THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Pen-25-170

STATE OF MAINE,

Appellee

v.

DJVAN CARTER,

Appellant

ON APPEAL from the Penobscot County
Unified Criminal Docket

APPELLANT'S BRIEF

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INTRODUCTION

On May 26, 2023, Djvan Carter committed a terrible assault against Victim Victim during a methamphetamine-fueled confrontation over suspected infidelity. Carter struck Victim multiple times with a hammer, causing severe but non-life-threatening injuries that required extensive surgery. No one disputes the gravity of Carter's actions or questions whether he deserved significant punishment for this attack.

Yet Carter now sits in prison serving a life sentence—the most extreme punishment Maine law allows—for a crime where the victim survived and recovered. This sentence places Carter's case among the most heinous murders in Maine's history, alongside defendants who tortured victims, committed sexual assaults, or killed multiple people, including children. It exceeds most of the sentences handed down for murder.

Maine's justice system demands proportionality. While Carter's actions warranted severe consequences, a life sentence for this single-victim assault—where no evidence supported the "extreme cruelty" enhancement and the injuries, though serious, did not threaten life—represents a fundamental departure from established sentencing principles. Justice requires punishment that fits the crime, not a punishment reserved for the cruelest of intentional murders.

PROCEDURAL HISTORY

A criminal complaint was filed against Djvan Carter on May 30, 2023. Appendix ("App.") 1. An indictment was issued on August 30, 2023 alleging Aggravated Attempted Murder under 17-A M.R.S. § 152-A(1)(D) (Count 1), Elevated Aggravated Assault under 17-A M.R.S. § 208-B(1)(B) (Count 2), Kidnapping under 17-A M.R.S. § 301(1)(B)(2) (Count 3), Domestic Violence Aggravated Assault under 17-A M.R.S. § 208-D(1)(D) (Count 4). App. 21-22.

A motion to suppress statements was filed on January 4, 2023. App. 23-25. After a hearing held on March 26, 2024, the Suppression Court (Roberts. J.) denied the motion on July 9, 2024. App. 4, 13-14.

A three-day jury trial was held on January 21-23, 2025. App. 8. Mr. Carter made a motion for judgment of acquittal after the close of the State's evidence on January 23, 2025, which the Trial Court denied. App. 48-53. (Ociepka, J.) The jury returned a guilty verdict on all counts on January 23, 2025. App. 28-30.

At sentencing held on March 31, 2025, Mr. Carter was sentenced to life imprisonment on Count 1, with a concurrent maximum sentence of thirty years on Counts 2 and 3, and ten years on Count 4. App. 38-39.

Mr. Carter filed a Notice of Appeal and an Application to Allow an Appeal of Sentence on March 31, 2025. App. 10. This Court granted leave to appeal the sentence on July 16, 2025.

STATEMENT OF FACTS

On May 25, 2023, Djvan Carter and [redacted] Victim, who had been dating for just over a month, were at Ms. Victim's home in Milford. Day Two Trial Transcript ("D2 Tr.") 26. In addition to staying at the house. Carter worked for Victim's stepfather, [redacted], in construction and remodeling. Day One Trial Transcript ("D1 Tr") 65. Earlier in the day, Carter called Victim from work and believed he heard her engaged in sexual activity with another person during what he thought was a pocket dial. D2 Tr. 27. When Carter confronted Victim about this, she denied any infidelity, explaining she had been sick in bed all day. Id. That night, both Carter and Victim, who were regular heavy users of methamphetamine, used the drug before going to bed. D2 Tr. 28.

On the morning of May 26, 2023, Victim awoke early the next morning to find Carter still upset and gathering clothes from the closet. D2 Tr. 28. Victim testified that as they argued, Carter threw her to the floor and choked her. D2 Tr. 31-32. She stated she thought she was going to die and could feel her eyes bulging. D2 Tr. 32. According to Victim, Carter had a hammer with him, which she attempted to keep away from her head. D2 Tr. 32. The physical confrontation ended when Carter helped her off the floor. D2 Tr. 32.

Victim testified that Carter took her to the bed to sit. Id. They spoke for nearly half an hour. Id. D2 Tr. 33. He continued to accuse her of infidelity, which

she continued to deny. Id. During this conversation, Carter threatened her and told her that when her kids came back to the home. in five days, they would find her in pieces in the trailer. D2 Tr. 33. There was no evidence that Mr. Carter ever threatened her with a knife or other bladed instrument.

After approximately thirty minutes, Victim asked Carter to let her dog outside. D2 Tr. 33-34. When Carter agreed, Victim went through the door and ran toward her neighbor's house, calling for help. D2 Tr. 33-34. Victim testified that she made it to close to her neighbor's house before Carter caught her. D2 Tr. 36. She described being struck in the head and losing consciousness. D2 Tr. 36-37.

Victim remembered being placed in the passenger seat of her car. D2 Tr. 37. She said she was in and out of consciousness during this time. D2 Tr. 37. Victim testified she had no memory of walking to the car or agreeing to be transported. D2 Tr. 37. During one period of consciousness, Victim testified she overheard Carter speaking to a woman on his phone about the incident where he admitted hitting Victim in the head with a hammer. D2 Tr. 38-39.

When Victim next awoke, she found herself in a wooded area off a dirt road in Alton. D2 Tr. 37. The location where the vehicle was found was not particularly remote. Detectives testified that Argyle Road had multiple residences on it, and he counted approximately seven mailboxes along the route. D1 Tr. 101. The vehicle was parked on Penobscot Indian Nation Road, a dirt road that was only

about 150 feet from the Argyle Road and visible from that public road. D1 Tr. 87. The location was also within proximity to other landmarks, including Alton Middle School, which was approximately 0.8 miles away, and Route 16, which was less than a mile from the location. D1 Tr. 86-87. The area was described as having "a decent amount of residences" for rural Maine. D1 Tr. 101.

According to Victim 's testimony, both she and Carter used methamphetamine multiple times during their time in the woods. D2 Tr. 38. She also testified that Carter showed her injuries in the car's visor mirror, revealing wounds to her temples and extensive bleeding, telling her she was dying. D2 Tr. 37-38. According to her testimony, Victim testified that she drifted in and out of consciousness during this period, but remembers Carter hitting her again while they were parked in Alton. D2 Tr. 38.

Paige Durkee, the mother of Carter's children, had contacted 911. She received a call from Carter's sister. D1 Tr. 75. Law enforcement conducted a phone ping on both Carter and Victim 's devices around 10:00 a.m. D1 Tr. 78. Carter's phone was turned off, but Victim 's phone provided coordinates placing them on Penobscot Indian Nation tribal land in Alton. D1 Tr. 78.

Law enforcement officers located Victim 's car on a dirt road off Argyle Road in Alton within approximately twenty minutes of receiving the 911 call. D2 Tr. 85. The officers observed movement inside the vehicle that appeared

concerning. D2 Tr. 18. When they approached and gave commands, the vehicle began moving, and the officers observed signs of a struggle in the car. D1 Tr. 95.

As police approached, one of the officers discharged his weapon into the vehicle, wounding Carter. D2 Tr. 21. Victim then exited the car on her own. D1 Tr. 98. Carter was arrested, and Victim was transported to Northern Light Eastern Maine Medical Center. D1 Tr. 26.

Dr. Holly Fanjoy, the emergency physician, observed extensive facial and head injuries, including multiple facial fractures, skull fractures, and intracranial hemorrhage. D1 Tr. 27. Dr. Ahmed Messahel, an oral maxillofacial surgeon, performed surgery on Victim. D1 Tr. 36-37. Dr. Messahel described her injuries as extensive and severe. D1 Tr . 37. The injuries included multiple skull fractures, with the surgical team counting over 20 wounds. D1 Tr. 40, 51. The surgery lasted approximately four hours and involved repairing multiple facial wounds, skull fractures, and other injuries. D1 Tr. 50-51.

A hammer with blood was found on the passenger seat of the Ford Focus. D2 Tr. 61-62. DNA analysis identified human blood on the hammer belonging to Victim, with additional DNA evidence suggesting both Victim and Carter had contact with the weapon. D3 Tr. 36-39. Blood evidence was also discovered in the grass between 32 Pine Street and the neighboring property at 28 Pine Street, with DNA analysis confirming it belonged to Victim. D3 Tr. 39. Evidence

included drug paraphernalia found in the vehicle, consistent with both parties' acknowledged substance use. D2 Tr. 90-91.

On May 29, 2023, while recovering from his gunshot wound at the hospital, Carter was interrogated by detectives. During the recorded interview, portions of which were played to the jury, *see* State's Exhibit 86, Carter provided his account of the events. Carter discussed his concerns about Victim 's fidelity and described the events of May 26. He acknowledged that the assault had occurred and discussed driving to the location in Alton.

Following a three-day jury trial, Carter was convicted on all four counts: aggravated attempted murder, elevated aggravated assault, kidnapping, and domestic violence aggravated assault. App. 28-30. At sentencing, the Trial Court sentenced Carter to a sentence of life imprisonment on the Aggravated Attempted Murder charge, with concurrent maximum sentences on each of the remaining charges. App. 31-39, *see also* II(C) *infra.*

This timely appeal ensued.

ISSUES ON APPEAL

I. Was there sufficient evidence of the aggravated factor of "extreme cruelty" enough to support a conviction of aggravated attempted murder?

II. Was the trial court's imposition of a life sentence for a conviction of aggravated attempted murder a disproportionately harsh sentence?

III. Was Mr. Carter's life sentence a result of a penalty for choosing to go to trial?

IV. Did the Suppression Court commit reversible error when denying Mr. Carter's motion to suppress his statements made while at the hospital under care for gunshot wounds?

SUMMARY OF THE ARGUMENT

No extreme cruelty. The evidence fails to meet the heightened "extreme cruelty" standard required for aggravated attempted murder. While Carter's assault was severe, it lacks the torture, sexual abuse, or gratuitous suffering found in cases where Maine courts have upheld extreme cruelty findings. The medical evidence shows Victim 's injuries, though serious, were not life-threatening - she remained "relatively alert and oriented" before surgery, and neurosurgeons opted for a cautious approach rather than emergency intervention. Comparing this case to

established precedents like *State v. Hutchinson* (50+ stab wounds to the face) or *State v. Wilson* (victim bound, gagged, and sexually assaulted), Carter's actions fall short of the "outermost portion of the range" that extreme cruelty requires.

Disproportionate sentence. A life sentence violates constitutional proportionality principles when measured against other attempted murder and murder cases in Maine. A comprehensive review of sentencing data reveals that attempted murder cases typically receive lower sentences than murder cases - contradicting the trial court's reliance on dicta suggesting equivalence between the crimes. Only one other aggravated attempted murder case (*State v. Fortune*) resulted in a life sentence, involving multiple victims and planned attacks on five individuals, and more recent cases have involved sentences of 30-40 years to serve. Carter's single-victim case with non-life-threatening injuries does not justify placement in the upper quartile reserved for the most heinous crimes.

Trial Penalty. The dramatic disparity between the pre-trial plea offer (21 years to serve) and the post-trial sentence (life imprisonment) creates a strong inference of punishment for exercising the constitutional right to trial. Empirical studies consistently show defendants receive 15-60% longer sentences after trial. Any doubt about whether punishment was imposed for going to trial must be resolved in favor of the defendant. The magnitude of this sentencing differential, combined with the disproportionate sentence compared to similar cases,

demonstrates the constitutional violation even without explicit judicial acknowledgment.

Invalid Waiver of Miranda Rights. Carter's hospital interrogation violated his Fifth Amendment rights because he lacked the capacity to waive his previously invoked right to silence voluntarily. After being shot, while on opioids, and going through methamphetamine detox, Carter could not make the "free and deliberate choice" required for a valid waiver. When Carter asked for the detective's name, the officer improperly transformed this into an interrogation opportunity - precisely the type of subtle overreach Miranda protections prevent. The "bright-line prohibition" against post-invocation questioning was violated, and Carter's compromised mental and physical state made any subsequent waiver involuntary under the totality of circumstances.

ARGUMENT

I. There was insufficient evidence to support the elements of aggravated attempted murder.

While under the influence of methamphetamines, Mr. Carter struck Ms. Victim in the head with a hammer. He did so on multiple occasions and in multiple locations in the early hours of May 26, 2023. It was an unjustified and terrible attack. It did not, however, rise to the level of "extreme cruelty" as required to find the aggravated factor necessary under 17-A M.R.S. § 152–A. As such, there

was insufficient evidence to establish that factor, and the conviction must be vacated.

A. Preservation and standard of review

At the close of the State's case. Mr. Carter moved for a Rule 29 motion. D3 Tr. 49-51. He raised two grounds, the first being that the State had failed to prove the aggravated factor required by 17-A MRS § 17-A M.R.S. § 152–A in the attempted murder charge. The Trail Court denied that motion. Id. 53.

When there is a challenge to the sufficiency of the evidence, this Court must "view the evidence in the light most favorable to the State to determine whether the factfinder could rationally find every element of the offense beyond a reasonable doubt." *State v. Woodard*, 2013 ME 36, ¶ 19, 68 A.3d 1250, 1257 (*quoting State v. Haag,* 2012 ME 94, ¶ 17, 48 A.3d 207).

B. There was insufficient evidence of extreme cruelty.

While the jury heard details of a terrible attack, they did not hear sufficient evidence to prove the element of extreme cruelty beyond a reasonable doubt. To determine what are relevant factors to make a finding of "extreme cruelty," murder cases must be reviewed, given the paucity of aggravated attempted murder cases.

> As we held more than thirty years ago, however, the imposition of a life sentence has such a serious impact on the offender so different from the impact of a sentence for a term of years that a life sentence is never justified unless the murder is accompanied by aggravating circumstances. Those aggravating circumstances include, but are not limited to, matters involving premeditation-in-fact; multiple deaths;

> murder by a person who has already been convicted of a homicide or any other crime involving the use of deadly force against a person; murder accompanied by torture, sexual abuse, or extreme cruelty; murder committed by an inmate in a penal institution; murder of a law enforcement officer who is performing his or her duties; and murder of a hostage.

State v. De St. Croix, 2020 ME 142, ¶ 6, 243 A.3d 880, 883 (*citing State v. Shortsleeves*, 580 A.2d 145, 149-50 (Me. 1990)). "The *Shortsleeves* list is neither exhaustive nor all-inclusive." *State v. Waterman*, 2010 ME 45, ¶ 44 & n.5, 995 A.2d 243.) However, these factors provide "guidelines to assist [trial courts] in placing murderous behavior along a continuum." *State v. Wilson*, 669 A.2d 766, 768 (Me. 1996).

"[I]t is axiomatic that any murder is a cruel and unfeeling act." *State v. St. Pierre,* 584 A.2d 618, 621 (Me. 1990). "[I]f acts of murderous cruelty could be arranged on a continuum, the phrase 'extreme cruelty' would delineate the outermost portion of the range." Id. at 621-22 (Me. 1990). While the continuum for attempted murder cases must necessarily be of a different nature, acts of "extreme cruelty" must also be located on the outermost portion of that continuum as well. Applying those two standards together, "[i]mposition of a life sentence on the basis of extreme cruelty alone will require a showing that the viciousness of the [*attempted*] murder differed in a substantial degree from that which inheres in the crime of [*attempted*] murder." *Id.* (emphasis added).

Necessary for a finding of "extreme cruelty" are facts that would place it far beyond the range of the facts found in other cases on this continuum. In looking at this outermost edge for attempted murder cases, there is only *State v. Fortune*, 2011 ME 125, 34 A.3d 1115, where two men broke into the home of a witness to a burglary case. ¶¶ 6-8. They attacked and repeatedly hacked the man and the younger daughter, who stumbled onto the scene with a machete. ¶¶ 9-12. They had plans to do the same to three other members of the household who had fled the house. ¶ 12. The Court there found extreme cruelty.

If we look at the murder continuum where this Court has upheld convictions based on extreme cruelty, a greater parade of horrors can be found that illustrates what defines the outermost portion of that range. See, e.g., *State v. Hutchinson*, 2009 ME 44, ¶¶ 13, 40-43, 969 A.2d 923 (in addition to executing a fatal chest wound and a sexual assault, the defendant stabbed the victim's face over fifty times with sufficient force that the knife tip broke off in her head); *State v. Cookson*, 2003 ME 136, ¶¶ 2, 39, 44, 837 A.2d 101 (multiple victims each died from a single gunshot wound to the head, the defendant showed the adult victim the gun, and she was therefore aware that she was going to die at his hands and also would have feared for the other victim, the twenty-one-month-old child that she was babysitting); *Wilson*, 669 A.2d at 769 (the victim was bound and gagged by tape

and asphyxiated with a choker chain, sexually assaulted, and conscious for some portion of the time that she was subjected to the attack).

Absent in this case is any evidence of torture, sexual assault, or gratuitous suffering that would warrant a finding of "extreme cruelty" when judged on that standard. Mr. Carter's acts were terrible, but that alone does not get past the necessary threshold. Ms. Victim described Mr. Carter choking her. D2 Tr. 29. As she struggled, she fell to the floor. Id. 32. Mr. Carter eventually helped her up and made her sit on the bed. Id. After about half an hour of talking, she eventually tried to leave the house when she was struck in the head – presumably with the hammer. Id. 36. When she revived, she was in her car, and they were in a wooded location. Id. 37. There, they each used methamphetamines. Id. 38. She said he would hit her again. Id. She also heard Mr. Carter on a phone call where he admitted he had struck her with a hammer. Id. She also said he told her that she was going to die. Id. 39.[1]

Mr. Carter's actions were unquestionably a severe attack, but they are not of the nature and character of those described in the murder cases above. Nor do they represent the sort of wholesale cruelty to multiple victims seen in *Fortune*.

[1] Ms. Victim also said that while they were in the house talking, he told her that when her kids came back in five days, they would find her in pieces in the trailer. D2 Tr. 33. There was no evidence Mr. Carter ever threatened her with a knife or other bladed instrument.

The extreme cruelty cannot be inferred just by looking at the injuries either. Medical personnel detailed significant injuries. Dr. Fanjoy, the ER physician, said she had "multiple facial fractures and skull fracture and some intracranial hemorrhage[s]." D1 Tr. 27. Dr. Messahel, the oral maxillofacial surgeon, noted there were in excess of 20 wounds – a combination of cuts, lacerations, and broken bones. Id. 44. She was taken to the operating room to "stabilize her facial injuries." Id. While her injuries were severe, they were not life-threatening. When asked if there was a threat to her life, Dr. Messahel described it thusly:

> In terms of the threat to her life, those all -- they all would have been from the skull fractures. Her lower face and check area, I believe, was -- was safe. Most of the injuries and the -- the trauma was from the head. So it would be the head injury that would have been the threat to her life.
>
> ….
>
> Thankfully, that did not appear to be the case for her that day, and that her multiple skull fractures and small brain bleed was not deemed to be, by the neurosurgeons, they did not feel that they had to dive in and -- and treat her immediately. They opted for a more cautious approach to see if this -- because the actual act of neurosurgical intervention is also quite traumatic.

Id. 46-47. Dr. Messahel said before surgery, she was "relatively alert and oriented." Id. 40.

None of these facts supports a finding of extreme cruelty. The Trial Court should have granted Mr. Carter's Rule 29 motion on this point, and this Court

should reverse the conviction on the aggravated factor of the attempted murder case.

II. The Trial Court's imposition of a life sentence was disproportionately harsh compared to other sentences for both murder and attempted murder.

Even if this Court finds the "extreme cruelty" threshold was met, the sentence handed out by the Trial Court was not proportionate. Imposing a sentence of life in a situation where a single victim suffered through a severe, but not life-threatening injury, is not consistent with the proportionality requirements of the Federal and Maine Constitutions, or the sentencing principles espoused under Maine law.

A. Preservation and Standard of Review

The parties conducted a contested sentencing hearing, during which the Trial Court addressed issues of a disproportionate sentence and trial penalty. App.35-36. "An issue is preserved for appellate review if there is a sufficient basis in the record to alert the trial court and the opposing party to the existence of the issue." *State v. Reeves*, 2022 ME 10, ¶ 35, 268 A.3d 281, 291 (citations omitted). This Court reviews "a sentencing court's determination of the basic sentence at step one for misapplication of the law or of sentencing principles, or an abuse of the court's sentencing power." *State v. Ketcham*, 2024 ME 80, ¶ 35, 327 A.3d 1103, 1113 (*citing State v. Williams*, 2020 ME 128, ¶ 56, 241 A.3d 835). It

reviews "the determination of the maximum sentence at step two for an abuse of discretion and the final sentence reached by the court for a disregard of sentencing factors or an abuse of the court's sentencing power." *Id.* The Court reviews, at "each of the steps of the sentencing process," has "articulate[d] which sentencing goals are served by the sentence." *Ketcham* at ¶ 35 (*quoting State v. Watson*, 2024 ME 24, ¶ 22, 319 A.3d 430).

B. Sentences must be proportionate to comply with the principles of constitutional fairness.

The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. Article 1, section 9 of the Maine Constitution explicitly provides that "all penalties and punishments shall be proportioned to the offense." Me. Const. art. I, § 9; *see State v. Bennett*, 2015 ME 46, ¶ 15, 114 A.3d 994, 1000. Furthermore, "all penalties and punishments shall be proportioned to the offense." Me. Const. art. I, § 9, cl. 2.

"[U]nder the Maine Constitution, a punishment can violate article 1, section 9 if it is disproportionate to the offense for which it is being imposed, even if it is not cruel or unusual in the sense that it is inherently barbaric." *State v. Lopez*, 2018 ME 59, ¶ 14, 184 A.3d 880, 885 (internal quotation omitted). Due process requires "that criminal adjudications are not conducted in an arbitrary manner and that terms of imprisonment are not imposed 'on an ad hoc and subjective basis.'"

Beckles v. United States, 580 U.S. 256, 266, 137 S. Ct. 886, 892 (2017) (*internal quotation omitted*).

Having granted the discretionary appeal and merged it with Mr. Carter's direct appeal, the Court is empowered to review questions of sentence legality here. *See State v. Murray-Burns*, 2023 ME 21, ¶¶ 12-17, 290 A.3d 542; 15 M.R.S. § 2152 (2023). In reviewing a criminal sentence, this Court must consider:

1. Propriety of sentence. The propriety of the sentence, having regard to the nature of the offense, the character of the offender, the protection of the public interest, the effect of the offense on the victim and any other relevant sentencing factors recognized under law; and
2. Manner in which sentence was imposed. The manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.

15 M.R.S. § 2155.

Sentences must be placed on a continuum based on the severity of the acts committed. *See, e.g.*, *State v. Hallowell*, 577 A.2d 778, 781 (Me. 1990). "[T]he trial court is generally afforded significant leeway in determining which factors are considered and the weight a factor is assigned." *Ketcham* at ¶ 35 (citations omitted). Although "a sentencing court is not required to consider or discuss every argument or factor the defendant raises, it must still articulate which sentencing goals are served by the sentence and must not disregard significant and relevant sentencing factors." *Id.* (*citing Watson*)

C. The Trial Court's sentencing analysis

The Trial Court conducted the required *Hewey* analysis by isolating the crime of aggravated attempted murder, focusing solely on the nature and seriousness of the conduct, to set the basic sentence. *See State v. Hewey*, 622 A.2d 1151 (Me. 1993) and 17-A MRS § 1602. The court emphasized several factors in setting its sentence. First, the Trial Court observed this was a crime of domestic violence. App.33. Second, the Trial Court described the nature of the acts that took place over a few hours and across multiple locations. App.33-35. This included acts of strangulation at the house, striking her with a hammer when she tried to flee the house, and again when she fell to the ground. Id. It also included getting T.C. into a car and driving to a remote area, where he struck her additional times in the head with the hammer before being shot by law enforcement. Id. Third, the Trial Court said Mr. Carter made her look at herself in the mirror, telling her she was going to die. App.34. Finally, the Trial Court referenced the details of the injuries, including over 20 skull fractures, a brain bleed, and multiple lacerations, noting testimony by the surgeon likening them to a car crash victim ejected from a vehicle. App.35.

The Trial Court set a basic sentence of fifty years. It noted two cases, *State v. Fortune*, 2011 ME 125, 34 A.3d 1115, where a life sentence was imposed, and *State v. Freeman*, 2014 ME 87, A.3d. 719, where a fifty-year sentence, with all but

forty years suspended, was the final sentence. App.35-36. The Trial Court did not mention the basic sentence of either case; however, it referenced only the final sentence of both cases. Id. Further, the Trial Court cited this Court's dicta in *Fortune,* asserting "[t]he only difference between attempted murder and murder is the fortuitous circumstance that the victim did not die in an attempted murder." 2011 ME at ¶ 39. While it recognized the quote came in a discussion about the constitutionality of 17–A M.R.S. § 152–A(2), the Trial Court noted:

> The law court has stated, and was referenced by both parties here, that the culpability of a person who commits attempted murder is the same as the culpability of one who commits murder, and went on to state that the only difference between attempted murder and murder is the fortuitous circumstance that the victim did not die in an attempted murder. Although I appreciate the legal distinction and argument made by counsel for the defense here, I agree with the State that the law court's statement focuses the Court on a difference in consequences or result and not a difference in culpability.

App.35. In finding that an attempted murder conviction should be judged as the equivalent to a murder conviction, the Trial Court set the basic sentence at 50 years. App.36.

In looking at the second step of the *Hewey* analysis, the Trial Court noted Mr. Carter's criminal history, including that he was currently on probation for a domestic violence assault conviction, as "significant aggravating factors." App.37. The Trial Court referenced the victim impact, not just the injuries, but that she was

still forced to dwell on it, and the last impacts it has had on her memory. Id. The Trial Court referenced the impact on her family, as well. Id.

In looking to the mitigating factors, the Trial Court did note Mr. Carter had issues with substance abuse, including "at or around the time of these offenses." Id. The Court also said it considered Mr. Carter's "childhood circumstances, including circumstances about his upbringing." App.37-38. Noting a series of jail calls that the prosecution played, which purported to show a lack of remorse from Mr. Carter, the Trial Court observed there were also calls where he did express remorse, and that he also articulated an apology to the victim and the family at the hearing. App.38. The Trial Court found the calls were "essentially a wash" – not weighing as a mitigating or aggravating factor. Id.

The Trial Court, however, found "the aggravating factors significantly outweigh the mitigating factors," and it imposed a life sentence on the aggravated attempted murder charge. Id. It imposed concurrent maximum sentences on the remaining counts without any additional analysis. App.39.

D. A life sentence was disproportionate when comparing Mr. Carter's case to other cases involving murder and attempted murder.

The details of Ms. Victim 's injuries were indeed awful. They did not, however, justify the life sentence imposed by the Trial Court, which was a disproportionate sentence when looking at the objective facts of the case.

This Court employs a two-part test when determining whether a sentence is a disproportionate one.

> To determine whether a sentence is disproportionate, we conduct a two-part test. First, we compare the gravity of the offense with the severity of the sentence. Second, if this comparison results in an inference of gross disproportionality, then we compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction.

State v. Stanislaw II, 2013 ME 43, ¶29 (cleaned up). "[I]n determining the basic sentence, the court may take into account *objective* facts that indicate the nature or severity of the crime." *State v. Reese*, 2010 ME 30, ¶ 29, 991 A.2d 806, 817 (emphasis added). Aggravating and mitigating factors cannot be used when applying these objective facts to the continuum of a basic sentence. *Id.* ¶ 18. ("In determining the basic term, the court is not to consider the subjective impact of the crime on the victim, but it may take into account objective factors."). The Court is "not require[d] ... to make factual comparisons using precedent, although there may be times when appropriate case comparisons would advance the sentencing principle of eliminating significant unjustified inequalities in sentences." *State v. Reese*, 2010 ME 30, ¶ 28, 991 A.2d 806.

The facts of this case were reviewed *supra* p.15-17. They reflect a terrible act and devastating injuries. But the objective facts of this crime do not place it on the continuum of the worst of these crimes, either for murder or attempted murder.

E. *State v. Fortune* and the danger of false equivalencies

Although it ultimately imposed a life sentence, the Trial Court did not go through the "*Shortsleeves* factors," which are necessary to consider when imposing a life sentence in a murder case. *See State v. Shortsleeves*, 580 A.2d 145, 149 (Me. 1990).[2] Instead, the Trial Court apparently based its sentencing decision on a concept that originated from the dicta this Court offered in *Fortune*, which contemplates that there is no distinction between murder and attempted murder, at least not when it comes to sentencing.

Maine law inherently establishes criminal attempt as a lesser act in both culpability and sentencing. Someone is guilty of criminal attempt if they are "acting with the kind of culpability required for the commission of the crime, and with the intent to complete the commission of the crime, the person engages in conduct that in fact constitutes a substantial step toward its commission." 17-A M.R.S. § 152(1). A person is charged with an attempted crime is charged with a "one-class-lower" version of the crime they are accused of attempting (e.g., an attempt to commit a Class A crime is treated as a Class B crime). *See* § 152(1)(A-

[2] This Court has not taken the opportunity to require it of lower courts. *See State v. Fortune*, 2011 ME 125, ¶ 41, 34 A.3d 1115, 1124 ("the court did not, and did not need to, address its sentencing analysis precisely according to the factors outlined in *Shortsleeves*.") The Court should take this opportunity to change that, because it could have impacted the Trial Court's analysis. There should be no *less* circumspection in imposing a life sentence for an aggravated attempted murder than for murder itself.

E). In cases of attempted murder, a class M crime, a person charged with attempt faces only a class A felony. Each lower crime comes with a lower maximum penalty. This statutory framework reflects a legislative intent to impose somewhat lesser penalties for attempts compared to completed crimes, except in cases where specific aggravating factors are present.

17-A M.R.S.A. § 152, however, allows for life imprisonment for aggravated attempted murder convictions, changing the dynamics of this sentencing structure. The Trial Court interpreted this provision, and this Court's dicta in *Fortune* and *Freeman*, to mean that murder and attempted murder are functionally equivalent. They are not.

1. Murder sentences

That is because "[t]he most extreme punishment in Maine for 'intentional or knowing' murder is life imprisonment." *State v. Wilson*, 669 A.2d 766, 768 (Me. 1996. Murder convictions are treated as fundamentally different convictions from any other conviction and have been placed by courts on their own continuum. From 1970 through 1990, the *average* length of a murder sentence was 34 years. *See State v. St. Pierre*, 584 A.2d 618, 622 (Me. 1990). Since 1990, the average length of a murder sentence for these cases has increased to over 43 years.[3] Of

[3] This data is compiled from the various sources, including news reports, other defense counsel and data provided by the Attorney General's office. It has been submitted to this Court

those 236 sentences, 62 of them (approximately 26%) involved life sentences. If the 62 life sentences imposed during that time are added to this data set, and given the value of "80 years," the average sentence increases to over 53 years.

2. Attempted murder sentences[4]

A review of this court's cases involving convictions when aggravated attempted murder is the main charge shows that they are not treated the same as murder convictions, but are assigned to a lower sentencing category. Only in one case (*Fortune*) was a life sentence imposed. The others reviewed by this court otherwise fell below the sentencing severity of murder cases.

Section 152-A was enacted in 2001. *See* P.L. 2001, c. 413, § 2 (effective Sept. 21, 2001). Before then, the State charged attempted murder, and it was left to a judge to determine whether an aggravating factor justified greater punishment. *See State v. Burdick*, 2001 ME 143, ¶ 19 n. 11, 782 A.2d 319. In *Burdick*, the defendant was convicted of the equivalent of aggravated attempted murder after a trial. 2001 ME 143. The jury's verdict reflected the fact that Burdick twice shot a police officer in the chest at close range, striking the officer's bulletproof vest but

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before in the appendix in *State v. Gaston*, Cum-20-199, and can be provided again if the Court wishes.

[4] This includes an unpublished case, *State v. Terrel Dubois*, 2009 WL 10868148, where the Court upheld the conviction of man who was convicted of attempting to kill a police officer, and was sentenced to 40 years, but did not address the sentence imposed. https://www.pressherald.com/2008/07/09/man-convicted-of-shooting-south-portland-cop-sentenced-to-35-years/ (last accessed September 9, 2025)

causing only "minor" injury. *Id.* ¶ 6. Though the State sought a life sentence, the court imposed a 40-year prison term. *Id.* ¶ 9.

In *Fortune*, the defendant and a co-defendant "savagely" assaulted a father and his 10-year-old daughter. A third count, attempted murder, committed against the teenage son, also led to a conviction. 2011 ME 125, ¶ 18. This Court indicated that, in planning and executing the crimes, Fortune "planned and intended [to] murder ...as many as five individuals." Id. ¶ 41. The father and younger daughter "suffer devastating and disfiguring lifelong injuries." Id. ¶ 14. Fortune was sentenced to two concurrent life sentences, although the opinion does not clarify the basis sentence calculated by the sentencing court. Id. ¶ 41.

In *State v. Ford*, 2013 ME 96, ¶¶ 2-3, 82 A.3d 75, the defendant led officers on a high-speed automobile chase after an officer tried to stop the defendant's vehicle on suspicion of theft. Ford "repeatedly used his truck to ram the pursuing police cruisers," nearly striking an officer who had to scramble out of the way of Ford's truck at the last moment. *Id.* ¶ 3. Officers had to shoot at Ford to stop him. *Id.* After a trial, Ford was sentenced to 20 years' prison, all but nine years suspended. *Id.* ¶ 10.[5]

[5] This sentence was subsequently vacated on post-conviction review. *See Ford v. State*, 2019 ME 47, 205 A.3d 896.

In *State v. Freeman*, 2014 ME 35, 87 A.3d 719, the defendant was convicted of aggravated attempted murder. After breaking up with his girlfriend, he started two fires in the basement of her residence, spray painting "bye" and "Die Kristen" on the basement walls. 2014 ME 35, ¶¶ 4, 5. The court set a basic sentence of between 30 and 40 years' imprisonment. *Id.* ¶¶ 14-17. It set a final sentence of 50 years, with all but 40 years to serve. ¶ 21.

Most recently, in *State v. Murray-Burns*, this Court reviewed a defendant who pleaded guilty to ten counts of aggravated attempted murder among other charges. 2023 ME 21, 290 A.3d 542. In *Murray-Burns*, the defendant fired an "AR-15 style" weapon at an officer, with two bullets hitting this officer, and 16 striking his cruiser. ¶ 2. A second officer drove on to the scene and Murray-Burns fired into that vehicle, disabling it. *Id.* A chase ensued with still more officers, with Murray-Burns stopping to fire at multiple locations before he was detained. *Id.* The sentencing court there set a basic sentence of 40 years on the aggravated attempted murder charges and imposed a sentence of 45 years, with all but 30 years suspended. ¶ 5.[6]

[6] This Court vacated the sentence when the trial court imposed consecutive sentences without conducting the necessary analysis. 2023 ME 21, ¶ 20.

F. A life sentence is unconstitutionally disproportionate.

This Court has not had a significant opportunity to revisit the dicta relied on by the Trial Court, nor has it seen fit to perpetuate it in subsequent cases it has taken up. The time is ripe to do so.

The Trial Court's life sentence fundamentally distorts Maine's sentencing hierarchy and abandons the careful proportionality analysis that has guided courts for decades. By treating Carter's single-victim assault as equivalent to the most heinous murders—despite the absence of torture, sexual violence, multiple victims, or life-threatening injuries—the court has created a dangerous precedent that collapses meaningful distinctions between different levels of criminal conduct. When a defendant who strikes one person with a hammer receives the same punishment as those who systematically torture victims or murder children in front of their families, the sentencing system loses its moral authority. It fails its constitutional obligation to proportion punishment to offense. Carter's actions demanded severe punishment, but not the ultimate sanction reserved for crimes that shock the conscience and represent the absolute worst of human behavior. This Court should restore proportionality by vacating the life sentence and remanding for resentencing consistent with established precedent and constitutional principles.

III. Mr. Carter suffered a penalty for his decision to go to trial.

Mr. Carter exercised his constitutional right to go to trial. He was found guilty after trial, and he received a life sentence. This sentence was far enough out of line that it raises the question of whether his choice to go to trial had a subconscious effect on the Trial Court. Sentences influenced by the decision to go to trial are unconstitutional, and Mr. Carter's sentence should therefore be vacated. the

A. Preservation and standard of review

Counsel for Mr. Carter raised the spectre of a trial penalty during his sentencing argument. S.Tr. 37-41. The Court specifically referenced that concern when it denied that its sentencing analysis was impacted by the decision to go to trial. S.Tr. 50.

"A defendant's claim that his sentence has been increased because he has exercised his right to a trial goes to the legality of the sentence." *State v. Moore*, 2023 ME 18, ¶ 23, 290 A.3d 533. (quotations omitted) The Court "review[s] the sentencing court's determination of the basic sentence de novo for misapplication of legal principles and its determination of the maximum sentence for abuse of discretion." *State v. Plummer*, 2020 ME 143, ¶ 10, 243 A.3d 1184 (quotations omitted).

B. Trial penalties can be found even when a judge said one did not exist.

The Trial Court clearly stated there was no impact on its sentence of Mr. Carter. "I have not considered at all the defendant's decision to exercise his absolute right to have a trial here. That has not played any role whatsoever in the Court's determination of any sentencing analysis here." S.Tr. 50. There is no direct evidence in the record suggesting the Trial Court did not believe what it said – that it was not punishing the defendant for going to trial. The Court's review, however, should not be so limited.

This Court, like the United States Supreme Court, has been watchful when trial courts hint at punishing a defendant who chooses to go to trial.

> We have long held as black-letter law that an accused cannot be punished by a more severe sentence because he unsuccessfully exercised his constitutional right to a trial. We recently affirmed this right in *State v. Moore*, adding that "[a]lthough a court may deny leniency to a defendant who is convicted after a trial, in so doing, it may not consider the defendant's exercise of his right to trial." 2023 ME 18, ¶ 24, 290 A.3d 533. In articulating this distinction, we have stated that there is a difference between increasing a defendant's sentence because the defendant chooses to exercise the right to trial ... and considering a defendant's conduct at trial and information learned at trial, along with other factors, in determining the genuineness of a defendant's claim of personal reform and contrition.

State v. Chase, 2023 ME 32, ¶ 29, 294 A.3d 154, 163 (cleaned up). This Court recently laid out its test for assessing the presence of a trial penalty.

> When a sentencing court references a defendant's demand for a trial, we evaluate the reference in the context of the entire sentencing

> process. It is sufficient to render a sentence invalid if it reasonably appears from the record that the sentencing court relied in whole or in part upon the defendant's election to stand trial. We need not conclude that the sentencing court in fact relied upon an improper consideration. Any doubt as to whether the defendant was punished for exercising his right to trial must be resolved in favor of the defendant.

Chase at ¶ 30 (cleaned up). This is in line with the standard in federal courts, though those cases have suggested empirical data can help show the existence of a trial penalty.

> In order to assure the absence of such a motivation, we have concluded that whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear. Those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. And *the factual data upon which the increased sentence is based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal.*

United States v. Mazzaferro 865 F.2d 450, 458 (1st Cir. 1989) (*quoting North Carolina v. Pearce,* 395 U.S. 711, 726, 89 S.Ct. 207, 223 L.Ed.2d 656 (1969) (emphasis in original).

The case of a trial penalty is easier to make when there is a clear mention of the decision to go to trial, as was seen in *Chase*. Examining broad sets of data on sentences, however, can reveal patterns that indicate judges are sentencing defendants more harshly when they go to trial. Recently, a court in the District of Massachusetts observed:

> [T]hose who exercise their constitutional right to a trial before a jury of their peers suffer a more severe penalty than those who cop a plea, ostensibly because we wish to provide leniency to those others who 'accept responsibility,' but really because they have inconvenienced the government by forcing it to undergo the expense and uncertainty of a trial.

United States v. Abraham, 498 F. Supp. 3d 175, 183 (D. Mass. 2020), *aff'd,* 63 F.4th 102 (1st Cir. 2023). The *Abraham* court, citing a study that looked at over 207,000 federal cases, noted that, even when adjusting for the acceptance of responsibility reduction that is part of the federal sentencing guidelines, defendants received a thirty-six percent higher sentence when they went to trial. *Id*. at 183–84 (*citing* Andrew Chongseh Kim, *Underestimating the Trial Penalty: An Empirical Analysis of the Trial Penalty and Critique of the Abrams Study*, 84 Miss. L.J. 1195, 1236 (2015)).

Other empirical studies have consistently shown this to be the case. Estimates of its magnitude differ across studies and jurisdictions, but it typically involves a two- to six-times increase in the odds of imprisonment and a 15–60 percent increase in average sentence length. *See* Johnson, B. *Trials and Tribulations: The Trial Tax and the Process of Punishment*, Crime and Justice, Vol. 48 (2019) (collecting studies). The Johnson paper illustrated these studies, showing an ominous pattern across state and federal courts:

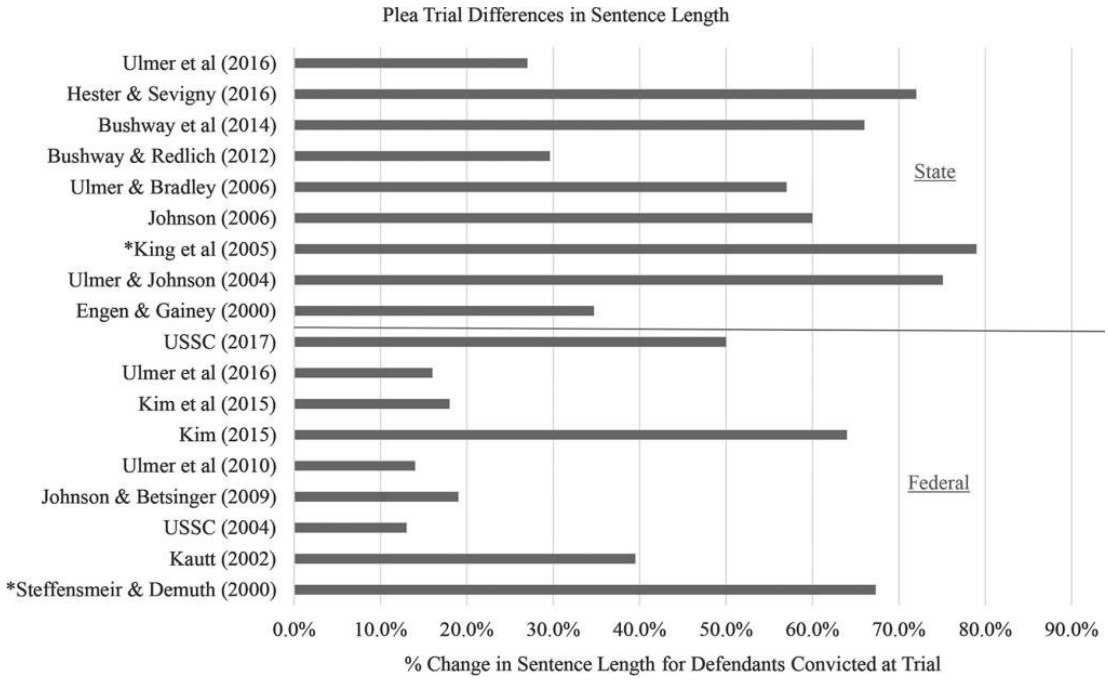

FIG. 3.—Plea-trial differences in sentence length across federal and state studies (2000–2017). Reported estimates are limited to jury trial/guilty plea comparisons. Average trial effects are shown for studies denoted by an ⋆ that report information for multiple subsamples. Color version available as an online enhancement.

Johnson at 18. Racial minorities, like Mr. Carter, particularly feel the phenomenon. *See* Testa, A. and Johnson, B. *Paying the Trial Tax: Race, Guilty Pleas, and Disparity in Prosecution*, 31 Crim. Just. Pol. Rev. 500-531 (2020).

The only concrete evidence that Mr. Carter suffered a penalty is comparing the offer on the table. As noted to the Trial Court, he was offered as part of a judicial settlement conference, thirty years on the attempted murder charge, with all but 21 years suspended. S.Tr. 40. It is a dramatically lower offer than what the State sought, and got, after trial, namely a life sentence.

The Trial Court said that it did not consider the original plea offer any more than it did Mr. Carter's choice to go to trial. S.Tr. 50. While it may be true that

consciously the Trial Court did not consider it, the chasm between the plea offer and the final sentence, the comparison with other sentences handed down for attempted versus completed murder in Maine, and the broad picture of significantly higher sentences received by defendants who made the same choice as Mr. Carter – to go to trial – paints a different picture. His sentence was so high compared to other sentences that there can be no way to be certain it was free of a trial penalty.

IV. Mr. Carter did not voluntarily waive his previous invocation of his right to silence.

In the days after being shot by police, Mr. Carter lay in his hospital bed. He was coming off a multi-day methamphetamine binge. He did not have the capacity to voluntarily waive his previously invoked right to silence when subsequently prompted by law enforcement. His interrogation by detectives should have been suppressed.

A. Preservation and standard of review

When addressing a challenge to a court's denial of a motion to suppress, this Court "review[s] the factual findings underlying the trial court's ruling for clear error and the court's legal conclusions de novo." *State v. Cote*, 2015 ME 78, ¶ 9, 118 A.3d 805. Although findings of fact are reviewed deferentially, the application of legal principles to those findings is reviewed independently. *See State v. Cefalo*, 396 A.2d 233, 240 (Me. 1978) (noting the trial court's legal conclusions, drawn

from findings of historical facts, are "subject to the independent examination and judgment of the Law Court.") "[T]he dispositive issue of the voluntariness of a confession, although based on all the facts and circumstances surrounding the confession, is a legal issue warranting independent appellate review." *State v. Coombs*, 1998 ME 1, ¶ 9, 704 A.2d 387.

The prosecution bears the burden of proof to show an effective *Miranda* waiver by a preponderance of evidence. *State v. Hernandez-Rodriguez*, 2025 ME 9, ¶ 25, 331 A.3d 354, 361 (*citing Colorado v. Connelly*, 479 U.S. 157, 168, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986)).

B. Given his physical condition, Mr. Carter could not make a voluntary waiver of his right to silence.

Mr. Carter, despite being in no state to make any decision about his rights, invoked his right to silence on March 27, 2023. The question for the suppression court was whether Mr. Carter had the capacity to waive his right to silence in the following days. "[S]omeone in custody must actually waive the privilege against self-incrimination in order for an interrogation to occur or continue. *State v. McLain*, 2025 ME 87, ¶ 62, __ A.3d. ___. It must be "clear and unequivocal." *Id*. Moreover, for the waiver to be valid, the individual is required to have "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421, 106 S. Ct. 1135, 1140, 89 L. Ed. 2d 410 (1986).

> When a suspect makes incriminating statements after invoking his right to remain silent during a custodial interrogation and properly challenges the admissibility of those statements before trial, those statements may not be used against the defendant in the State's case in chief in a criminal proceeding unless they were made voluntarily and the defendant knowingly and intelligently waived his or her Miranda rights.

State v. Grant, 2008 ME 14, ¶ 21, 939 A.2d 93, 100 (*citing Davis v. United States,* 512 U.S. 452, 458, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994). As the U.S. Supreme Court explained, the inquiry has two distinct dimensions:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Moran at 421.

The Defendant unambiguously invoked his right to remain silent on March 27, 2023. While he remained hospitalized, officers were always outside his door since he arrived at the hospital. He had been shot a few days earlier, was on opioids, going through detox after significant methamphetamine use, and was in State custody. Given these circumstances, when the defendant asked Trooper Barnes the name of the lead detective on his case, Trooper Barnes didn't answer the question. Instead, he asked if the defendant wanted to talk to the detective. This is

exactly the subtle overreach that the Fifth Amendment's clear rule is designed to prevent. Furthermore, the analysis "focuses on the state of mind of the suspect, and not of the police, *see Arizona v. Roberson*, 486 U.S. 675, 677 (1988)"; it does not matter if Trooper Barnes asked the question in good faith, being unaware of the Defendant's prior invocation.

Defendant's invocation in this case created "a bright-line prohibition" without which "the authorities through 'badger[ing]' or 'overreaching' – explicit or subtle, deliberate or unintentional, might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier" invocation of rights. *Smith v. Illinois*, 469 U.S. 91, 98, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984).

CONCLUSION

This Court should either vacate the conviction of Mr. Carter and/or the sentence imposed by the Trial Court and remand the case back to the Trial Court for proceedings consistent with this Court's mandate.

Dated: September 15, 2025 /s/ James Mason

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CERTIFICATE OF SERVICE

As required by the M.R.App.P. 7(c)(1), I sent a native PDF version of this brief to the Clerk of this Court and the parties' counsel at the email addresses provided with entry of appearance. I will, when directed by the Clerk of Court under M.R.App.P. 7(c)(3), deliver ten paper copies of this brief to this Court's Clerk's office via U.S. Mail, and send two copies to opposing counsel at the addresses provided by that same Directory.

CERTIFICATE OF COMPLIANCE

I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

Dated: September 15, 2025

/s/ James Mason

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