STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No.: KEN-24-447

STATE OF MAINE

V.

HEATHER HODGSON

ON APPEAL FROM THE
KENNEBEC COUNTY UNIFIED CRIMINAL DOCKET

APPELLANT'S REPLY BRIEF

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REPLY ARGUMENT

I. **There was no evidence that A.H. was in the vicinity of the area where the shot was fired**.

Heather has challenged the sufficiency of the evidence, *inter alia*, as it pertains to her conviction for Endangering the Welfare of a Child. One of the key facts cited to by Heather is the lack of evidence that Heather and S[redacted]'s son, A.H., was outside of his room, which was located at the other end of the house from where the shot was fired. (Blue Br. at 29-30.) In response, the State makes several assertions that A.H. was out of his room repeatedly. (Red. Br. at 11, 18.)

Heather responds to the argument simply to clarify the factual record. The evidence presented at trial was that A.H. got out of his room *once* before the shot was fired. There was no evidence that he came out of his room at any other time until after the police arrived at his house. It is speculation, not circumstantial evidence, to suggest that A.H. was outside of his room at any point after the firearm was removed from Heather's purse.

II. **The State missed their deadline to file a Notice of Appeal, and therefore this Court should apply principals of *res judicata* to prevent the State from relitigating an issue that should have been raised on a cross appeal.**

Heather has argued that this Court should apply principals of *res judicata* to the State's appeal of their Rule 35 motion, as they failed to file a timely Notice of Appeal from the final judgment. In response, the State has asserted that it "filed its Rule 35 Motion on August 22, 2024, within the 21-day appeal window." (Red Br. at 22, n. 6.) The State seems to assert that the deadline began to run on the date Heather filed her Notice of Appeal. (*Id.*) This argument misconstrues the Appellate Rules.

M.R. App. P. 2B(b)(1) requires a party who wishes to appeal to file a Notice of Appeal within 21 days from the date of the judgment, not the date the other party files their Notice. The final judgment in this case was docketed on the day of sentencing, July 29, 2024. (A. at 7.) Therefore, the 21-day deadline was August 19, 2024.[1] The State's Rule 35 Motion was filed on August 22, 2024. (A. at 11.) Therefore, the Rule 35 Motion did not toll the 21-day deadline, as it

[1] M.R. App. P. 2C(a)(2) does allow a party who is cross appealing to file a Notice of Appeal 14 days after the first Notice of Appeal is filed. However, this provision does not save the State's argument, as Heather filed her Notice on August 1, 2024. (A. at 7.) Therefore, August 19, 2025, remained the deadline.

was filed after the appeal period had expired. For these reasons, there is ample basis to conclude that the State filed their Rule 35 Motion because they missed the deadline to file a Notice of Appeal.

A Rule 35 motion should not be used as an opportunity to reargue an issue that was already fully developed and litigated. At sentencing on July 29, 2024, the State argued that the Trial Court was bound to impose a one-year mandatory minimum sentence. There were lengthy arguments about this issue. The Court ruled it was not required to impose the one-year mandatory minimum sentence. The State did not appeal. Allowing the State to relitigate the issue, simply because they failed to file a timely Notice of Appeal, would invite all future defendants and prosecutors to litigate, and then relitigate, the same issues that were already decided. That is exactly what the State is doing here.

Accordingly, this Court should apply the principals of *res judicata* to Rule 35 and decline to consider the State's argument regarding the legality of the sentence, because the argument was already decided by the Court and the State failed to appeal.

III. **The State did not plead and prove that Heather used a firearm against S[redacted], and therefore the Trial Court correctly found that the mandatory minimum sentence was not applicable**.

The State has argued that it sufficiently pled and proved that Heather used a firearm *against* S[redacted], such that the Trial Court was required to impose the mandatory minimum sentence pursuant to 17-A M.R.S. § 1604(3)(C). It relies heavily on *State v. Woodard*, 2025 ME 32, __ A.3d__ to support its position. However, *Woodard* does not overrule *Kline*, 2013 ME 54. The two cases have distinct factual differences that render *Woodard* inapplicable here.

The first distinction comes from the fact that elements of the offenses in *Woodard* are very similar to the language that must be pled to apply the enhancement. The enhancing statute, 17-A M.R.S. §1604(3)(C), states "[i]f the State pleads and proves that a Class A, B or C crime was committed with the use of a firearm *against an individual*, the minimum sentence of imprisonment, which may not be suspended, is as follows: …" (emphasis added). The indictment in *Woodard* alleged that he "did intentionally or knowingly cause serious bodily injury to [the victim] with the use of a dangerous weapon, a handgun…" *Id.* at ¶ 12. Causing bodily injury with a

firearm requires using a firearm against an individual. Therefore, the operative language to trigger the enhancement under §1604(3)(C) is the same as the underlying charge. Therefore, no additional language was necessary to plead and prove the enhancement.

In contrast, the indictment in this case *does not* say that Heather used a firearm *against* S[redacted]. Rather, it says that Heather "recklessly *created a substantial risk* of serious bodily injury to S[redacted] Hodgson *with the use* of a dangerous weapon." (A. at 72.) (emphasis added). Recklessly creating a substantial risk of harm is not the same thing as using a firearm against an individual. The victim in *Woodard* was shot. S[redacted] was not shot. The firearm was not used against him. This is a significant distinction. Put differently, the one-year mandatory minimum under § 1604(3)(C) is not triggered simply by a crime being committed with the use of a firearm. The crime must involve using the firearm directly *against* a person.

This reading is further reinforced by *State v. Kline*, 2013 ME 54. In *Kline*, the defendant was charged with Reckless Conduct with a Dangerous Weapon, a firearm. *Id.* at ¶ 5. "The indictment included the language "with the use of a firearm *against [a] person*" to invoke

the mandatory minimum one-year sentence on the Class C charge specified in 17–A M.R.S. § 1252(5)." *Id.* In contrast, no such language was included in the indictment here.

In addition, while *Woodard* holds that the State does not need to cite the enhancing statute in the indictment as a matter of law, this situation is different because the indictment is misleading to the point that the indictment is not sufficient. The indictment here cites 17-A M.R.S. § 1604(5)(A), which elevated the crime of Reckless Conduct from a class D offense to a class C offense because a dangerous weapon was used. However, the State failed to cite 17-A. M.R.S. § 1604(3)(C) in the indictment, which requires imposition of the one-year mandatory minimum.

Woodard reiterates that an indictment is sufficient if it is "adequate to apprise a defendant of reasonable and normal intelligence ... that if he were convicted of the offense as alleged in the [indictment], he would be subject to the enhanced mandatory sentencing for committing the offense with a firearm." *Id.* at ¶ 16. (internal citations and quotations omitted). However, a person of "reasonable and normal intelligence," would not assume that the

State was seeking two enhancements, when the State only cites one in the indictment. The misleading character of the indictment is further evident by the fact that the Trial Court itself candidly stated that it did not even know the State was even seeking the mandatory minimum until it reviewed the sentencing memorandums. (A. at 64, 7/29/24 Tr. at 82, 83.) If the language in the indictment was not "adequate to apprise" Justice Stokes (a seasoned judge and former homicide prosecutor) that the State was seeking a one-year mandatory minimum, then it certainly was not adequate to apprise Heather.

Finally, the State misapprehends the significance of this issue when it asserts that "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." (Red Br. at 24, n. 7). The State comes to this conclusion based on the Appellant arguing that the State had a duty to inform the Court that it was seeking a mandatory minimum sentence. *Id.*

The State *does* have a responsibility to adequately inform the Parties, and the fact finder, that it is seeking the statutory

enhancement. Due Process, and § 1604(3)(C), require the State to plead and prove the enhancement. The fact that the State never expressly told the Parties or the Court that it was seeking the enhancement is significant, because it highlights the lack of notice required by law. It also suggests that the decision to seek the one-year mandatory minimum was a *post hoc* decision made after trial. In *Kline*, the State and the Appellant both agreed that "the fact-finder must find that the offender used a firearm against a person before the mandatory minimum sentence …. may be applied." *Id.* at 14. Therefore, the fact that the Trial Judge did not even know the State was seeking the enhancement is fatal.

The Appellant's argument does not suggest that the enhancement should have been highlighted to influence the verdict.[2] Rather, the Court was legally required to make a finding that a firearm was used against an individual. It could not do so when the State failed to raise the issue with the Court altogether. For all of

[2] The Appellant agrees that consideration of the punishment is not an appropriate consideration for the fact finder during deliberations.

these reasons, the indictment was insufficient because § 1604(3)(C) was not pled and proven.

CONCLUSION

Wherefore, the Appellant respectfully request that the Court vacate the convictions in this matter.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the Undersigned, do hereby certify that on April 22, 2025, I caused to be served upon all parties an electronic copy of the Reply Brief, by emailing the parties below.

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Dated: April 22, 2025

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