THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
Sitting as the Law Court

Law Court Docket Number: KEN-24-447

STATE OF MAINE

v.

HEATHER HODGSON

On Appeal from a criminal conviction entered by the Unified Criminal Court sitting in Kennebec County.

Brief for Appellee – The State of Maine

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TABLE OF CASES AND OTHER AUTHORITIES

Cases

[1] *State v. Woodard* was published by this Court on March 27, 2025, and the State is unclear what the Atlantic Reporter Cite is at this time due to the recent publication of the order.

Maine Statutes

Maine Rules of Criminal Procedure

STATEMENT OF THE CASE

Procedural History

On February 6, 2023, the Appellant was arrested and had her initial appearance on February 6, 2023. (A. 1.) On April 21, 2023, the Appellant was indicted on six charges including Attempted Elevated Aggravated Assault (Class B), Attempted Aggravated Assault (Class C), two counts of Domestic Violence Reckless Conduct with a Dangerous Weapon (Class C), Domestic Violence Criminal Threatening with a Dangerous Weapon (Class C), and Endangering the Welfare of a Child (Class D).[2] (A. 71-73.) Several dispositional conferences were held, including a judicial settlement conference on October 14, 2023, but no resolution could be reached. (A. 3.)

Originally, this matter was set for jury trial and a jury was picked by the parties on June 7, 2024. (A. 4.) However, after the jury had been picked, the Appellant decided to waive her right to a jury and move forward with a bench trial. (A. 5.) The bench trial was held on June 17, 2024, and a verdict was returned on June 18, 2024. (A.5.) Prior to the trial beginning, the State dismissed Count 1. (A. 5.) Additionally, prior to the close of evidence, the Trial Court granted, in part, the Appellant's Motion

[2] The State filed a Motion to Amend the Indictment to correct some typographical errors, which was granted by the Trial Court on May 17, 2023. (A. 3.)

for Judgment of Acquittal dismissing Counts 2 and 5. (A. 5.) After trial, the Trial Court found the Appellant guilty of the remaining counts.[3] (A. 5.)

Once the verdict was rendered, sentencing was scheduled for July 29, 2024. (A. 5.) At sentencing, the Trial Court heard argument and impact statements regarding aggravating and mitigating factors. (S. Tr. 1-94.) From the State, the named victim, S[redacted] Hodgson spoke about the impact of the crime on him and the parties two children (*Id.* 9-24.) The State asked for a sentence of four years, all but two years suspended, and four years of probation. (*Id.* 5-8.) The State also argued, both orally and its written memoranda, that a one (1) year mandatory minimum incarceration sentence was applicable as to Count 3. (S. Tr. 5.) The Appellant spoke on her own behalf, along with members of her community seeking a sentence of three years, all but thirty days suspended, four years of probation. (*Id.* 30.)

In its sentencing, the Trial Court found as aggravating factors the use of alcohol by the Appellant and the fact that children were present in the home. (*Id.* 80.) Looking to mitigating factors, the Trial Court found the Appellant's lack of criminal history and the Appellant's educational history were mitigating. (*Id.*) After those two steps, the Trial Court found the aggravating and mitigating factors evened out and the base sentence should be three years. (*Id.* 79-80.) Thereafter, the Trial

[3] At trial, the Defense did try to raise the issue of self-defense, but the Trial Court found the evidence did not show the Appellant was in fear, but rather that she was angry. (Trial Tr. 14 (Jun. 18, 2024).) Thus, self-defense was not taken into consideration by the Trial Court. (*Id.* 14-16.)

Court detailed it would not impose the mandatory minimum sentence because it found it did not *specifically* find the crime was committed against an individual. (*Id.* 82.) The Trial Court stated:

> One could imply from what I said that I made that finding. I think one could argue that I made an implicit finding that it was against an individual, but I never made the explicit finding. And I'll be frank with you, the reason I didn't make that explicit finding is I didn't think it was in front of me. And it was not brought to my attention.

(*Id.* 82-83.)

The Trial Court made clear its verdict, finding the Appellant guilty beyond a reasonable doubt of all remaining counts, was still valid and the State had met its burden. (*Id.* 76-86.) However, the Trial Court found it was not mandated to impose the mandatory minimum and sentenced the Appellant to three years, all but ninety days, and four years of probation. (*Id.* 86-87.) The Appellant filed a notice of appeal on August 1, 2024. (A. 7.) On August 22, 2024, the State filed a Rule 35 Motion seeking to correct the Trial Court's sentence and impose the mandatory minimum sentence. (A. 11.) The motion was set for hearing on September 10, 2024, and was denied by the Trial Court. (*Id.*) The State filed a notice of appeal as to the Rule 35 Motion, with approval of the Attorney General's Office, on September 27, 2024. (*Id.*) On October 30, 2024, the two individual appeals were consolidated by this Court so the parties could be jointly heard. (A. 12.)

Statement of Facts

On February 3, 2023, Lieutenant (hereinafter "Lt.") Adam Sirois of the Oakland Police Department responded to a 911 call involving the Appellant and her husband, S[redacted] Hodgson. (Trial Tr. 40-41 (Jun. 17, 2024)). Lt. Sirois was familiar with the parties, as he had been called to the residence in the past for other domestic disputes. (*Id.* 42.) Both the Appellant, and Mr. Hodgson, called 911 seeking police assistance. (*Id.* 43.) Upon arrival, Lt. Sirois observed that Mr. Hodgson was upset and he could "kind of sense[] . . . a fear in him." (*Id.* 46.) The Appellant's demeanor, according to Lt. Sirois, was more erratic. (*Id.*) Lt. Sirois testified that both parties had been drinking, but only the Appellant appeared impaired. (*Id.*) During his investigation, Lt. discovered through the parties that the Appellant had shot a firearm in the direction of Mr. Hodgson. (*Id.* 48-53.)

Prior to police arrival, the Appellant and Mr. Hodgson were having a normal evening, but it soon became contentious due to drinking. (*Id.* 17-20.) Alcohol had been an issue in the couple's marriage for some time, with each party going through bouts of sobriety. (*Id.*) On February 3, 2023, Mr. Hodgson brought alcohol into the house after stating he was going to take a break from drinking. (*Id.* 19-20.) This upset the Appellant, but she began to drink with Mr. Hodgson. (*Id.* 20-21.) While both parties admitted to drinking, the Appellant was drinking in excess and became intoxicated. (*Id.* 22.) Around 7:30 P.M., the parties sat down to watch television and

they started to verbally argue. (*Id.* 22-23.) The argument became harsh and the parties' young son came out of his room to tell his parents to stop fighting. (*Id.* 23.) It was common for their son to have trouble sleeping and he would get out of bed often. (*Id.* 23-24.) After putting his son back to bed, Mr. Hodgson decided to go downstairs and go to sleep.[4] (*Id.* 24.) However, the Appellant was not done arguing with Mr. Hodgson.

While Mr. Hodgson was in bed, the Appellant came down with the two bottles of liquor Mr. Hodgson had bought and demanded he dump them out. (*Id.* 24-25.) After some back and forth argument, Mr. Hodgson got up and dumped the bottles out, despite feeling humiliated by the Appellant. (*Id.* 25.) Mr. Hodgson left the bottles in the sink and went back to bed. (*Id.*) Again, that was not enough for the Appellant. She came back downstairs again and yelled at Mr. Hodgson to put the bottles in the recycling bin. (*Id.*) Mr. Hodgson became upset with the Appellant's actions and continuation of the fight, so he took off his wedding ring, threw it on the ground in front of the Appellant, and called her a derogatory name. (*Id.* 26.) Thereafter, he went upstairs, grabbed the bottles and brought them outside to the outdoor recycling bin to avoid any additional fighting with the Appellant. (*Id.*) Mr. Hodgson left the house, on a very cold February night, in just a t-shirt and shorts

[4] It is important to note that the parties' home was a split-level design, and the master bedroom was on the lower floor. (*Id.* 17, 64.)

with no car keys, phone, or other items that would allow him to leave the residence for the night. (*Id.*)

After placing the bottles outside, Mr. Hodgson tried to reenter the home and the door appeared to be blocked, and he could not get back in. (*Id.* 27.) The Appellant was screaming and telling Mr. Hodgson to leave. (*Id.*) Mr. Hodgson agreed to leave, but he needed certain personal items to do so. (*Id.*) Because he needed those items, Mr. Hodgson pushed his way into the house. (*Id.* 28.) Once he got the door open, Mr. Hodgson was greeted by the Appellant and her firearm – which was pointed directly at him. (*Id.* 28.)

Mr. Hodgson was familiar with the Appellant's firearm, as he was with her when she bought it. (*Id.* 28.) Both the Appellant and Mr. Hodgson were recreational firearm users and both completed firearm training. (*Id.* 29-32.) Mr. Hodgson was shocked and scared by the gun being pointed at him, so he quickly went downstairs to get his items and leave. (*Id.* 28-29, 37.)

Once Mr. Hodgson was back downstairs, he started collecting his items so he could leave the residence. (*Id.* 32.) The Appellant pursued Mr. Hodgson down the stairs, her firearm in hand. (*Id.* 32-33.) At one point, Mr. Hodgson was trying to get his phone that was charging, and the Appellant grabbed his phone and threw it at Mr. Hodgson. (*Id.* 33.) He looked down, found his phone, and as Mr. Hodgson grabbed it, he heard a bang. (*Id.* 34.) Mr. Hodgson leapt into action, grabbed the

barrel of the Appellant's gun, disarmed her, and removed any remaining ammunition from the firearm. (*Id.* 33-34.) The Appellant had fired her gun into the ground near Mr. Hodgson. (*Id.*) The bullet hit the cement floor and splintered into multiple pieces. (*Id.* 50-51.)

Lt. Sirois also spoke to the Appellant, which was fully captured on his body camera. (*Id.* 56.). During his conversations with the Appellant, she stated that Mr. Hodgson had made her feel threatened due to his size, him being in her face, and that he called her a derogatory name. (*Id.* 52.) The Appellant agreed she had been drinking that evening, she argued with her husband, she grabbed her loaded firearm, and she shot it at Mr. Hodgson. (*Id.* 108-133.) It is important to note that during these conversations at the home, the Appellant's son was getting in and out of his bed continuously. (*Id.* 52.) Based on his investigation, Lt. Sirois arrested the Appellant, and she was later charged by the District Attorney's Office.

ISSUES PRESENTED

I. Whether there was sufficient evidence for the Trial Court to find the Appellant guilty of Domestic Violence Reckless Conduct with a Dangerous Weapon, Endangering the Welfare of a Child, and Domestic Violence Criminal Threatening with a Dangerous Weapon?

II. Whether the Trial Court erred when it denied the State's M.R. Crim. P. 35 Motion seeking to correct the sentence after failing to impose a mandatory minimum sentence pursuant to 17-A M.R.S. § 1604(3)(C)?

SUMMARY OF ARGUMENTS

1. The Trial Court properly denied the Appellant's Motion for Judgment of Acquittal as to Counts 3, 4 and 6. Additionally, the Trial Court did not err when it found the Appellant guilty of Counts 3, 4 and 6 once the evidence was closed. Such findings were proper because there was sufficient evidence in the record to support each element, of each charge, beyond a reasonable doubt.

2. The Trial Court's denial of the State's Rule 35 Motion was error as it failed to impose a required mandatory minimum sentence. The State properly plead and proved the necessary elements, specifically that a firearm was used in the commission of the crime of Domestic Violence Reckless Conduct with a Dangerous Weapon, against an individual, the named victim. Additionally, Rule 35 allows for any party, even the State, to file a motion seeking to correct an illegal sentence and be heard.

ARGUMENT

I. There was sufficient evidence for any fact finder to find the Appellant guilty of Domestic Violence Reckless Conduct with a Dangerous Weapon, Endangering the Welfare of a Child, and Domestic Violence Criminal Threatening with a Dangerous Weapon beyond a reasonable doubt.

This Court reviews any denial of a motion for judgment of acquittal "in the light most favorable to the State to determine whether a jury could rationally have found each element of the crime proven beyond a reasonable doubt." *State v. Bilodeau*, 2020 ME 92, ¶ 10, 237 A.3d 156 (citing *State v. Williams*, 2020 ME 17, ¶ 19, 225 A.3d 751; *State v. Adams*, 2015 ME 30, ¶ 19, 113 A.3d 583.). If a motion for a judgment of acquittal is denied, a fact finder can only find a person guilty beyond a reasonable doubt if they find that the charge is "*almost certainly true.*" *State v. Cook*, 2010 ME 81, ¶ 14, 2A. 3d 313 (emphasis in original). When reviewing a challenge to the sufficiency of the evidence after a verdict has been rendered, this Court views "the evidence in the light most favorable to the State to determine whether a fact-finder could rationally find beyond a reasonable doubt every element of the offense charged." *Id.* ¶ 7.

a. Domestic Violence Reckless Conduct with a Dangerous Weapon

The Appellant asserts the Trial Court improperly denied its Motion for Judgment of Acquittal as to the charge of Domestic Violence Reckless Conduct with a Dangerous Weapon. That is not supported by the record or well-established case

law. To find a person guilty of domestic violence reckless conduct with a dangerous weapon, the State must prove a defendant: (1) recklessly created a substantial risk of serious bodily injury to another person; (2) with the use of a dangerous weapon; namely a firearm; and, (3) that the conduct was committed against a family or household member as defined by law. *See* 17-A M.R.S. § 211-A(1)(A), 1604(5)(A). The evidence supported each element of the charge beyond a reasonable doubt. The Trial Court found the Appellant and Mr. Hodgson were married, that the Appellant shot a firearm in the direction of Mr. Hodgson, and that action was reckless and created a substantial risk of serious bodily injury. (Trial Tr. 9-14 (Jun. 18, 2024)).

There is no dispute that the Appellant shot a firearm in the direction of S[redacted] Hodgson. In fact, the Appellant argued at trial, and here on appeal, she deliberately shot into the floor near Mr. Hodgson. *See* (Trial Tr. 182-203 (Jun. 17, 2024)); *see also* (Blue Br. 25-27.). With that, the Appellant argues, despite that *deliberate act*, such conduct did not create a substantial risk of serious bodily injury to Mr. Hodgson. *Id.* Additionally, there is no dispute that when the Appellant engaged in this conduct, she was under the influence from alcohol, with the State arguing she was significantly impaired. (Trial Tr. 22, 46, 54-56, 157-158 (Jun. 17, 2024)).

This Court has held that merely pointing a gun at another person, without discharging it, meets the elements of reckless conduct with a dangerous weapon. *State v. Napier*, 1998 ME 8, ¶¶ 7-9, 704 A.2d 869. In *Napier*, the defendant pointed

a loaded firearm at a law enforcement officer and was later convicted with reckless conduct with a dangerous weapon. *Id.* ¶ 2. Napier challenged whether pointing a firearm at another person recklessly created the substantial risk of serious bodily injury. *Id.* ¶ 8. This Court found that "[r]isk turns on what is possible, not necessarily on what is probable, and in this case Napier's pointing a loaded gun at a police officer created the risk that the firearm might be discharged causing grave injury to the responding officers."[5] *Id.*

If *just pointing* a firearm in someone's direction meets the elements of reckless conduct, it is clear that shooting a bullet into the floor near your husband, while angry and intoxicated, meets each and every element of Domestic Violence Reckless Conduct with a Dangerous Weapon. As the Trial Court found, "I don't think you can ever calculate the degree – the riskiness of what you do when you fire a firearm – discharge a firearm in close proximity to another human being." (Trial Tr. 13 (Jun. 18, 2024)). The evidence in the record, from both the State and Defendant herself, established that it was almost certainly true she engaged in reckless conduct when she fired a gun in the direction of her husband. Thus, the Trial Court's denial of the Appellant's Motion for Judgment of Acquittal, and later verdict finding her guilty, was proper and legally sound.

[5] *See also State v. Harnois*, No. MEM 04-69, 2004 WL 7400823, at *1 (Me. May 13, 2004) as persuasive, but not binding, authority.

b. Endangering the Welfare of a Child

The Appellant argues the Trial Court's denial of her Motion for Judgment of Acquittal, and later verdict of guilty, as to the charge of Endangering the Welfare of a Child, was improper due to lack of direct evidence. (Blue. Br. 28.) Count six of the State's indictment as to the charge of Endangering the Welfare of a Child required the State to prove the Defendnant "did recklessly endanger the health, safety or welfare of a child, SH and/or AH, by violating a duty of care or protection." (A. 73.) The record reflects there was sufficient evidence to find the Appellant guilty of the charge, both directly and circumstantially, as permitted by law.

First, as this Court is aware, "[d]irect evidence of a defendant's exact actions in committing a crime is not required; the fact-finder 'may properly find beyond a reasonable doubt that a defendant acted recklessly or with criminal negligence based solely on circumstantial evidence.'" *State v. Hopkins*, 2018 ME 100, ¶ 52, 189 A.3d 741 (quoting *State v. Brown*, 2017 ME 59, ¶ 9, 158 A.3d 501). Therefore, the Appellant's assertion that lack of direct evidence is error is legally unfounded.

Regardless, there is both direct and circumstantial evidence in the record showing the Appellant's actions did endanger the welfare of her children. The evidence established the young boy was up and down all night, not stationary in his bedroom. (Trial Tr. 22-24, 52, 77-79, 156-158 (Jun. 17, 2024)). Both parents testified that when they were arguing, their son got out of bed and asked them to

calm down. (*Id.* 22-24, 156-158.) There was also evidence on the body camera footage that the child was up and out of bed constantly, despite being told numerous times to return to his room. (*Id.* 52, 77-79.) In the Trial Court's verdict, it made clear that merely having a gun in the house is not per se endangering. (Trial Tr. 20 (Jun. 18, 2024)). Rather, it was the Appellant handling that firearm, while intoxicated, and firing at Mr. Hodgson, *knowing* her children were home and her son had been getting in and out of his bed. (*Id.* 19-22.)

Additionally, the Appellant, a trained firearm user, admitted that it is *never* safe to handle a loaded firearm when you have been drinking, and it is certainly *never* safe to handle a loaded firearm while drinking when children are present in the home. (*Id.* 158.) This direct evidence, coming from the Appellant's own testimony, establishes the Appellant recklessly endangered the safety of her children by her own actions.

c. Domestic Violence Criminal Threatening with a Dangerous Weapon

The Appellant argues the Trial Court's finding of guilt as to Domestic Violence Criminal Threatening with a Dangerous Weapon is faulty because the conviction is not supported by its oral findings at the verdict or the evidence overall. Again, the record is clear and such an assertion is not supported. First, the Appellant takes issue with the Trial Court using the phrases "if" and "tend to" because it means the Trial Court lacked certainty. (Blue Br. 36-37.) The Appellant is correct that these

phrases were used in explaining how the Trial Court reached its verdict, and the necessary *certainty* comes from the verdict itself. The Trial Court found the Appellant pointed the muzzle of a gun at Mr. Hodgson. (A. 25.) The fact that its sentence started with "tend to" does not change the conclusion found that she in fact did commit the crime. The parsing of words at the beginning of a sentence does not change the conclusion of guilt.

Second, the Appellant asserts the State failed to prove Mr. Hodgson was in fear when the Appellant pointed the loaded firearm at him. (Blue Br. 37-39.) Yet again, the record tells a different story. On direct examination, Mr. Hodgson testified as follows:

> Q: Were you scared during this incident?
>
> A: Oh, yes.
>
> Q: Who were you scared –
>
> A: The -- the -- the fright and -- and being scared kicked in while I was on that call, after the -- after I had grabbed everything. That's when I knew this was -- this was a really close call. I still had no point where that bullet had gone yet.
>
> Q: And who were you scared for?
>
> A: I was scared for my kids, scared for myself, scared for the whole -- I was scared for her, too. I mean, I -- we went from having a really loving afternoon to, how did we get here now?
>
> (Trial Tr. 37 (Jun. 17, 2024)).

In addition to the above direct testimony as to being scared, Mr. Hodgson also spoke about his reaction to the Appellant's demeanor while she pointed the firearm at him. Specifically, he testified as follows:

> Q: And was she pointing the firearm at you?
>
> A: During that exchange, no.
>
> Q: Okay.
>
> A: When I turned to go -- well, not that I know of. I was -- my back was to her. But when she came around and grabbed the -- my phone, definitely wasn't pointing at me then.
>
> Q: Okay.
>
> A: When I went to go get my phone, I was bent over a laundry basket, looking over my right shoulder, and she was standing by the bed with the gun pointed straight down at me like this. ***And I kept saying, get that muzzle off me, get that muzzle off me, don't do this.*** And I'm -- I'm kind of looking quick for my phone, but I'm watching her. At one point, she moved her arm -- moved her muzzle off of me, and then she came right back on. And that's the moment I knew I had to get out of there. And so I just -- I just stopped focusing on her.
>
> . . .
>
> Q: So let's go away from the training. How did you feel when she pointed the gun at you first?
>
> A: At first, up in the -- in the landing in the front doorway, I was shocked, but it was -- she's been aggressive like that, not with a gun, but aggressive for sure in the past. So I wasn't too shocked that there was that level of aggression. I just wanted to move. So I -- I hadn't really thought about it. ***It was when she'd moved that muzzle off me and come back on me and the look in her eyes, I knew I was in trouble.*** I -- it was -- she went from yelling at me, swearing for me to leave, to not saying a word. She didn't say a single word that whole time that gun

> was on me, just expressionless and that -- the cold look in her eyes. I had nightmares for a while after that of that. ***That's when I knew I had to -- I had to act; I had to get out of there.***
>
> (*Id.* 33, 35-36) (emphasis added).

Mr. Hodgson noted that the Appellant's actions, keeping the muzzle of a firearm on him, meant he was in trouble. (*Id.*) The look in the Appellant's eyes, and the firearm being pointed at him, caused him to act. (*Id.*) S[redacted] Hodgson was in fear when the Appellant pointed that gun at him, he reacted according to that fear in trying to leave the home. These facts are clearly established in his direct testimony. Any rational fact-finder, including the Trial Court, could and did find that he was in fear due to the Appellant's actions and the conviction should be affirmed.

II. The Trial Court erroneously denied the State's Rule 35 Motion seeking to correct its illegal sentence after failing to impose a mandatory minimum sentence pursuant to 17-A M.R.S. § 1604(3)(C).

a. M.R. Crim. P. 35 is the proper procedure to correct an illegal sentence

On August 22, 2024, the State filed a Motion to Correct a Sentence pursuant to M.R. Crim. P. 35. (A. 11.) M.R. Crim. P. 35 allows for a party to file a motion seeking to correct an illegal sentence so long as the motion is filed within one year of the sentence being imposed. The basis for the State's motion was the Trial Court failed to impose a mandatory minimum sentence. (A. 74-76.) The Appellant argues the State's Rule 35 motion was improper as it violated the principle of res judicata.

(Blue Br. 30-31.) Additionally, the Appellant argues the State only filed a Rule 35 Motion due to missing the appeal window.[6] (Blue Br. 31.)

Rule 35 exists for a reason, to allow any party to request a correction of a sentence. It is illogical that Rule 35 would exist if re-litigation of any sentencing issue argued previously would be impermissible under res judicata. Further, it would be entirely inconsistent with this Court's jurisprudence regarding Rule 35. *See State v. Johnson,* 2006 ME 35, 894 A.2d 489; *see also State v. Letalien,* 2009 ME 130, ¶ 61, 985 A.2d 4. If the Court were to follow the Appellant's logic, future defendants would not be able to re-litigate any issue ruled on by a previous court, even filing an appeal. Therefore, this Court should consider the State's appeal and determine whether the Trial Court entered an illegal sentence.

b. <u>The State Plead and Proved the Appellant Used a Firearm Against S[redacted] Hodgson, an Individual</u>

Any indictment brought by the State "must be 'a plain, concise, and definite written statement of the essential facts constituting the crime charged.'" *State v. Pelletier*, 2023 ME 74, ¶ 28, 306 A.3d 614. This Court has found a defendant's sentence may be subject to enhancement, like a mandatory minimum period of incarceration, if the State pleads and proves the enhancement beyond a reasonable doubt. *See State v. Briggs*, 2003 ME 137, ¶ 5, 837 A.2d 113. In order for the court

[6] For the sake of clarity, the Docket Record outlines that the Appellant's Notice of Appeal was docketed on August 1, 2024. (A. 7.) The State filed its Rule 35 Motion on August 22, 2024, within the 21-day appeal window. (A. 11.)

to impose a mandatory minimum sentence, the evidence submitted to a fact-finder must establish each element of the crime charged. *State v. Woodard*, 2025 ME 32, ¶ 14. This Court further made clear in *Woodard* there is no requirement to cite to a sentencing statute in an indictment as such citation is "not part of the charge." *Id.* ¶ 15. Additionally, it has been long held that failure to impose mandatory minimum sentences violates the Legislatures decision making power. *State v. Gilman*, 2010 ME 35, ¶ 1, 993 A.2d 14. Therefore, if the State is able to prove each element of a charge to a fact-finder, and said crime is properly enhanced and subject to certain mandatory minimums, said mandatory minimum must be imposed by the sentencing court. *Id.*; *see also Woodard*, 2025 ME 32, ¶ 14.

Here, the Appellant was subject to a mandatory minimum sentence of one year on Count 3 pursuant to 17-A M.R.S. § 1604 (3)(C). The Trial Court found that because his oral verdict did not include the statement "the offense was committed against an individual" he was not subject to the mandatory minimum. (S. Tr. 7.) The Trial Court was clear the State did plead and prove its case, but the lack of that phrase in his oral verdict negated the need for the one-year sentence. (*Id.* 82-84.) The Trial Court was correct that the State properly plead and proved its case, thus the mandatory minimum sentence should be imposed.

The State's indictment states the Appellant "did recklessly create a substantial risk of serious bodily injury to S[redacted] Hodgson with the use of a dangerous weapon,

namely a firearm." (A. 72.) S[redacted] Hodgson is an individual, and the indictment is clear the State alleged the Appellant used a firearm against him. Regardless of how the indictment is structured, it establishes that an individual, S[redacted] Hodgson, was at risk of serious bodily injury due to the Appellant's use of a firearm. Additionally, as detailed above, the record clearly articulates the State proved the Appellant shot a firearm in the direction of S[redacted] Hodgson. Failure of the Trial Court to say a specific phrase does not negate that the matter was properly plead and proven and that the evidence supported each element of the crime. Thus, the mandatory minimum sentence should have been imposed and this matter should be remanded for resentencing in accordance with the law.[7]

[7] The Appellant implies the State had a duty to inform the Trial Court of the mandatory minimum prior to the rendering of a verdict. Firstly, as noted in *Woodward*, prior notice of a mandatory minimum sentence in an indictment is not required. *Woodard*, 2025 ME 32, ¶ 15. Secondly, it seems as if the Appellant believes if the fact-finder had that information, the verdict may have been different. Such an implication is inappropriate. A verdict should be based on the evidence, not the possible consequences. *State v. Robinson*, 2016 ME 24, ¶¶ 25-29, 134 A.3d 828. It does not matter if it is a jury or bench trial, a verdict should be based on the evidence alone. To insinuate the State has a burden to inform the fact-finder the consequences of a guilty verdict, so that they can be taken into consideration, goes against the validity of the evidence, and would be inappropriate at a jury or bench trial.

CONCLUSION

For the aforementioned reasons, the State requests this Court to affirm the Trial Court's verdicts and remand for resentencing consistent with the arguments made above.

Date:

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Shannon Flaherty, Assistant District Attorney, hereby certify that one (1) copies of the within Brief for Appellant were mailed to Appellant's Attorney addressed as follows:

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The State has sent a native .pdf file for submission to the court (at lawcourt.clerk@courts.maine.gov).

Dated: _____ _____

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