STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PIS-25-160

STATE OF MAINE

APPELLEE

v.

WILLIAM BRADBURY

APPELLANT

ON APPEAL FROM THE PISCATAQUIS COUNTY

UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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FACTUAL SUMMARY

On March 7, 2025, the State uploaded evidence obtained from the Defendant's cell phone to ShareFile/Citrix. Trial Transcript, A22, ¶¶ 13-15.[1]

On March 15, 2025, Defendant's counsel skimmed that disclosure. Trial Transcript, A20, ¶¶ 15-18.[2]

On March 18, 2025, the day before the trial, Defendant's Counsel reviewed the disclosure again. Trial Transcript, A20, ¶¶ 22-25.

On March 19, 2025, the trial began. At the end of the day, the State rested.

On March 20, 2025, the State gave the Defendant several printed photos from the March 7 disclosure. Trial Transcript, A21, ¶¶ 1-6. The State acknowledged discovery was late. Id., A22, ¶¶ 16-25. The State proposed to use the photos only as rebuttal to the Defendant's testimony. Id., A24, ¶¶ 3-6. The trial court found the photos were admissible for rebuttal. Id., A25, ¶¶ 18-20. The trial court then inquired

[1] The disclosure timeline before March 7 is not on the record. For context, here is what happened with this evidence.
• On July 9, 2024 Game Warden Paul Mason extracted the cell phone files.
• Warden Mason made an evidence log and supplemental police report that he turned the cell phone evidence over to the case investigator, Sheriff's Office Chief Todd Lyford. The log, basic report, and search warrant was uploaded and disclosed to Defendant on September 12, 2024.
• On February 26, 2025 the DA's office inquired where cell phone evidence was.
• On March 4, the DA's reiterated its demand for the full cell phone contents from Warden Mason and Chief Lyford.
• On March 7, the DA's office, finally in possession of the evidence, uploaded and disclosed it.

[2] There is an error in the trial transcript at Appendix A20 ¶ 8: The transcript says the speaker is "MR. ALMY," the prosecutor. However, the speaker was actually defense counsel MR. TOOTHAKER.

The Appellant's surname is misspelled on the covers of the Blue Brief and Appendix as "BRADBUY."

with the Defendant on whether wanted to testify. Id., A26, ¶¶ 11-16. The Defendant chose not to testify. The jury found the Defendant guilty of counts 2, 3, 4, 5, and 6. Docket Record, A6-A9.

ARGUMENT

On Count II, The Evidence for was Sufficient for a Jury to Find that the Victim Did Not Acquiesce

Appellant's first assignment of error disputes the sufficiency of the evidence for two elements of Unlawful Sexual Touching. The first disputed element is that "the other person has not expressly or impliedly acquiesced to the sexual touching." 17-A M.R.S. § 260 (1)(A) The second disputed element is that "the actor is criminally negligent with regard to whether the other person has expressly or impliedly acquiesced." Ibid. The inquiry here is whether a trier of fact could find beyond a reasonable doubt every element of the offense charged. State v. Kendall, 2016 ME 147, ¶ 12.

Appellant is correct that "the lack of acquiescence must be communicated in some fashion, verbally or otherwise. State v. Asaad, 2020 ME 11 ¶ 14.

Here, the State presented evidence that Sister 2 was unconscious, and the Defendant did not dispute this fact either at trial or on appeal. (Sister 2) "I fell

asleep." CAC Interview Transcript, A34. "Half asleep, she felt 'wetness' on her boob." Appellant's Brief p. 11. "Sister 2 fell asleep on the couch at defendant's home." Appellant's Brief p. 10.

Unconsciousness is a physical cue that communicates non-acquiescence. State v. Idris, 2025 ME 17, ¶ 10 "Like the acquiescence language at issue in Asaad, the consent language in subsection 253 (2)(D) requires (a) that the victim communicate their lack of consent—verbally or by physical cues that the victim is unconscious." Ibid.

It was reasonable for the jury to conclude that Sister 2 communicated non-acquiescence through physical cues.

On Count II, The Evidence was Sufficient for a Jury to Find that the Defendant was Criminally Negligent

Appellant further avers that the State did not establish criminal negligence. Appellant's Brief p. 20. Appellant avers he was not negligent at all: "In our case, though, there is simply no evidence that defendant was even imperfect." Ibid.

Appellant argues if there's no direct evidence, then he's hypothetically not negligent, and therefore a jury cannot reasonably find he was criminally negligent.

Criminal negligence "must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation." 17-A M.R.S. § 35 (4)(C). The intent element is a question of fact for the jury. The instant inquiry is whether a jury could reasonably find Appellant guilty beyond a reasonable doubt.

To be culpable, a defendant need not know that their conduct is illegal to be guilty of a crime. Staples v. United States, 511 US 600 (1994). Rather, the defendant must be conscious of the "facts that make his conduct fit the definition of the offense." Id. at n.3. The Appellant was "conscious of the facts that make his conduct fit the definition of the offense" because he was aware of the fact Sister 2 was unconscious. Unconsciousness is communication by physical cues of a lack of acquiescence. Idris, at ¶10.

Here, the jury heard Sister 2's testimony on the act itself when she was on the cusp of waking up: "He kept touching my boob and I swear I'm not sure if it was just me or if it was just my imagination thinking of what could happen, you know? I swear I felt him move down my shirt and start kissing my boob. I swear." Appellant's Brief p. 11, citing SX1 at 1:40:00. The jury can reasonably find evidence of the act itself from that testimony, as well as the attendant circumstance of Sister 2 being unconscious. The jury also heard that the other victim, Sister 2, averred the Defendant once sucked on her boobs. Appellant's Brief p. 9.

"The finding that a defendant possessed the requisite mens rea need not be proved by direct evidence; rather, the fact-finder "may look to the act itself, the attendant circumstances, and any other evidence tending to prove the defendant's mental state," Asaad, at ¶ 9. In the instant case, it was reasonable for the jury to find the Defendant culpable by looking to the act itself, attendant circumstance of unconsciousness, and Sister 2's testimony.

"Although there were weaknesses in the victims' testimony… their testimony addressed all of the elements of the offenses… and was not inherently incredible. The jury apparently credited the victims' testimony, and, viewed in the light most favorable to the State, it amply supports the jury's verdict." State v. Logan, 2014 ME 92, ¶ 17 (Affirming judgment for unlawful sexual touching).

The Trial Court Acted Within Its Discretion in Admitting the Late-Discovered Cell Phone Evidence

The appellant's second assignment of error is that the Court may have abused its discretion by finding that the State could admit photos taken from the Defendant's cell phone for rebuttal.[3]

[3] The pictures in question show the Defendant naked and masturbating while alone in his house. It was alleged that the Defendant showed such pictures to the victims.

The trial court's limited admission of the pictures was consistent with this Court's precedents. See—

State v. Poulin, 2016 ME 110, ¶ 29 (evidence discovered late but in good faith properly limited to impeachment purposes);

State v. Hassan, 2018 ME 22, ¶¶ 19–20 (reversing dismissal for late discovery because State's duty of reasonable diligence only extended to evidence within its possession or control).

State v. Page, 2023 ME 73, ¶ 17 (late-discovered evidence with some wrongdoing from Prosecution sanctioned to rebuttal purposes only); and,

State v. Dennis, 2024 ME 54, ¶ 15, (no discovery violation when evidence was disclosed promptly yet immediately before trial, and Trial court properly mitigated the prejudicial effect);

The State Complied with Maine Rule of Criminal Procedure 16

This Appeal avers prosecutorial wrongdoing during discovery by a violation of Rule 16 (b)(2). Appellant's Brief p. 23. However, the Defendant's trial counsel agreed there was no misconduct and agreed it was police who caused the late disclosure. Trial Transcript, A24, ¶¶ 21-24. The Defendant's trial counsel even praised the Prosecution's discovery disclosures. Id., A24, ¶ 17.

Rule 16 (b)(5) applies here: "If additional material that would have been furnished to the defendant as automatic discovery comes within the possession or control of the attorney for the State after the timeframes listed in subdivision (b)(1)-(4), the attorney for the State shall so inform the defendant within 14 days thereafter." M.R.U. Crim. P. 16(b)(5).[4]

The trial court agreed there was no bad faith. Trial Transcript, A25 ¶ 7. The trial court did not inquire whether the Prosecution actually disclosed the evidence within 14 days of obtaining it because no wrongdoing was alleged. This Court should follow the trial court's determination that there was no prosecutorial misconduct.

The Limited Admissibility was Fundamentally Fair.

"When a defendant contends that a discovery violation and the court's response to it violated his or her right to a fair trial, we review the trial court's procedural rulings to determine whether the process struck a balance between competing concerns that was fundamentally fair." Dennis, at ¶ 17

[4] The disclosure timeline that is not on the record:
• On July 9, 2024 Game Warden Paul Mason extracted the cell phone files.
• Warden Mason made an evidence log and supplemental police report that he turned the cell phone evidence over to the case investigator, Sheriff's Office Chief Todd Lyford. The log, basic report, and search warrant was uploaded and disclosed to Defendant on September 12, 2024.
• On February 26, 2025 the DA's office inquired where cell phone evidence was.
• On March 4, the DA's reiterated its demand for the full cell phone contents from Warden Mason and Chief Lyford.
• On March 7, the DA's office, finally in possession of the evidence, uploaded and disclosed it.

In the instant case, the trial court denied Defendant's request to exclude the evidence. However, the trial court limited the admissibility to rebuttal if Defendant elected to testify. Trial Transcript, A25, ¶¶ 23-25. The trial court also inquired with the Defendant whether he wished to testify. Trial Transcript, A26, ¶¶ 11-24.

This Court has held that limiting the admissibility of late-disclosed evidence to rebuttal is fair. "The trial court's discovery sanction struck a fundamentally fair balance between the parties' competing interests and that it did not abuse its discretion by crafting a sanction that limited the State's introduction of evidence contained in the late discovery." State v. Page, 2023 ME 73, ¶ 17. The Page trial court found prosecutorial wrongdoing. In the instant case, the court did not find any. Therefore the instant trial court's decision exceeds the Page Court's fairness.

The Trial Court's Discretion Was Properly Exercised

This Court has held that as a matter of law, a trial court may not sanction the State for late discovery when the evidence was not in the prosecutor's control. State v. Hassan, 2018 ME 22, ¶ 19. "The court erred as a matter of law by concluding that the State committed a discovery violation, it had no authority to sanction the State." Id., ¶ 24.

The Appellant's reliance on cases involving true discovery violations is misplaced. Appellant cites State v. Reed-Hansen, 2019 ME 58, where the State failed

to disclose a dash-cam video in the prosecutor's possession which directly captured the alleged offense. Here, the prosecution did not possess the late evidence during the period of delay, disclosed it promptly, and did not deprive the Defendant of anything the prosecution had.

The Appellant's claim that the admission of the late-discovered photographs "drove him from the stand" is speculative. Declining to testify so that rebuttal evidence is not admitted is a valid trial strategy. The trial court appropriately paused the trial to inquire with the Defendant whether he still wanted to testify. Defendant did not testify. The photos were never entered into evidence.

Conclusion

The evidence was sufficient to find all elements of Count II, Unlawful Sexual Touching. The victim, Sister 2, was asleep. Unconsciousness is a physical cue that communicates non-acquiescence. Idris, at ¶ 10. There is no evidence that Sister 2 ever acquiesced to any sexual advances. It was reasonable for the jury to find that touching Sister 2's breasts was a gross deviation from reasonable conduct, and thus that the Defendant was at least criminally negligent.[5]

[5] A jury may also have reasonably found that the Defendant acted recklessly, knowingly, or intentionally.

The State met its continuing discovery obligations by disclosing newly acquired evidence promptly. The trial court's decision to admit the derivative photos solely for rebuttal was a fair and proportionate finding consistent with precedent.

Accordingly, the State requests that the Court affirm the judgment.

Thank you,

Signed: October 31, 2025

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CERTIFICATE OF SERVICE

On October 31, 2025, I sent native PDF versions of this brief to the Clerk of the Law Court and attorney Rory McNamara by email. I will deliver ten hard copies to the Law Court and two copies to opposing counsel Rory McNamara at P.O. Box 143, York, Maine 03909 after the Clerk of the Law Court accepts this brief.

Signed: October 31, 2025

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