injured from these accidents; had discharged a fire extinguisher inside Matthew's house the previous night while Matthew was running errands; and that Matthew asked Kevin to leave the house and sleep in the camper outside following the fire extinguisher incident. (State's Ex. 4.) Matthew explained to the officer that Kevin had a "hematoma" from his ear that bled all around the house, and that he had tried to clean up some of the house. (State's Ex. 4.) The officer instructed Matthew to stop drinking from his glass, and after Matthew informed the officer that he did not want to answer any more questions, Matthew then stood up and placed his hands behind his back. (State's Ex. 4.) Matthew was not handcuffed or informed of his Miranda rights. (State's Ex. 4). The officers contacted the Major Crimes Unit of the Maine State Police, and placed Matthew in the back of a locked sheriff's cruiser. (Trial Tr. I 175-176, 186; State's Ex. 4.) Matthew remained in the back of the locked cruiser for at least 6 hours according to the responding deputy (Trial Tr. I 186-187.) Major crimes unit detectives eventually arrived and took control of the property and Kevin's body. (Trial Tr. I 186; Trial Tr. II 25, 33.)

Later that evening, upon realizing that they had not seized Matthew's boots from him, law enforcement officers removed a pair of boots from inside the house, although the house had not yet been photographed by crime scene analysts, (Trial Tr. II 75-76), and traveled to Camden to find Matthew. (Trial Tr. II 76.) There, they removed his boots, providing him the pair they had brought to the house. (Trial Tr. II 77.). Matthew was not allowed to return to his residence or remove his dog. (State's Ex. 5.)

Back at Matthew's residence, following the issuance of a warrant, the Major Crimes Unit photographed the home and collected evidence. (Trial Tr. II 34.) They took possession of Kevin's body, which was transported to the medical examiner's office. (Trial Tr. II 25, 33-34.)

On January 7, 2023, law enforcement received a warrant for Matthew's arrest. As Matthew was not able to return to his residence or take his phone, law enforcement looked for him at the home of a family member. (Trial Tr. II 84.) Law enforcement found Matthew slumped by trees a few hundred yards from his sister's home. (Trial Tr. II 86-87.) Matthew was visibly intoxicated, (State's Exs. 6B, 6D, 6F, 6H), and the officers had to assist him so that he could stand and walk to the road. (State's Ex. 6B.) The officers arrested Matthew and took him into custody. (Trial Tr. II 87.)

Following his arraignment and indictment, the court (*R. Murray, J.*) held a hearing on Matthew's Motion to Suppress Evidence. (A. 6.) Following the hearing, the court issued a written Order granting in-part and denying in-part Matthew's motion. (A. 7-8.)

Following an unsuccessful Judicial Settlement Conference (*A. Murray, J.*), (A. 8), jury selection occurred on February 5 and 6, 2024. (Jury Select. Tr. I & II.) A jury was selected without incident, including no challenges made by either party to Juror Number 221. (Jury Select. Tr. II 39.)

The court received and heard additional argument from counsel in chambers on both parties' motions in limine following the completion of jury selection. These arguments and discussions were not on the record. Before the first day of trial, the court orally resolved one of the motions in limine filed by the Defendant that sought to exclude photographs purporting to depict screenshots of a text message conversation between the Defendant and his daughter. (A. 21-25; Trial Tr. I 5-33). The court went through each proffered screenshot and denied Defendant's motion in part and granted it in part, ordering the redaction of certain messages. (*See* A. 21-25; Trial Tr. I 5-29.)

A jury trial was held on February 8<sup>th</sup> through 14<sup>th</sup>, 2024. (Trial Tr. I-V.) Closing arguments and jury instructions were given on February 13, 2024. (Trial Tr. IV.) The jury deliberated until the afternoon of February 14, 2024, at which point a



verdict of not guilty was returned on the charge of Depraved Indifference Murder, and a verdict of guilty was returned on the lesser included charge of Manslaughter. (A. 13-14; Trial Tr. V 12.)

A sentencing hearing was held on April 7, 2024. (A. 14-16.) Prior to the hearing, both parties submitted sentencing memorandum to the court. (A. 14.) Matthew's counsel also submitted on his behalf the affidavit of Juror # 221 for the court's consideration as part of sentencing. (Def.'s Sent. Ex. 1.) The affidavit explained the facts as determined by the juror in question, including the mens rea supporting the jury's verdict. (Def.'s Sent. Ex. 1.) Prior to the beginning of the sentencing hearing, the court held a conference in chambers to discuss the affidavit. (A. 42-52). Following argument by the parties, the court held that M.R. Evid. 606 provided "some guidance" on the competency of a juror as a witness. (A. 46-47.) The court analogized evidence of communications between jurors in challenging the validity of the verdict under M. R. Evid. 606 to the sentencing determination that the court must make based upon the jury's verdict and "[the court's] own opportunity to assess evidence that relates to how this particular case occurred . . . ." (A. 45-51.) The court noted that arguments such as the accuracy of the juror's recollection and whether in the jury room there was decision-making that presented a contrary view were not important or relevant to the court's decision. (A. 46-51.) Ultimately, the court excluded the affidavit and rules that the juror would not be permitted to

participate in the sentencing hearing (A. 49.) The court grounded the decision to preclude the juror from commenting on the jury deliberations, findings, or verdict on (1) the commentary relating to M.R. Evid. 606 and (2) the lack of case law. (A. 49-51.)

Following the sentencing hearing, the court sentenced Matthew to 18 years, all but 14 suspended, and 4 years of probation. (A. 18.) Matthew timely appealed. (A. 16.) *See* 15 M.R.S.A. § 2115 (2024); M.R. App. P. 2B(b)(1). Following the issuance of the briefing schedule, the Sentence Review Panel issued an Order Granting Leave to Appeal Sentence. *See* 15 M.R.S.A. §§ 2151-2153 (2024); M.R. App. P. 20. (July 29, 2024 Order Granting Leave to Appeal Sentence.)

### **STATEMENT OF ISSUES**

- I. Whether the court erred in allowing the admission of screen shots in evidence.**
- II. Whether the court erred in allowing the testimony of Cynthia Pendleton.**
- III. Whether the court erred in allowing the testimony of Derek Pearson.**
- IV. Whether the court erred in denying Defendant's motion for a mistrial following the State's witness identifying Defendant as a pre-trial custodial inmate.**
- V. Whether the court erred when it excluded participation from a seated juror as part of Defendant's sentencing arguments and presentation.**

## **SUMMARY OF ARGUMENT**

First, the court erred in allowing the admission of screenshots purportedly between the Defendant and his daughter in evidence. The redacted screenshots were not relevant, were more prejudicial than probative, confused the issues before the jury, were not authenticated, and were not the best evidence available. The denial in part of Defendant's motion in limine and admission over objection at trial was an abuse of the court's discretion.

Second, the court erred in allowing the testimony of the Defendant's daughter. In addition to lacking any relevance, the testimony was not probative, was prejudicial, and only served to paint the Defendant as a bad father. The witness saw neither the Defendant or the decedent on the night in question and could not be certain that the text messages she received were in fact statements from the Defendant. Her testimony confused the issues before the jury. The admission of emotional details about the strained relationship between the Defendant and his daughter and their inclusion at trial was an abuse of discretion. Similarly, the court erred in allowing the testimony of Derek Pearson.

The court also erred in its analysis and denial of Defendant's motion for a mistrial following the State's witness testimony of the Defendant's custodial status. The revelation to the jury of the Defendant's incarceration for the crime he was accused of was exceptionally and substantially prejudicial to the Defendant,

including to his constitutional presumption of innocence by an unbiased jury.

Finally, the court erred in expanding the clear, limited language of the Maine Rules of Evidence to exclude the participation of a juror in the Defendant's sentencing argument at hearing. Federal statute and caselaw are explicit that "[n]o limitation shall be placed on the information concerning the background, character, and *conduct* of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661 (2024) (emphasis added). In harmony with the federal statute, no Maine Rule of Evidence precludes a juror from participating at a defendant's sentencing hearing. The sentencing court improperly relied on M.R. Evid. 606, which unambiguously applies only to (1) trials and (2) inquiries into the validity of a verdict, to exclude information concerning the factual findings of the jury as to the Defendant's conduct on the night in question. This exclusion was in error and the error was not harmless. The excluded information presented the Defendant's conduct in a far more favorable light than the conduct upon which the Defendant was sentenced.

## **ARGUMENT**

### **I. THE COURT ERRED IN DENYING DEFENDANT'S MOTION IN LIMINE AND ADMITTING OVER OBJECTION THE TEXT MESSAGE SCREENSHOTS IN EVIDENCE AT TRIAL.**

#### **a. Standard of Review**

“[This Court] review[s] the trial court’s [denial of] a motion in limine for an abuse of discretion, and its legal conclusions de novo.” *State v. Adams*, 2014 ME 143, ¶ 8, 106 A.3d 413 (quotation marks omitted). “[This Court] review[s] the court’s determination of relevance for clear error. The trial court’s weighing of probative value against the danger of unfair prejudice is reviewed for an abuse of discretion.” *State v. Michaud*, 2017 ME 170, ¶ 8, 168 A.3d 802 (citations and quotation marks omitted). “[This Court] review[s] a trial court’s rulings on relevance for clear error, and rulings on admissibility for an abuse of discretion. A court abuses its discretion in ruling on evidentiary issues if the ruling arises from a failure to apply principles of law applicable to a situation resulting in prejudice.” *State v. Maine*, 2017 ME 25, ¶ 23, 155 A.3d 871 (citations and quotation marks omitted).

“[This Court] review[s] a trial court’s admission of evidence over an objection for lack of foundation for an abuse of discretion and review[s] the trial court’s underlying factual findings for clear error.” *State v. Beeler*, 2022 ME 47, ¶ 12, 281 A.3d 637 (quotation marks omitted). “Pursuant to the best evidence rule, when evidence is presented in the form of a writing, recording, or photograph, the original must be used to prove its content unless an exception applies. *See* M.R. Evid. 1002.” *State v. Robinson*, 2015 ME 77, ¶ 22, 118 A.3d 242.

In addition to preserving the arguments within his motion in limine at trial, the Defendant also raised objections to the admission of the screenshots discussed

in chambers based on foundation, authenticity, best evidence, and relevance. (A. 26-29). The court admitted the offered exhibits over objections. (*See* Trial Tr. I; State’s Exs. 9E, 9G, and 9L).

**b. The Text Message Screenshots Were More Prejudicial Than Probative Under Rules 403 and 404.**

“The court has the discretion to exclude relevant evidence ‘if its probative value is substantially outweighed by a danger of . . . unfair prejudice.’ M.R. Evid. 403. For purposes of Rule 403, prejudice means an undue tendency to move the fact finders to decide the issue on an improper basis. . . .” *Michaud*, 2017 ME 170, ¶ 8, 168 A.3d 802. “Evidence of similar acts, although prejudicial, may be admitted for the limited purpose of establishing an essential element of the crime charged, including the element of intent. Similar threats or acts against others are relevant if there is a sufficient nexus between the evidence sought to be introduced and the elements of the crime charged.” *State v. Shuman*, 622 A.2d 716, 718 (Me. 1993) (citations omitted). In chambers, the court correctly identified that there was no nexus as to the purported texts from Matthew to his daughter’s boyfriend, via his daughter’s phone. However, even the redacted screenshots that the court did admit had no nexus, were not relevant, lacked a sufficient foundation that the messages were from the Defendant, and were admitted in violation of M.R. Evid. 403 and 404.

The statements at issue in the redacted screenshots focused on the text

messages purporting to be from the Defendant about his hand and photographs of Kevin Curit.<sup>1</sup>

Even if the screenshots did contain relevant evidence that was not otherwise excluded by the rules and was probative of the issues, any probative value was substantially outweighed by the danger that the evidence would confuse the jury of the narrow issue before them. Under M.R. Evid. 403, relevant evidence may be excluded if its probative value is substantially outweighed by the risk of unfair prejudice, confusion, or misleading the jury. Furthermore, M.R. Evid. 404(b) prohibits the use of evidence of other crimes, wrongs, or acts to prove a person's character to show action in conformity therewith, unless such evidence is admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

In this case, the text message screenshots were presented by the State to suggest the Defendant's involvement in behavior unrelated to the charges. The State sought to use these messages to imply that the Defendant had a propensity for violent behavior or conduct, effectively inviting the jury to make a character-based inference of guilt. This use of evidence is precisely what the rules of evidence are designed to prevent. The messages did not pertain to any material issue in the case, the charge

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<sup>1</sup> No metadata or evidence was admitted at trial that established when or where the photographs received by the witness via text message were taken.

the State decided to prosecute, and served no legitimate purpose other than to paint the Defendant in a negative light based on unrelated past conduct and a strained relationship with members of his family.

Moreover, even if the messages had some minimal relevance, the prejudicial impact of admitting them far outweighed any probative value under Rule 403. The jury was likely to be swayed and confused by the oddity of the messages, the difficulty in understanding the messages, and the negative character implications of the messages rather than focusing on the specific charges brought by the State. This type of evidence is particularly dangerous as it risks leading the jury to convict based on a personal belief that the defendant is a bad person deserving of punishment, rather than on the evidence relating to the charged offenses.

The trial court's failure to exclude all the text message screenshots constitutes an abuse of discretion. The introduction of this evidence created a significant risk that the jury's verdict was influenced by improper considerations, rather than the admissible facts and evidence relevant to the crime charged.

**c. The Text Message Screenshots Lacked Proper Authentication Under Rule 901.**

The trial court further erred by admitting the text message screenshots without proper authentication, as required by M.R. Evid. 901. *See* M.R. Evid. 901. Authentication is a foundational requirement that ensures that the evidence is what



its proponent claims it to be. To meet this requirement, the State needed to establish that the messages were sent by the Defendant and had not been altered or manipulated.

In this case, the State failed to meet the threshold for authentication. The admission of the screenshots into evidence were not accompanied by any metadata or expert analysis confirming the device the messages originated from. Although a witness testified as to how she received the messages on her phone and how they appeared in the same conversation thread as other messages she assumed to be from the Defendant, based on a saved contact and picture, the witness had no personal knowledge of who sent each individual message—she merely had an assumption that it was her father.

It is common knowledge that technology exists today allowing persons to send messages that purport to be from a known, trusted individual, but in fact originate from elsewhere. The Maine State Police employ professionals who can analyze devices to determine the authenticity of messages from one device to another. In this case, the testimony and report of such experts was properly excluded based on a motion for sanctions filed by the Defendant. As a result, the State was not able to properly authenticate the statements they purported to be from the Defendant with only the testimony that the witness received a text message. The screenshot in question did not even show the phone number associated with the saved contact—

only a small thumbnail picture.

Without proper authentication, there was no guarantee that the messages were accurate reflections of any communications made by the Defendant. This lack of authentication raises significant doubts about the reliability of the evidence and its admissibility under Rule 901.

**d. The Text Message Screenshots Violated the Best Evidence Rule Under Rule 1002.**

Finally, the admission of the text message screenshots violated the Best Evidence Rule, codified in M.R. Evid. 1002. The Best Evidence Rule requires that to prove the content of a writing, recording, or photograph, the original document must be produced unless it is shown that the original is unavailable for a valid reason. M.R. Evid. 1002. The purpose of this rule is to prevent the admission of inaccurate or incomplete reproductions of evidence.

In this case, the State introduced screenshots of text messages rather than the original digital messages. Screenshots are secondary evidence and may not capture the full context, time stamps, or other critical metadata that could provide important context or clarification. The State failed to properly produce the original messages, such as extracting them directly from the device and providing a more complete digital record. This omission violated the Best Evidence Rule and calls into question the accuracy and completeness of the evidence presented to the jury.

**e. The Combined Errors Resulted in a Denial of a Fair Trial.**

The trial court's admission of the text message screenshots, despite their violation of Rules 403, 404, 901, and 1002, resulted in an unfair trial. The jury was exposed to evidence that was not only prejudicial but also irrelevant, unreliable, and improperly authenticated. The cumulative effect of these errors deprived the Defendant of his right to a fair and impartial adjudication of the charges against him.

Given these violations, this Court should reverse the conviction and remand for a new trial, excluding the improperly admitted text message evidence.

**II. THE COURT ERRED IN DENYING DEFENDANT'S MOTION TO EXCLUDE THE TESTIMONY OF DEFENDANT'S DAUGHTER.**

**a. Standard of Review**

The same standards of review as outlined in Argument I apply and are incorporated by reference.

**b. The Testimony Was Not Relevant Under Rule 401.**

Under M.R. Evid. 401, evidence is relevant only if it has a tendency to make a fact of consequence more or less probable than it would be without the evidence. The Defendant's daughter was not a witness to the events that led to the charges.

At issue in the trial was whether the Defendant caused the death of Kevin Curit. The witness's "complicated," (Trial Tr. I 88:23), relationship with her father and her testimony was, at best, tangential to the central issues before the jury. His

daughter's testimony did not make any fact regarding the Defendant's guilt or innocence more or less likely. Testimony that is speculative or disconnected from the facts in dispute lacks the relevance required under the rules and established case law.

**c. The Testimony Should Have Been Excluded Under Rule 403 Due to the Risk of Unfair Prejudice.**

Even if the testimony had some marginal relevance, it should have been excluded under M.R. Evid. 403 because its probative value was substantially outweighed by the risk of unfair prejudice, confusion of the issues, and misleading the jury. The daughter's strained relationship with the Defendant introduced biased and emotionally charged testimony that could unduly influence the jury. The jury could have been swayed by the daughter's negative portrayal of the Defendant, including his drinking habits and his daughter's personal opinion about him and his alcohol use, and the testimony was not based on factual evidence related to the charge against him. This type of evidence poses a significant risk of unfair prejudice, as it might lead the jury to make decisions based on emotion or character judgments rather than the evidence presented about the actual events in question.

Moreover, the admission of such testimony could confuse the issues by shifting the focus from the specific allegations against the Defendant to broader, irrelevant considerations of his character or family dynamics. This could mislead the

jury into making a determination based on irrelevant or tangential factors, rather than the substantive evidence related to the criminal charges. In addition to the arguments previously stated as to the admissibility of purported text messages between the Defendant and his daughter, the trial court's failure to exclude his daughter's testimony was an abuse of discretion.

**d. The Admission of the Testimony Resulted in Prejudice to the Defendant.**

The inclusion of his daughter's testimony prejudiced the Defendant by allowing the jury to hear irrelevant and biased information, leading to an unfair trial. The jury may have given undue weight to the Defendant's drinking habits and "complicated" relationship with his child, resulting in an improper consideration of character evidence rather than focusing on the facts of the case. The trial court's decision to admit this testimony undermined the Defendant's right to a fair and impartial trial as it allowed the jury to be influenced by factors unrelated to the actual charges. For these reasons, this Court should find that the trial court erred in admitting the testimony of the defendant's daughter. The conviction should be reversed, and the case remanded for a new trial in which such prejudicial and irrelevant testimony is excluded.

**III. THE COURT ERRED IN ALLOWING THE TESTIMONY OF DEREK PEARSON**

**a. Standard of Review**

This Court reviews the trial court's M.R. Evid. 403 and 404 analysis and rulings on admissibility for an abuse of discretion. *See Michaud*, 2017 ME 170, ¶ 8, 168 A.3d 802; *Maine*, 2017 ME 25, ¶ 23, 155 A.3d 871.

**b. The Testimony of Mr. Pearson Was Inherently Unreliable and Should Have Been Excluded Under M.R. Evid. 403 and 404.**

On its face, the testimony of a jailhouse informant is inherently unreliable as informants often have strong incentives to fabricate or exaggerate statements to secure leniency or other benefits from the State. In this case, the informant stood to gain materially from providing testimony against the Defendant given his pre-sentence status and representations by the State that they would inform the prosecutor in Mr. Pearson's case about his cooperation, which created a significant risk that the testimony was motivated by self-interest rather than truthfulness.

Under M.R. Evid. 403, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. M.R. Evid. 403. Here, the jury was likely to give undue weight to the informant's testimony of the Defendant's purported confession, especially considering the serious nature of the charges and the lack of confession to law enforcement. The inherent unreliability of the testimony, combined with the informant's potential motive to lie, rendered it highly prejudicial. The admission of Mr. Pearson's testimony also violated M.R. Evid. 404(b), which prohibits the

introduction of evidence of other crimes, wrongs, or acts to prove a person's character in order to show that they acted in conformity therewith on a particular occasion. *See* M.R. Evid. 404(b).

The trial court failed to apply the necessary scrutiny to its analysis, instead abusing its discretion in determining that the witness would be able to testify without the Defendant's pre-conviction custodial status being revealed. Mr. Pearson was a self-interested witness. It is the jury's role to assess witness credibility. *Maine*, 2017 ME 25, ¶ 21, 155 A.3d 871. In order to assess his credibility, the jury was entitled to know what benefits he may receive because of his participation at the trial. It was an error of the court and an abuse of its discretion to determine that relevant testimony could be presented to the jury in a manner that would allow them to ascertain the credibility of the witness without being unfairly prejudicial to the Defendant. The risk of misleading the jury with unreliable testimony from a self-interested witness far outweighed any probative value the testimony might have had as the connotation of incarceration could not be overcome by limited direct examination and the subsequent curative instruction.

**c. The Admission of the Testimony Compromised the Defendant's Presumption of Innocence.**

Finally, the admission of the Mr. Pearson's testimony compromised the Defendant's presumption of innocence by drawing improper inferences from the

Defendant's custodial status. By presenting the informant's testimony about alleged confessions made while in custody, the prosecution implicitly invited the jury to view the Defendant's custodial status as evidence of guilt, undermining the fundamental principle that a Defendant is presumed innocent until proven guilty. Although a curative instruction was provided to the jury and Mr. Pearson was excluded from further participation, the bell could not be unrung in the jury's mind. This prejudicial impact violated the Defendant's right to a fair trial and requires that the conviction be reversed.

A criminal defendant has a right to a fair trial, which is protected by the United States and Maine Constitutions. U.S. Const. amends. VI, XIV, § 1; Me. Const. art. I, § 6." *State v. Poulin*, 2016 ME 110, ¶ 25, 144 A.3d 574. For these reasons, the trial court's admission of the Mr. Pearson's testimony was erroneous, prejudicial, and denied Defendant a fair trial. Accordingly, this Court should reverse the conviction and remand for a new trial, excluding Mr. Pearson's future participation.

#### **IV. THE COURT ERRED IN DENYING DEFENDANT'S MOTION FOR A MISTRIAL**

##### **a. Standard of Review**

"[This Court] review[s] the denial of a motion for a mistrial for an abuse of discretion and will overrule the denial of a mistrial only in the event of exceptionally prejudicial circumstances or prosecutorial bad faith. A motion for a mistrial should



be denied except in the rare circumstance that the trial is unable to continue with a fair result and only a new trial will satisfy the interests of justice.” *State v. Peters*, 2024 ME 33, ¶19, 314 A.3d 290 (alterations, citations, and quotation marks omitted).

**b. Mistrial**

The trial court abused its discretion by denying the Defendant’s motion for a mistrial after a state witness testified about the Defendant’s custodial status. This testimony was irrelevant, highly prejudicial, and occurred after extensive discussion in chambers about the limitations and parameters of the witness’s testimony. All parties voiced their understanding of the parameters of the testimony, and a break was allowed for the witness to be further prepared and instructed on the limitations of his testimony. Under the extraordinary circumstances, a mistrial should have been granted.

Evidence that a defendant was incarcerated prior to trial is generally inadmissible because it lacks relevance to the issues of guilt or innocence and poses a significant risk of unfair prejudice. Evidence that a person is already incarcerated suggests, and can lead a jury to conclude, that a defendant is guilty, thus eroding the defendant’s constitutional presumption of innocence.

The M.R. Evid. 403 concerns that Derek Pearson’s testimony raised were discussed by the court prior to the witness taking the stand. Over objection by the Defense, he was allowed to testify. At issue in this argument is the witness’s

response:

Q. All right. Did he tell you that he murdered somebody?

A. Not with those exact words, but yes.

Q. What did he say?

A. He said he was in jail for murdering somebody. So yeah, I guess he did say he murdered somebody.

(Trial Tr. III 40-41). In addition to being non-responsive to the question posed by the prosecutor, the unsolicited statement that the Defendant had been in jail prior to trial had no probative value and was exceptionally prejudicial to the Defendant. The central issue for the jury was whether the Defendant committed the offense as charged, not whether he had been previously, or was currently incarcerated—especially for the offense the trial concerned. The introduction of this fact served only to prejudice the jury by associating the Defendant with incarceration for criminal behavior, leading to an improper inference of guilt that could not be erased from the jury’s mind with a curative instruction.

While the trial court attempted to cure this prejudice through the exclusion of the witness and a curative instruction, such an instruction was inadequate under the circumstances. First, after hearing “He said he was in jail for murdering somebody,” the jury was then presented with an extended break while the Defendant moved for a mistrial, as well as other curative options should the Court deny his motion. This time allowed the jury to reflect on the last evidence they heard, and, coupled with the curative instructive they later received, forced the jury to recall what the witness

had said yet again in their attempt to follow the court's instructions to disregard the testimony. Although "it is presumed that the jury heeds the court's instruction," *State v. Bridges*, 2004 ME 102, ¶ 10, 854 A.2d 855, common sense leads only to the conclusion that highlighting the exceptionally prejudicial testimony of Mr. Pearson resulted in the jury's knowledge that the Defendant was incarcerated. The prejudice from the statement was so significant to the Defendant in the context of all the evidence that it could not be effectively mitigated. *See, e.g., State v. Edwards*, 412 A.2d 983, 985 (Me. 1980). The denial of the mistrial motion thus resulted in an unfair trial and undermined the Defendant's right to a fair and impartial jury.

Furthermore, after the trial court's decision to deny the motion for a mistrial, the court erred in its improper application of the balancing test required by M.R. Evid. 403 for mitigating actions. The prejudicial impact of the witness's testimony far outweighed any conceivable probative value, which, in this case, was nonexistent. The court's 403 analysis that resulted in the exclusion of Mr. Pearson from additional participation and the court's curative instruction was insufficient to mitigate the damage that occurred. Not only was this insufficient, but the outcome of Mr. Pearson's participation was clearly foreseeable to the court given that the arguments had been discussed in chambers and that the court had already granted Defendant's request to exclude another inmate from testifying on the same grounds. The evidence presented by the State was not sufficient to convict the Defendant of

the offense as charged by the State as evidenced by the return of a not guilty verdict on the charge of depraved indifference murder. Defendant's conviction of the lesser included offense demonstrates that the evidence of guilt was not overwhelming and every ruling by the court was consequential for the jury.

Accordingly, this Court should find that the trial court abused its discretion in denying the motion for a mistrial as the remedy selected by the court was not sufficient to mitigate the damage to the Defendant and his rights, which only could not continue with a fair result. The conviction should be vacated and the case remanded for a new trial where the Defendant's right to a fair trial can be fully executed as the only avenue to satisfy the interest of justice.

**V. THE COURT ERRED IN EXCLUDING THE AFFIDAVIT AND PARTICIPATION OF A SEATED JUROR FROM THE DEFENDANT'S SENTENCING ARGUMENT.**

**a. Standard of Review**

"Courts are afforded wide discretion in determining the sources and types of information to consider when imposing a sentence." *State v. Butsitsi*, 2015 ME 74, ¶ 25, 118 A.3d 222 (quotation marks omitted). "The guiding principle for the [sentencing] court in deciding both the information to use and how that information is to be presented is that a sentence must be based on reliable factual information." *State v. Wright*, 588 A.2d 1200, 1201 (Me. 1991).

The sentencing court is not limited to facts adduced at trial alone. *State v.*

*Dumont*, 507 A.2d 164, 166 (1986). The Supreme Court of the United States has stated that “highly relevant—if not essential—to the selection of an appropriate sentence is the possession of the fullest information possible . . . . Congress codified this principle at 18 U.S.C. § 3661, which provides that no limitation shall be placed on the information a sentencing court may consider concerning the defendant’s background, character, and *conduct* . . . .” *Pepper v. United States*, 562 U.S. 476, 480 (2011) (citations and quotation marks omitted) (emphasis added).

**b. M.R. Evid. 606**

M.R. Evid. 606 is titled “Juror’s competency as a witness” and is broken into two sections: “(a) At the trial” and “(b) During an inquiry into the validity of a verdict or indictment.” M.R. Evid. 606. The rule states “The court may not receive a juror’s affidavit or evidence of a juror’s statement *on these matters*.” *Id.* (Emphasis added). Exceptions to the rule refer to instances when a juror may testify.

The commentary both following the rules and within secondary sources, such as *Maine Rules of Evidence* by Field and Murray, comments on Rule 606, and subsequently to the two in situations the rule covers: at the trial and during an inquiry into the validity of a verdict or indictment. Neither situation occurred here. The sentencing court’s analysis and ultimate determination to exclude the affidavit and participation of a juror from the Defendant’s presentation at the sentencing hearing rested entirely on Rule 606 and its commentary. The sentencing court even noted

that other arguments identified were not important or relevant to its decision. (Sent. Tr. 6-11). Rule 606 and its commentary is clear and unambiguously limited to two instances. The language limiting Rule 606's applicability is in line with 18 U.S.C. § 3661, which codifies for federal courts that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661 (2024). Thus, the sentencing court erred in excluding the juror's affidavit and participation in Defendant's sentencing argument based on M.R. Evid. 606.

The exclusion of information and the participation of the juror was in error. It is the sentencing court, not the jury, that makes "factual findings for sentencing purposes by a preponderance of the evidence based on whatever information the court deems reliable." *State v. Carrillo*, 2021 ME 18, ¶ 42, 248 A.3d 193 (quotation marks omitted). "[T]he court may consider any evidence that is factually reliable and relevant," *State v. Hewey*, 622 A.2d 1151, 1154 (Me. 1993), and is not limited to facts adduced at trial alone. *Dumont*, 507 A.2d at 166 (1986). The evidence the sentencing court determines is relevant to the sentence therefore begins with what the judge allows to be considered at sentencing. Here, the juror's affidavit and participation were excluded by the court's ruling based on M.R. Evid. 606. The sentencing court denied the Defendant the ability to present his argument and facts

that included the jurors' perception, denied the court the ability to hear from and assess the credibility and reliability of the juror, and to then ultimately determine the facts of the case for sentencing purposes based on a preponderance of the evidence. Although the sentencing court could have given the juror's testimony or affidavit no weight in its consideration, because it was excluded, we cannot know what the sentencing court would have found relevant or persuasive. As the sentencing court's factual findings and analysis are based on the trial and facts presented through the sentencing hearing, the sentencing court's error in improperly excluding the juror's involvement can only be corrected by remanding the matter to the sentencing court for a new hearing.

### CONCLUSION

For the stated reasons stated above, Appellant Matthew Pendleton respectfully requests that the sentence and/or conviction be vacated, and that this Court order any further relief this Court determined to be just.

Respectfully submitted,

Dated: August 21, 2024

          /s/ Christopher K. MacLean            
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**CERTIFICATE OF SERVICE**

I, Christopher K. MacLean, Esq. attorney for the Appellant in this matter, hereby certify that I have made service of two copies of the foregoing BRIEF OF APPELLANT on Katie Ann Sibley, AAG, Office of the Attorney General, 6 State House Station, Augusta, ME 04333.

Dated at Camden, Maine August 21, 2024

          /s/ Christopher K. MacLean            
Christopher K. MacLean, Esq.  
(Bar No. 8350)