THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

SITTING AS THE LAW COURT

DOCKET No. LIN-24-234

STATE OF MAINE

Appellee

v.

CHUCK D. SCHOOLEY

Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF FOR APPELLEE, State of Maine

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STATEMENT OF FACTS

Procedural History

The Defendant/Appellant Chuck D. Schooley (hereafter Appellant) was first charged in a complaint containing a single count of Gross Sexual Assault, a Class A violation of **17-A M.R.S. Section 253(1)(C)** and a single count of Violation of Condition of Release a Class E violation of **15 M.R.S. Section 1092(1)(A)**. (App at 3).

The Appellant was charged with the same two (2) counts in an indictment returned on September 23, 2022[1]. (App at 4). Appellant was arraigned and pleaded not guilty on October 13, 2022. (App at 5). Jury selection took place on February 2, 2024, and a panel was seated. (App at 7).

The trial began on February 20, 2024. (App at 7). The State rested that same day, and the court was recessed until February 21, 2024. (Tr. T. at 186). On February 21, 2024, Appellant moved for Judgment of Acquittal. (Tr. T. at 193). The Motion was denied. (Id.). The Appellant then rested. Following instructions to the jury from

[1] The indictment alleged that: On or about **between** January 1, 2020, and July 16, 2022, in Wiscasset, Lincoln County, Maine, CHUCK D. SCHOOLEY, did engage in a sexual act(s) with minor child, DOB [redacted], not his spouse, who had not in fact attained the age of 12 years (emphasis added). Appellant's brief leaves the "between" out when stating the allegations in the indictment. (Appellant's Br. At 7, footnote 3). Appellant is correct that the clerk read the Indictment at the opening of the trial without including the "between." (Tr. T at 17). Appellant is also correct that the Court in its instruction stated, "Mr. Schooley is charged with one count, Gross Sexual Assault of a minor, which is a Class A crime in Maine." (Tr. T. at 201).

the court and closing statements by counsel, the jury retired to deliberate. (Tr. T. at 241)

During deliberations the jury sent a note asking, "is the Transcript available to us, specifically the testimony of the sergeant detective?" (Tr. T. at 242, 243). The court responded, "there is no transcript available However, if you would like to have any part of the testimony read back to you in the courtroom, that can be done." (Tr. T. at 243). A second note from the jury stated, "we would like to hear the testimony of the sergeant detective, and the prosecutor and defendant's attorney related to sergeant's testimony."(Id.). The readback of the testimony was conducted in the courtroom. (Tr. T. at 243, 244).

Approximately ninety (90) minutes after the readback, a third note[2] was sent from the jury, which was read into the record, stating, "we do not have a unanimous verdict at this time and are unsure how to proceed. In the absence of further guidance, we think it might be best to break for today and return tomorrow." (Tr. T. at 245).

The Court then stated:

> "So, I am going to attempt to give you some further guidance

[2] Appellant states that "Furthermore, the jury's deliberation resulted in **numerous** notes to the trial court." (Appellant's Br. at 26) (emphasis added). In fact, just three (3) notes were sent to the trial court and two (2) of those dealt with the singular issue of having testimony read back. (Tr. T at 241, 244) Contrary to Appellant's assertion the jury was not flummoxed or desperately seeking clarity related to the instructions from the court or their duties.

on your deliberations. If after hearing my guidance—after hearing my guidance, I'll have you go back to the jury room, consider what I said, but from there it will be entirely up to you how you wish to proceed, either continuing with your deliberations today, breaking for today, however you wish to proceed.

As I said earlier, at this point you are in charge of your schedule. You just have to let us know what you intend to do. So, I'll ask you to consider the reinstruction that I'm about to give, talk about it a little bit in the jury room after I'm done and then from there you can decide how you wish to proceed.

Members of the jury, your note indicates the difficulties you are having in agreeing upon a verdict. Let me take some—let me make some observations that may be helpful for your consideration when you return to the jury room.

First of all, the amount of time you have spent in deliberations so far is not unusual for this type of case. Responsible deliberations require a thorough discussion of all the issues and points of view. The fact that you've taken this amount of time suggests you are doing your job responsibly.

As I indicated in my closing instructions, the verdict you reach must represent the considered judgment of each juror. In order to return a verdict, your verdict must be unanimous. Whether the verdict is not guilty or guilty, all 12 of you must agree.

It is your duty as jurors to talk with one another and to deliberate with a view to reaching an agreement if you can do so without sacrificing individual judgment. Each of you must decide the case for yourself but do so only after impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations, keep an open mind. Do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous, but do not surrender your honest belief as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

> Remember at all times you are not partisans. You are judges of the facts. You're sole interest is to determine whether the State has proven the charge beyond a reasonable doubt based on the evidence that you heard in this case.
>
> Keep these observations in mind as you return to the jury room for further deliberations. At this point I'm going to have you go back to the jury room to consider the instructions I've just given. If, after further consideration, you wish to break for the evening, that's fine. If after further consideration you're able to reach a verdict, you should report that to the court in accordance with my prior instructions. If after further deliberations you still believe that you cannot reach a verdict, you should advise me of that in writing.
>
> So, with that, I'll have you return to the jury room to consider the instructions[3]." (Tr. T. 245-248).

Approximately 30 minutes later the jury returned a verdict of guilty on Count 1. (Tr. T. at 249). The jury members were polled and confirmed the foreperson's report of the verdicts. (Tr. T. 250-252).

Sentencing was scheduled for May 3, 2024. The court sentenced Appellant on Count 1, Gross Sexual Assault Class A, to eighteen (18) years to be served followed by fifteen years of supervised release and on Count 2, Violation of Condition of Release[4], six (6) months concurrent to Count 1. (App at 8). The appellant timely appealed the judgment. (App. at 10).

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[3] See Alexander, *Maine Jury Instruction Manual* § 8-6 at 8-12 Deadlock: Deliberations to Continue (2025) ed. LexisNexis Matthew Bender.

[4] Count 2, Violation of Condition of Release, Class E, was not tried by the jury, but by the trial court. (Tr. T. at 1-2, 194-195); (Sent T. at 4-5).

Evidence Presented

M[redacted] B[redacted] was born on [redacted]. She lived with her biological mother, M[redacted] Schooley and her stepfather, Appellant in Wiscasset from the time she was eight (8) years old to eleven (11) years old. (Tr. T at 87, 88). Also living in the residence were her half-brothers, twins, E[redacted] and N[redacted] who were four (4) years old to six (6) years old during the time of the alleged assaults. (Tr. T. at 88). M[redacted] testified she was home alone with Appellant when her mother had to go to work at McDonalds once or twice a week. (Tr. T. at 91). During this time the twin boys were home as well. (Id.). M[redacted]'s mother stated she worked four (4) days a week and Appellant was home, he was not working, with M[redacted] during these times. (Tr. T. 175).

M[redacted] testified that Appellant drank a lot of alcohol. She stated she knew this as she saw him drink alcohol and there were beer bottles all around the house. (Tr. T. at 93). M[redacted] testified that when Appellant drank alcohol, he would become abusive and hit, punch, and touch her inappropriately. (Tr. T. at 93).

M[redacted] stated the inappropriate touching involved Appellant's "fingers, touching my vagina with his penis." (Tr. T. at 94). M[redacted] stated these incidents happened in "the car and bedroom." (Id.). M[redacted] testified that on more than one (1) occasion Appellant ordered her up to his bedroom and told her to take her

clothes off. (Tr. T. at 95-98). M[redacted] stated that Appellant would come into the bedroom and make her take her clothes off and then he would take his clothes off and push her onto the bed and climb on top of her. (Tr. T. at 100). M[redacted] stated that Appellant would move her so she was on top of him, and she felt very uncomfortable and started to cry. (Id.). M[redacted] stated Appellant would tell her to stay quiet. (Id.). M[redacted] calls a vagina a "hooha" and a penis a "stick." She identified these terms as the private parts of girls and boys respectively. (Id.). M[redacted] stated that during these events Appellant would place his "stick" in her "hooha" and it was painful and uncomfortable. (Tr. T. at 101).

M[redacted] described another incident that took place in a car. (Tr. T. at 102). M[redacted] testified that she was watching television one night and Appellant asked her if she wanted to go to Maxwell's, a convenience store just around the corner from the residence. (Id.). M[redacted] stated it was the night of the races as she could hear the race cars and then see the cars go by her house as they left the track. (Tr. T. at 103). M[redacted] testified that Appellant drove her to Maxwells where she bought some candy and Appellant bought some beer. (Id.). On the way back Appellant pulled over onto a dirt road from which she could not see her house. (Tr. T. at 104). M[redacted] testified she could see the road and cars passing by, as well as cars leaving the racetrack. (Id.). M[redacted] stated she was on her phone when Appellant told took her phone away and told her to pull down her pants. (Id.). M[redacted] stated she had

told him no but this just made Appellant mad. (Id.). M[redacted] then testified that Appellant pulled down his pants and told her to suck his "stick." (Tr. T. at 104). M[redacted] said no but Appellant told her to do it or she would get hit. (Tr. T. at 104, 105). Appellant still had M[redacted]'s phone, and she stated she was scared and felt like she had no choice. (Tr. T. at 105). While M[redacted] was sucking his "stick" Appellant was telling her not to tell her mom and that if she did she would go into foster care and would not have a great life. (Id.). The incident finally ended when a car stopped, and Appellant got mad at M[redacted] for not sucking his "stick" as long as he wanted. Appellant drove home with M[redacted] and told her again not to tell her mother. (Tr. T. at 106, 107).

M[redacted] testified to one (1) other time there was a sexual assault. M[redacted] stated some of her family was over at her house and everyone was drinking. (Tr. T. at 107). The family was out by the bonfire and Appellant told M[redacted] to go into the house and get him a beer. (TR. T. at 108). M[redacted] retrieved the beer and was bringing it out of the kitchen when Appellant came into the house and told M[redacted] to go upstairs. (Id.). M[redacted] tried to get upstairs ahead of Appellant and lock herself in the room but was not quick enough and Appellant followed her into the bedroom. (Tr. T. at 109). Appellant took his and M[redacted]s clothes off and put his "stick' in her "hooha" but Appellant had to quickly terminate the encounter as M[redacted]'s mother came into the house from outside and Appellant told M[redacted] to

grab her clothes and not to tell her mother. (Tr. T. at 109, 110.). M[redacted] testified that sometimes during these encounters "white stuff" came out of Appellant's stick. (Tr. T. at 111). M[redacted] stated it was sticky and made her want to throw up and that these assaults had been ongoing since she was about eight (8) years old. (Id.). At the time of her interview, M[redacted] was eleven (11) years old.

Approximately two (2) days after the car incident M[redacted] told her mother what had happened. (Tr. T. at 114). Since M[redacted] had previously told her mother about the assaults and nothing happened about thirty (30) minutes after M[redacted] disclosed to her mother, she disclosed to a friend on snapchat what had happened, and this friend called social services. (Tr. T. at 114-116).

The Appellant was interviewed by Detective Sergeant Ronald Rollins of the Lincoln County Sheriff's Office, and he stated that M[redacted] did not have friends come over to the house nor did she go to other people's houses and that the family mostly stayed to themselves. (Tr. T. at 43).

Det. Rollins requested and was granted a search warrant for M[redacted]'s phone and discovered a text from M[redacted] to her friend Christine Pottle that described M[redacted] having sex with Appellant. (Tr. T. at 45, 46). Mr. Schooley stated to Detective Sergeant Rollins that he does not drink often and that he is never alone with M[redacted]. (Tr. T. at 46, 47). This was contrary to the testimony of Appellant's

wife, M[redacted] Schooley, who testified that she stated to law enforcement at the time of the report to social services that Appellant was an alcoholic who drank a lot, anywhere from a six (6) pack of beer to a twelve (12) pack of beer a night. (Tr. T. at 179, 180). M[redacted] also testified that Appellant spent time alone with M[redacted] and that Appellant would often take M[redacted] to the store, races or park by himself, just the two of them, like any parent would. (TR. T. at 177, 178).

Jury Instructions

Jury instructions were provided to Appellant and Appellee for review. (Tr. T. at 197). Following discussion regarding the instructions an updated draft was provided for both parties. (Tr. T. at 197). Neither the Appellant nor Appellee objected to the instructions. (Tr. T at 197).

STATEMENT OF THE ISSUES

I. The Defendant waived any assertion regarding a specific unanimity jury instruction on appeal by declining to have the instruction included in the instructions at trial.

II. The prosecutor's closing argument, to which there was no objection, was not improper and does not require reversal of the convictions.

ARGUMENT

I. The Appellant waived his assertion on appeal that a specific unanimity jury instruction was required.

The Appellant's failure to request a specific unanimity instruction precludes this Court from reaching this issue on the merits, given that he has waived his assertion on appeal that the instruction was required.

This Court has stated that, "If a defendant explicitly waives the delivery of an instruction or makes a strategic or tactical decision not to request it, we will decline to engage in appellate review, even for obvious error." *State v. Nobles*, 2018 ME 26, ¶ 34, 179 A.3d 910; see also *State v Lester*, 2025 ME 21, ¶ 14 fn. 5. Where a defendant has "elected not to request a specific jury instruction regarding the requirement of unanimity for each convicted count," this Court "will not review an issue – even for obvious error – when a party has, as a trial strategy, openly acquiesced to the process employed." *State v. Ford*, 2013 ME 96, ¶¶ 15–17, 82 A.3d 75. Pursuant to Alexander's *Maine Jury Instruction Manual*, a specific unanimity instruction is to be given upon request "if the evidence offered in support of one charge includes more than one incident of the charged offense. Alexander, *Maine Jury Instruction Manual* § 6-65 at 6-150 (2025 ed. LexisNexis Matthew Bender).

It is within the purview of the defense to waive jury instructions as a matter of trial strategy. *See e.g*., *State v. Cleaves*, 2005 ME 67, ¶ 13, 874 A.2d 872; *State v. Ford*, 2013 ME 96, ¶ 16-17, 82 A.3d 75. "Although the attorneys' specific reasoning is not part of the record, it is reasonable to assume that they may have eschewed defense theories that might strain credibility or otherwise conflict with defenses they deemed more likely to succeed." *State v. Ford*, 2013 ME 96, n. 3, 82 A.3d 75. "Obvious error review provides no invitation to change trial and instruction request strategy when the results of the original strategy turn out less favorably than hoped for." *State v. Cleaves*, 2005 ME at ¶13, 872 A.2d at 874.

In the instant case, the Appellant did not request a specific unanimity instruction. The Appellant did request certain instructions with respect to the State's burden of proof and Appellant proposed specific language to be included in the instruction. The Appellee did not object and the updated instructions were provided to the Appellant and Appellee, reviewed and accepted by both parties (Tr. T at 197). This demonstrates the Appellant was aware that jury instructions are malleable and contextual and can be tailored to fit the particular facts and nature of the trial and charges. And they are not in fact some fixed north star without room for strategic decisions.

The Appellant's strategy in this matter was focused on whether the State could meet its burden as evidenced by the request to highlight instructions as to

how high this burden is. The thrust of the Appellant's defense was focused on the credibility of the witness and that she had fabricated her testimony. The Appellant did not attack specific dates but rather the victim's veracity on all her testimony regarding assaults by the Appellant. Declining to request a specific unanimity instruction is not inconsistent with this defense tactic. Requesting such an instruction might set the focus of testimony on a singular event which may provide the appearance of credibility while hindering the ability of Appellant to attack a series of events with inconsistencies and a pattern of fabrication. It is better for the Appellant to have the State meet its burden of proof on multiple allegations rather than a single event.

This Court is at a disadvantage when placed in a position to second-guess the strategy of the defense. It becomes akin to reading song lyrics or sheet music from the page and thinking how does that work. Then you hear the performance, and the lyrics and music gain context through the relationship between the musicians and audience. The Appellant went through the trial, heard the testimony, watched the jury, and when reviewing instructions decided the burden of proof on the State was what needed to be highlighted. In this matter the Appellant was clearly attuned to the time and opportunity to make a request for jury instructions.

Although Appellant now argues that he did not receive due process and was deprived of a fair trial he did not seek further process to address any deficiencies in

the trial court. (See *Clarke*, 2015 ME 70, ¶ 5 n.2, 117 A.3d 1045; *State v. Bilynsky*, 2008 ME 33, ¶ 7, 942 A.2d 1234. "[A] party must pursue the process that is available before complaining of a procedural inadequacy" for purposes of a due process challenge. *Marshall v. Town of Dexter*, 2015 ME 135, ¶ 28, 125 A.3d 1141.

Based on the Appellant's decision the Court needs to go no further in its analysis on the merits of the unanimity instruction as the defendant has waived this assertion on appeal.

II. The prosecutor's closing argument, to which there was no objection, was not improper and does not require reversal of the convictions.

The Appellant claims that the prosecutor made improper statements in his closing argument. The Appellant did not object to any portion of the closing that is mentioned in his Brief (Appellant Br. at 31-32). The Appellant did object once during the closing argument and that objection was handled at a sidebar (Tr. T. at 233).

It appears most of the alleged improprieties were references to evidence regarding issues of credibility. Before the prosecutor begins, he first states "So briefly we'll talk about things that might lend itself to credibility." (Tr. T. at 212). A prosecutor may properly suggest to the jury ways to analyze the credibility of witnesses when those arguments are "fairly based on facts in evidence." See Hassan,

2013 ME 98, ¶ 33, 82 A.3d 86 (quotation marks omitted). It is improper, however, for a prosecutor to vouch for a witness by "impart[ing] her personal belief in a witness's veracity or impl[ying] that the jury should credit the prosecution's evidence simply because the government can be trusted." State v. Williams, 2012 ME 63, ¶ 46, 52 A.3d 911 (quotation marks omitted)(quoting United States v. Perez–Ruiz, 353 F.3d 1, 9 (1st Cir.2003))). A lawyer shall not "state a personal opinion as to ... the credibility of a witness." M.R. Prof. Conduct 3.4(e); However, "an argument that does no more than assert reasons why a witness ought to be accepted as truthful by the jury is not improper witness vouching." Perez–Ruiz, 353 F.3d at 10 (quotation marks omitted). A prosecutor may "appeal to the jury's common sense and experience without crossing the line into prohibited argument." State v. Schmidt, 2008 ME 151, ¶ 17, 957 A.2d 80 (quotation marks omitted). "[T]he central question is whether the comment is fairly based on facts in evidence or improperly reflects a personal belief" about the witness's overall credibility. State v. Moontri, 649 A.2d 315, 317 (Me.1994).

Appellant points to seven (7) aspects of the prosecutor's closing as being improper, the first sets the stage for what follows, this being references to credibility where the prosecutor states the following:

> "So what we talk about now is—since the State's evidence is really based on direct evidence and the testimony of M[redacted], it really turns

> on credibility. So briefly we'll talk about things that might lend itself to credibility." (Tr. T at 213).

As stated in *Hassan* 2013 ME 98, ¶ 33, 82 A.3d 86, a prosecutor may properly suggest to the jury ways to analyze the credibility of witnesses when those arguments are "fairly based on facts in evidence."

> "She thought she finally had the courage to testify and this wasn't because—as she testified yesterday, she told her mom what happened. This wasn't because somebody in the household protected her. As far as M[redacted] was concerned-and I think you can deduce this or you heard this yesterday-nobody was helping her in the house. Her mom didn't help her. **Certainly Mr. Schooley wasn't helping her**. So, she had to rely on other people. She had to—actually, by testifying she was stepping out into the unknown by finally revealing this secret." (Tr. T. at 215-216)(emphasis added).

This states the obvious. It is an appeal to common sense. It also is linked to the evidence presented. The victim testified that Appellant was sexually and physically abusing her and that Appellant threatened to put her in foster care if she told her mom about the abuse. (Tr. T. at 93, 105).

> "So, she really was on her own up here, and **it took great courage for her to finally step forward and tell you, 12 strangers, the Judge and to again face Mr. Schooley.**" (Tr. T. at 217-218) (emphasis added).

This again states the obvious. It is an appeal to common sense.

> "And I'll point out that when she first started to testify, she came out here and sat down, Judge swore her in, and before I even asked a question, she needed a recess. That was the first time that she had been in front of people. That was the first time that she had seen Mr.

> Schooley in years, and **it was very probably traumatic for her to begin to experience this**. However, we took a recess, and she came back out, got herself together and was able to face Mr. Schooley, the jury, the Judge and—and a cross from defense attorney." (Tr. T. at 217)(emphasis added).

This states the obvious. It is an appeal to common sense.

> "And I will just point out you saw how skilled Mr. Ashe is. He had a detective of 26 years squirming a little bit in the chair during his cross of him—of the detective up there. **She stood up to his cross, stuck to her story, was consistent with her story and even corrected Mr. Ashe when he tried to get her off her story or correct her by saying, no, that's not what I said, this is what I said.**" (Tr. T. at 218, 219)(emphasis added).

This states the obvious. It is an appeal to common sense and is supported by the evidence. Apellant's counsel misstated a fact, and M[redacted] corrected him consistent with her earlier statement (Tr. T. at 134).

> **She really worked to get her truth out..and I think if you notice-I did notice-she almost grew up right in that stand. She took ownership back of her life, got stronger by telling her truth and her story, and I think those all lead to credibility here. And this case really does turn on the credibility of the eyewitness in this matter.**" (Tr. T. at 219)(emphasis added).

The prosecutor was careful here to state her truth and leaving it up to the jury to determine if that truth was credible. The prosecutor does not bolster the victim's credibility rather he concludes back to the beginning of his opening by stating that there was evidence presented that along with common sense and obvious inferences could allow a fact finder to determine the victim is

credible, “an argument that does no more than assert reasons why a witness ought to be accepted as truthful by the jury is not improper witness vouching.” Perez–Ruiz, 353 F.3d

> “And again, the State has a high burden here. The State welcomes that burden. **And the State believes that the testimony of M[redacted] yesterday was credible**, and if you believe that testimony, the State has met its burden and you should find Mr. Schooley guilty of gross sexual assault.” (Tr. T. at 234)(emphasis added).

These were perhaps ill-chosen words that could have been more artfully stated to avoid the appearance of bolstering or vouching for credibility. The prosecutor here was not necessarily referring to the State as in the prosecutor’s office, but the State writ large. This would include law enforcement. This was mainly in response to Appellant’s statement in closing that, “you heard Detective Rollins. There was the complaint that came in. He went over. He was the detective on call. He investigated it, spoke with M[redacted], found her credible…”(Tr. T. at 221, 222).

This Court has stated, “The mere existence of a misstatement by a prosecutor at trial, or the occasional verbal misstep, will not necessarily constitute misconduct when viewed in the context of the proceedings”. (See *State v. Corrieri*, 654 A.2d 419, 422 (Me.1995) (concluding that a prosecutor's “ill-chosen words” during closing “within the context of the

entire three-day trial, did not affect the jury's determination or [the defendant's] right to a fair trial").

This court has further stated that "Juries are presumed to have followed jury instructions, including curative instructions." See *Gentles*, 619 F.3d at 82; *State v. Bridges*, 2004 ME 102, ¶ 10, 854 A.2d.

In the instant matter the Court stated in its instructions that;

> "Further, statements and arguments of counsel are not evidence." (Tr. T. at 205.) and "Please remember that the arguments of counsel are not evidence but the attorneys' opportunity to discuss the evidence and the pints of law they believe are most important. As advocates, the attorneys may discuss the evidence as they see it and suggest inferences and conclusions that you might draw from the evidence, but it is ultimately your decision what inferences and conclusions you decide to draw from the evidence." (Tr. T. at 18, 209)

The Court's instructions made it clear that the closing and statements of counsel were not evidence and should not be treated as such.

Because Appellant did not object to the prosecutor's closing analysis on appeal is under the four-part test described in *State v. Dolloff*, 2012 ME 130, 58 A.3d 1032, at 1043-1044. To prevail on appeal the Appellant must prove that there was error, that it was plain, that it affected substantial rights, and that it seriously affected the fairness or integrity of the proceeding. Appellant has failed in every respect to meet the burden he has under *State v. Dolloff*. The following language from *Dolloff* emphasizes the high burden of proof borne by an Appellant who did not object at

trial: "When a prosecutor's statement is not sufficient to draw an objection, particularly when viewed in the overall context of the trial, that statement will rarely be found to have created a reasonable probability that it affected the outcome of the trial." *Ibid* at 1044. Notably, a new trial was not ordered in *Dolloff* itself, despite the court's identification of several instances of prosecutorial misconduct. Nor was a new trial ordered in *State v. Woodward*, 2013 ME 36, 68 A.3d 1250, despite the prosecutor's use of an expression ("send a message") which was clearly improper. Even if the court in the present case concludes that the prosecutor's comments were improper, which it should not, Appellant falls far short of meeting his burden of proof under *State v. Dolloff*.

That is not to say that we cannot always strive to do better. Appellee recognizes that fair play, and the protection of due process are foundational in dispensing justice. While the Appellee believes there is no basis for a new trial there is always room for making the system better.

CONCLUSION

Appellant has raised several points on appeal. In every instance the claim Appellant now makes was not made to the trial court. Appellant has either waived the issue for appeal or the issue is reviewed under the obvious error standard, and Appellant has not met that very high standard. The appeal should be denied and the judgment affirmed.

Dated: March 31, 2025 Respectfully,

/s/ Kent G. Murdick

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Certificate of service

I, Kent G. Murdick, have filed this brief, and served opposing counsel, as listed on the briefing schedule and the Board of Bar Overseer's (email) directory, in compliance with M.R. App. P. 1D(c), 1E and 7(c).

Dated: March 31, 2025

Respectfully,

/s/ Kent G. Murdick

Kent G. Murdick
Deputy District Attorney