STATE OF MAINE
SUPREME JUDICIAL COURT
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, BANGOR, ME

APPELLEE'S BRIEF

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STATEMENT OF THE FACTS

In May of 2023, Carter and Victim [redacted] were in a sexual relationship and newly living together. (Trial Transcript Day 2, 25 – 26 (hereinafter "II Tr. ___")). Carter had been working for Victim's father and staying with Victim's parents prior to moving into Victim's house in Milford. *Id*. Carter and Victim used methamphetamine together throughout the duration of their relationship. (II Tr. 26).

On May 25, 2023, the day before the assault, Carter had a phone call with Victim while he was at work. (II Tr. 27); (State's Exhibit 86: 30:40 – 33:30) (hereinafter "SX ___:") At the end of the call Victim thought she had hung up the phone, but the call did not actually disconnect, and Carter overheard what he believed to be evidence of infidelity. *Id*. That night Victim and Carter talked but ended up smoking methamphetamine and going to bed. (II Tr. 27 – 28); (SX 86: 49:30 – 51:55). Both Victim and Carter described the evening of the 25th as a "regular" or "normal" night. *Id*.

The day of the attack, May 26, 2023, Carter texted Victim's stepfather (Chris Davis), his employer, "I'm up" around five in the morning. (Trial Transcript Day 1, 66 (hereinafter "I Tr. ___.")). It was typical for Carter to send this type of message on days he was supposed to work; however, he never actually arrived at work that day after sending the text. (I Tr. 65 – 66). Eventually, Chris Davis went to Victim's

house. (Tr. D1: 67). Victim and Carter were not at the residence, but Davis observed a hammer hole in the floor. *Id*.

Victim testified that she woke up around 4:30 in the morning. (II Tr. 36). When Victim woke up she could tell Carter was upset and was "bitching." (II Tr. 28). As Carter was getting clothes out of the closet, Victim told him to grab a few extra and take some time apart. (II Tr. 29). Carter then grabbed Victim by the throat, got on top of her, and began squeezing her throat. (II Tr. 31 – 32). Victim testified that she believed she was going to die at that moment, that she could not breathe, and that her eyes felt like they were going to pop out of her head. *Id*. Similarly, Carter confirmed in his interview that he had again confronted Victim about who she had been with and said that Victim had gone on a rant and told him to get out. (SX 86: 55:40 – 57:15). Carter stated this occurred around 6:30 am. *Id.* Carter admitted that he had eventually pushed Victim down, held her down and squeezed her throat. (SX 86: 1:01:08 – 1:04:30).

Carter then helped Victim up to her bed where he interrogated her about who she had been cheating on him with. (II Tr. 32 – 33). Carter told Victim that she was going to die that day, asked when her children were going to be home from their father's, and told her that they were going to find her body in pieces throughout the trailer. *Id*. During this episode Victim attempted to escape. Victim asked Carter for permission to let her puppy out. (II Tr. 33). When Carter opened the door, Victim ran

outside towards her neighbor's house screaming for help. (II Tr. 33, 35 – 36). Victim described screaming "help" like she had never screamed before. *Id*. Carter similarly described this as Victim's "plan of escape." (SX 86: 1:06:30 – 1:07:07). Victim ran some distance towards the neighbor's house, but Carter chased after her with a hammer, ultimately catching up to her and striking her multiples in the head with that hammer. (II Tr. 36 – 37); (SX 86: 1:09:15 – 1:12:23). Victim testified that her memory and consciousness drifted in and out from that point on. (II Tr. 37). Carter described Victim as incapacitated and unable to move after he struck her with the hammer. (SX 86: 1:09:15 – 1:12:23). While Victim laid on the ground outside, Carter went back into the house to get his phone, wallet and the vehicle keys. *Id.* Carter then picked Victim up off the neighbor's lawn and put her in her vehicle. (II Tr. 37); (SX 86: 1:12:58 – 1:14:15).

The next thing Victim could recall was waking up in the middle of woods in the vehicle with Carter. (II Tr. 37 – 38). Carter had driven Victim out to Argyle Township and told detectives he chose that location because it seemed secluded and nobody would expect them to go there. (SX 86: 1:14 – 1:14:46). Multiple law enforcement officers testified at trial about the location being a remote, wooded area. (I Tr. 93); (II Tr. 17 – 19, 56); (SX 19 – 20).

The first thing Carter did when Victim regained consciousness in the woods was pull down the visor in the car and make Victim look at herself. (II Tr. 37). Victim recalled

seeing two "gaping holes" in her temples and that she was bleeding. *Id.* Victim described lapsing in and out of consciousness after regaining consciousness in the woods. (II Tr. 38). In Victim's lucid moments, Carter stared at her and said things like "you're dying" and "you're going to die." *Id*. Carter both smoked methamphetamine throughout the attack and instructed Victim to take hits of methamphetamine, after which he continued hitting Victim. *Id.*

At 8:53 am, a ten-minute call was placed from Carter's cellphone to his sister, Katrisha Burke. (II Tr. 108 – 109). Burke did not testify at trial. Victim testified that during one period of lucidity she could hear Carter speaking to a woman on the phone. (II Tr. 38). He was telling the woman he had beat "her" in the head with a hammer. (II Tr. 38). Victim heard the woman telling Carter he could not do that and asking for "her" name. *Id*. Victim recalled yelling her name and "help me." *Id*. Paige Durkee, the mother of Carter's children, testified that on the morning of this incident she received a call from Burke, and that based upon that phone call she called the police. (I Tr. 75). Police were able to obtain the location of Victim's cellphone via an emergency ping which was conducted around ten am. (I Tr. 92 – 93), (I Tr. D: 78).

Maine State Police Trooper Jake Ferland and Sergeant Blaine Silk were the first members of law enforcement to locate Victim and Carter in Victim's car in Alton. (I Tr. 93 – 95). Trp. Ferland observed movement coming from inside of the vehicle. *Id.* Carter later confirmed that when he saw the police he began striking Victim with

the hammer again with the intention of inflicting as much damage as possible. (SX 86: 1:21:30 – 1:24:50). Trp. Ferland and Sgt. Silk approached the vehicle shouting commands such as "get out of the car" and "show me your hands." (SX 4); (SX 5-1); (II Tr. 20). Carter instead backed the vehicle up into a gate and sped forward in an apparent attempt to flee the scene with Victim still inside the vehicle. (SX 4); (SX 5-1). Sgt. Silk fired shots into the vehicle, striking Carter. (SX 4); (SX 5-1), (II Tr. 20-21).

Victim was able to make her way out of the vehicle and had obvious injuries. (SX 5-2: 0:00 – 2:05); (II Tr. 21). Sgt. Silk described his first observations of Victim: "a lot of blood, extensive facial injuries." *Id.* He further testified that her left eye was "completely swollen closed" and her right side of her face appeared to be separated from her skull. *Id.* Trp. Ferland testified that he thought Sgt. Silk had accidentally shot Victim in the head because he had never seen someone alive that looked so injured. (I Tr. 97 – 98).

Victim was transported to Northern Light Eastern Maine Medical Center. (I Tr. 25). Two doctors who treated Victim testified at trial, emergency room doctor Holly Fanjoy and oral maxillofacial surgeon doctor Ahmed Messahel. (I Tr. 25, 35). Victim was brought to the emergency room as a tier one level trauma, which is the highest level of response dictated by an injured person. (I Tr. 37). Dr. Messahel described Victim's injuries as extensive, severe, and appallingly horrific. *Id.* Victim had sustained

multiple skull fractures, her upper orbital area was shattered, and there were fragments of bone projecting into her eye socket. (I Tr. 41). Victim also had a small brain bleed. *Id.* Victim was "relatively stable" and taken immediately to the operating room to stabilize, explore, and repair her facial injuries. (I Tr. 44). Dr. Messahel explained that the neurosurgery team felt Victim was stable enough to opt for a more cautious approach rather than diving in with neurosurgery, which is "also quite traumatic" (I Tr. 47.) Dr. Messahel did confirm that death is the threat in a head trauma case. (I Tr. 46).

There was testimony at trial about Victim's life after the assault. Victim spoke about her continued short-term memory loss, frequent headaches, and blurry vision in her left eye. (II Tr. 41). Victim testified that she relives the events of that day in her head every single day. *Id.* Victim admitted that she had been charged and convicted of both class B trafficking schedule drugs and class C possession of cocaine in between the attack and the trial. (II Tr. 47 – 48). However, by the time of trial Victim was in recovery and an active drug court participant. (II Tr. 51 – 52).

STATEMENT OF THE ISSUES

I. Whether there was sufficient evidence presented at trial of torture or other extreme cruelty to support an aggravated attempted murder conviction?

II. Whether the trial court's imposition of a life sentence was appropriate and within the court's sentencing power?

A. Life sentences are permitted for the crime of aggravated attempted murder.

B. The trial court did not err in its application of the sentencing analysis.

C. The imposition of a life sentence in this case was constitutionally proportionate and does not offend prevailing notions of decency.

III. Whether the imposition of a life sentence was a trial penalty?

IV. Whether the suppression court erred in denying Carter's motion to suppress his statements made in the hospital interviews?

A. There was no constitutional violation based on Carter's invocation of his right to remain silent, because the detectives scrupulously honored that right, and Carter later decided to speak with the detectives, at which point fresh Miranda warnings were properly given and waived.

B. Carter's statements were voluntary because they were the result of the free choice of a rational mind, not a product of coercive police conduct, and their admission was fundamentally fair.

ARGUMENT

I. There was sufficient evidence presented at trial of torture or other extreme cruelty to support an aggravated attempted murder conviction.

A challenge to the sufficiency of the evidence is viewed in the light most favorable to the State to determine whether the fact finder could rationally find every element of the offense beyond a reasonable doubt. *State v. Haag*, 2012 ME 94, ¶ 17, 48 A.3d 207. In the instant case, Carter is challenging the sufficiency of the evidence to support the "aggravated" element of the attempted murder.

17-A M.R.S. § 152-A sets out a number of circumstances which elevate an attempted murder to an aggravated attempted murder and which serve as a precondition for the court to consider a life sentence. 17-A M.R.S. § 152-A. One of those preconditions is that the attempted murder was accompanied by torture, sexual assault or other extreme cruelty inflicted upon the victim. 17-A M.R.S. § 152-A (1)(D). It was subsection D that was alleged in the indictment brought against Carter. (A. 21).

The attack Carter perpetrated against Victim was brutal and prolonged. It was torturous and extremely cruel. Perhaps most notable of all in terms of cruelty—more so even than the brutality of the use of a hammer or Victim's horrific injuries—was the level of fear and helplessness Victim [redacted] was subjected to that day.

Carter began with strangulation. (II Tr. 31 – 32). He then forced Victim to sit on her bed so that he could interrogate her. (II Tr. 32 – 33). When Victim tried to escape, Carter chased her down like she was an animal and struck her in the head with a hammer, not just enough to get her to stop, but twice more as she lay on the ground. (II Tr. 33, 35 – 36); (II Tr. 36 – 37); (SX 86: 1:09:15 – 1:12:23). Carter could have stopped there, but he did not. Instead, he drove her to a remote location where he continued to beat her. (I Tr. 93); (II Tr. 17 – 19); (II Tr. 56); (SX 19 – 20); (II Tr. 38).

Shortly before 9 am, hours after the attack began, Carter placed a phone call to his sister in which Victim recalled trying to ask for help. (II Tr. 108 – 109). It wasn't until 10 am that dispatch was able obtain Victim's location. (Tr. D: 78). Both parties were consistent that they had gotten up early in the morning, with Carter putting the initial argument around 6:30 in the morning. (SX 86: 1:01:08 – 1:04:30). Accordingly, the evidence suggests that this attack lasted multiple hours. Throughout the attack Carter taunted Victim. He forced Victim to look at herself, beaten and with holes in her head. (II Tr. 37). Carter told Victim that she was dying, that she was going to die that day, and that her children were going to find her body in pieces. (II Tr. 32 – 33), (II Tr. 38). Victim sustained injuries that led a police officer to believe she had been *shot in the head*, that the trial court described as "extensive, severe, and horrific," and that the surgeon who treated

her described as "appallingly horrific." (I Tr. 97 – 98); (Sentencing Transcript, 49) (hereinafter (S. Tr. ___)); (I Tr. 37).

If Carter had, in a moment of panic, chased Victim outside after strangling her, hit her in the head with a hammer, and ended the attack there, it would still be extremely cruel and horrific. He did not stop there. He secreted Victim away to prolong her suffering, all the while telling her she was going to die. Taken in the light most favorable to the State, or in any other light, there is sufficient evidence beyond a reasonable doubt to conclude that the attempted murder was accompanied by torture or other extreme cruelty inflicted upon the victim.

II. The Trial Court's imposition of a life sentence was appropriate and within the Court's sentencing power.

As set out in *State v. Reese:*

> Appellate review [of a sentence] is limited to consideration of the propriety of the sentence and the sufficiency and accuracy of the information on which it was based. We look to whether the sentencing court disregarded the statutory sentencing factors, abused its sentencing power, permitted a manifest and unwarranted inequality among sentences of comparable offenders, or acted irrationally or unjustly.

State v. Reese, 2010 ME 30, ¶ 21, 991 A.2d 806

A. Life sentences are permitted for the crime of aggravated attempted murder.

It is worth establishing at the outset of this Court's analysis that the imposition of a life sentence for the crime of aggravated attempted murder is provided for by

both statute and precedent. 17-A M.R.S. § 152-A; *State v. Fortune*, 2011 ME 125, ¶ 38, 34 A.3d 1115.

This Court opined in *Fortune* that the culpability of the actor in an attempted murder is the same as that of a completed murder. *Id.* Common sense would dictate the same conclusion given that the crime of attempted murder requires both the intent to commit the crime of murder and a substantial step towards the commission of the crime of murder. 17-A M.R.S. § 152. The difference between the crime of murder and attempted murder lies only in the result, or as this Court aptly described it, "the fortuitous circumstance that the victim did not die in an attempted murder." *State v. Fortune*, 2011 ME 125, ¶ 39, 34 A.3d 1115. Likewise, the factors that elevate an attempted murder to an aggravated attempted murder allowing for the possibility of a life sentence substantively mirror the *Shortsleeves* factors considered for the imposition of a life sentence in the crime of murder. 17-A M.R.S § 152-A; *State v. Shortsleeves*, 580 A.2d 145 (Me. 1990).

This Court has already addressed the constitutionality of 17-A M.R.S. § 152-A and concluded that it does not violate Maine's constitutional requirement that all penalties and punishments be proportioned to the offense or the Constitution's prohibition against cruel and unusual punishments. *State v. Fortune*, 2011 ME 125, ¶ 38, 34 A.3d 1115.

Carter asks this Court to overturn well-reasoned and settled law based upon arguments that this Court has already decided. The rarity of an imposition of a life sentence for the crime of aggravated attempted murder supports the conclusion that the law is functioning the way it was intended, to capture only the most extreme circumstances that warrant a life sentence, such as Carter's case.

B. The trial court did not err in its application of the sentencing analysis.

When imposing a sentence, courts are required to engage in the three-step analysis from *State v. Hewey*, 622 A.2d 1151 (Me. 1993) and codified in 17-A M.R.S. § 1602.

This Court reviews step one, the basic sentence, for misapplication of principle and steps two and three, the maximum and final sentence, for an abuse of discretion. *State v. Hansen*, 2020 ME 43, 228 A.3d 1082 (citing *State v. Stanislaw II*, 2013 ME 43, ¶ 17, 65 A.3d 1242). Each step of the *Hewey* analysis is reviewed for a disregard of the relevant sentencing factors or an abuse of sentencing power. *Id.*

i. Step One

At step one in the instant case the trial court appropriately assessed the nature and seriousness of the offense. The trial court, as directed by statute, considered that this was a crime of domestic violence. (S. Tr. 47). The trial court also set out several facts it considered relevant to the nature and seriousness of the offense. (S. Tr. 47 –

49). Some of the facts the court considered relevant included the following: that Carter strangled Victim to the point that she thought she was going to die and afterwords explained to Victim as she sat on the couples' bed that she was going to die that day and that her kids would find her in pieces; that Carter chased Victim outside when she tried to escape and struck her with the hammer once and then twice more after she fell to the ground, incapacitated; that Carter then drove Victim to a remote location where Carter had the time to make a phone call to his sister and to make Victim look at herself in the mirror and tell her she was going to die; that Carter continued to assault Victim with a hammer even after law enforcement arrived, hitting her in the head at least another three to five times when the officers were present; and that when the officers approached the vehicle Carter drove at the officers until the officers shot him. (S. Tr. 48). The trial court described Victim as covered head to toe in blood and noted that one officer thought Victim had been shot in the head. (S. Tr. 49). The trial court described Victim's injuries as extensive, severe, and horrific, and cited her numerous skull fractures, brain bleeding, and other significant facial injuries and lacerations. *Id.* The trial court also noted that the attack took place over several hours and that Carter's conduct put the lives of law enforcement at risk. *Id.*

A sentencing court is not required to make factual comparisons at all when sentencing. *State v. Reese*, 2010 ME 30, 991 A.2d 806. Nonetheless, the court in the instant case did reference a few cases, while noting that there were relatively few

similarly situated cases to consult. (S. Tr. 50). The trial court considered both *Fortune*, where a life sentence was imposed, and *Freeman*, where a final sentence of fifty years with all but forty suspended was imposed. (S. Tr. 49 – 50); *State v. Fortune*, 2011 ME 125, 34 A.3d 1115; *State v. Freeman*, 2014 ME 35, 87 A.3d 719.

The trial court made a specific finding that the circumstances in Mr. Carter's case were closer to those presented in *Fortune* than in *Freeman* given the extent and severity of the attack at issue. (S. Tr. 50). The trial court also took notice that absent from *Fortune* was any indication that the case involved domestic violence. *Id.*

The trial court ultimately concluded that this was a serious aggravated attempted murder offense and set the basic sentence at fifty years. *Id.*

It is not enough that another court or even this Court may have imposed another sentence, what matters is whether there was a misapplication of principle. *State v. Hewey*, 622 A.2d 1151 (Me. 1993) (citing *State v. Hallowell,* 577 A.2d 778 (Me.1990)). Here, the trial court engaged in a thorough analysis of the nature and seriousness of the offense and concluded that this was a serious aggravated attempted murder offense that warranted a basic sentence of fifty years. There was no misapplication of principle, disregard for sentencing factors, or abuse of discretion.

ii. Step two

At step two the court must consider aggravating and mitigating factors to formulate a maximum term of imprisonment. 17-A M.R.S. § 1602. A maximum sentence is reviewed for abuse of discretion with greater deference being accorded to the trial court than in the setting of the basic sentence. *State v. Lewis*, 1998 ME 83, 711 A.2d 119. This Court has recognized time and time again that the trial court is in a better position to evaluate aggravating and mitigating circumstances. *State v. Williams*, 2020 ME 128, 241 A.3d 835 *as revised* (Dec. 1, 2020) (citing *State v. Basu*, 2005 ME 74, 875 A.2d 686) (observing that a sentencing court is in a better position for evaluating the offender's circumstances and has wide discretion to weigh aggravating and mitigating factors); see also *State v. Lewis*, 1998 ME 83, 711 A.2d 119; *State v. Sweet*, 2000 ME 14, 745 A.2d 368; *State v. Hewey*, 622 A.2d 1151 (Me. 1993).

In considering aggravating factors in the instant case the trial court first focused on Carter's criminal history. (S. Tr. 51). Carter has multiple criminal convictions including charges that resulted in a stand-off with law enforcement for which he received two *consecutive* sentences of eight years and nine months. *Id.* Additionally, Carter was on probation for domestic violence assault at the time of offense. *Id.* The trial court also considered a protection from abuse order that that had been entered with respect to a third individual who had been in a relationship

with Carter. *Id.* The trial court described all those facts as significantly aggravating circumstances. *Id.*

The trial court considered the subjective impact on Victim, citing her testimony that she thinks about the attack every single day. *Id.* Both Victim and her daughter provided victim impact statements to the trial court which the trial court noted that it considered. *Id*; see also (S. Tr. 16 – 21).

The trial court considered both Carter's substance use issues around the time of the offense and the circumstances of Carter's childhood and upbringing to be mitigating factors. (S. Tr. 51 - 52).

The trial court concluded that the aggravating factors significantly outweighed the mitigating factors such that a life sentence was warranted. *Id.* The trial court came to this conclusion after a thorough analysis of the aggravating and mitigating factors and acted within its discretion in setting the maximum sentence.

iii. Step three

The trial court opined that the last step of the sentencing analysis, whether any portion of the sentence should be suspended, was not relevant to its inquiry. (S. Tr.: 52 – 53). This is a permissible conclusion. *State v. Fortune*, 2011 ME 125, ¶ 42, 34 A.3d 1115. However, recognizing that it could be relevant to the other offenses charged, the trial court clarified that it did not find a suspended period of incarceration with probation to be warranted given Carter's history and the findings

the trial court had already made. *Id.* Again, the trial court acted within the bounds of its discretion.

C. The imposition of a life sentence in this case was constitutionally proportionate and does not offend prevailing notions of decency.

The Maine Constitution requires a proportionality review that is broader than that of the eighth amendment of the United States Constitution. *State v. Stanislaw II*, 2013 ME 43, 65 A.3d 1242. To determine whether a sentence is disproportionate, this Court has set out a two-part test. *Stanislaw II*, 2013 ME 43, 65 A.3d 1242. First, this Court must compare the gravity of the offense with the severity of the sentence.[1] *Id.* This court has acknowledged that it is a rare case in which that threshold comparison results in an inference of gross disproportionality. *State v. Lopez*, 2018 ME 59, ¶ 17, 184 A.3d 880. However, if that comparison does result in an inference of gross disproportionality, this Court must then compare the sentence to that of sentences received by other offenders in the same jurisdiction. *Stanislaw II*, 2013 ME 43, 65 A.3d 1242. If the initial comparison of the gravity of the offense to the

[1] Carter's brief could be read to suggest that this Court can only consider objective facts such as those that would be relied upon in step one of Hewey and is forbidden from considering aggravating and mitigating factors. (Blue Br. 29). The State does not concede that to be true and could not find case law to support that suggestion. The case cited in Carter's brief (*State v. Reese)* appears to be contemplating Hewey analysis as opposed to the analysis required for constitutional proportionality. (Blue Br. 29); *State v. Reese*, 2010 ME 30, 991 A.2d 806. Furthermore, the discussion in *State v. Lopez* seems to rebut this suggestion, as this Court commented that, "[t]he court properly observed the gravity of Lopez's conduct by considering both his involvement in the drug trade and the crime's effect on the victim's family." *State v. Lopez*, 2018 ME 59, ¶ 22, 184 A.3d 880.

severity of the sentence does not result in an inference of gross disproportionality, then this Court will move to the second step of analysis; an examination of whether the sentence offends prevailing notions of decency. *State v. Lopez,* 2018 ME 59, 184 A.3d 880.

i. Comparison of the gravity of the offense with the severity of the sentence.

This Court has historically compared the gravity of the offense with the severity of the sentence by:

> (1) evaluating where that defendant's term of imprisonment fell within the range of incarceration time authorized by the Legislature, and (2) considering the facts of a case in conjunction with the commonly accepted goals of punishment.
>
> *State v. Weddle II*, 2024 ME 26, ¶ 11, 314 A.3d 234.

A maximum sentence is still a sentence authorized by the Legislature. This Court has recognized the Legislature as the "voice of the sovereign people" and recognized that it is the function of the Legislature, not the courts, to define a crime and set out its punishment. *State v. Gilman*, 2010 ME 35, 993 A.2d 14 (citing *State v. King,* 330 A.2d 124 (Me.1974)). As such, only the most extreme punishment deemed appropriate by the Legislature for a particular crime could be unconstitutionally disproportionate. *State v. Weddle II*, 2024 ME 26, ¶ 10, 314 A.3d 234 (citing *State v. Gilman*, 2010 ME 35, ¶ 23, 993 A.2d 14). In footnotes in both *Gilman* and *Lopez* this Court opined that one example of disproportionality would

be a legislature making overtime parking a felony punishable by life imprisonment. *State v. Lopez*, 2018 ME 59, 184 A.3d 880; *State v. Gilman*, 2010 ME 35, ¶ 23 n.11, 993 A.2d 14 (quoting *Ewing v. California*, 538 U.S. 11, 21 (2003)).

In *Weddle II* this Court reviewed the sentence on a manslaughter conviction (among other related convictions) stemming from a drunk driving, multi-vehicle crash that caused the deaths of two other drivers. *State v. Weddle II*, 2024 ME 26, 314 A.3d 234. *Weddle* was sentenced to 30 years, all but 25 years suspended, with 4 years of probation. *Id* at 237. This Court engaged in an analysis of the legislative purpose and history of vehicular manslaughter and concluded that:

> The evolving classification of manslaughter committed while operating a vehicle "signals the Legislature's greater disdain for such serious criminal conduct" and its desire that such conduct be punished consistently with manslaughter committed in other ways.

State v. Weddle II, 2024 ME 26, ¶ 12, 314 A.3d 234

A similar analysis prevails in the instant case. The decision in *State v. Burdick,* which had been argued in front of this Court in April of 2001, describes the landscape of life sentencing in attempted murder at that time. *State v. Burdick*, 2001 ME 143, 782 A.2d 319. Burdick's sentencing was governed by 17–A M.R.S.A. § 152(4), as amended by P.L. 1995, ch. 422, § 1 (effective Sept. 29, 1995). *Id.*

The 1995 amendment that governed Burdick's sentencing had increased the maximum penalty of attempted murder from "a term of imprisonment not to exceed

40 years" to a "definite period of imprisonment of any term of years". *Id* at 324. The 1995 amendments also added two provisions, one which set the maximum at forty years under a certain circumstance and another that allowed the sentencing court the option of imposing a life sentence if it found one or more aggravating circumstances. *Id.* This sentencing framework was problematic because it did not require the aggravating circumstances to be submitted to the fact finder and proven beyond a reasonable doubt. *Id.* Later that year the Legislature codified what we know as our aggravated attempted murder statute of today, which specifically sets out the aggravating preconditions that allow a court to consider imposing a life sentence. CRIMES AND OFFENSES—AGGRAVATED ATTEMPTED MURDER, 2001 Me. Legis. Serv. Ch. 413 (H.P. 867) (L.D. 1147).

This Court can infer that the Legislature wanted to distinguish attempted murder from an attempted murder including one or more of the aggravating circumstances set out in 17-A M.R.S. § 152 and allow for the possibility of a life sentence in those aggravated cases. In the instant case the indictment brought against Carter and submitted to the jury included the element that the attempted murder was accompanied by torture, sexual assault or other extreme cruelty. (A. 21). The jury returned a verdict of guilty as to the aggravating factor. (A. 26). Thus, as specifically set out by the Legislature, Mr. Carter was exposed to a life sentence.

In comparing the facts of this case in conjunction with the commonly accepted goals of punishment, Carter's life sentence is still well within the bounds of reason. The Maine criminal code lists eight general purposes of sentencing. 17-A M.R.S. § 1501. Courts are not required to conduct a mechanical analysis of every listed sentencing purpose and are given "significant leeway in what factors [they] may consider and the weight any given factor is due when determining a sentence." *State v. Chase*, 2025 ME 90, ¶ 31, ___ A.3d ___. (citing *State v. Bentley*, 2021 ME 39, ¶ 11, 254 A.3d 1171). This Court recognizes that depending upon the facts of a case some of these sentencing goals may be less relevant than others and some may be in tension with each other. *State v. Watson*, 2024 ME 24, ¶ 22, 319 A.3d 430 (citing *State v. Reese*, 2010 ME 30, 991 A.2d 806); (citing *State v. Bentley,* 2021 ME 39, ¶ 11, 254 A.3d 1171).

The instant case included a significant act of domestic violence committed by a man who had already spent seventeen years in prison and who had a history of domestic violence, to include being on probation for domestic violence assault at the time of the offense. (S. Tr. 50 – 51). The trial court specifically referred to recognizing the crime as an act of domestic violence. (S. Tr. 47, 50). The trial court described the nature of the offense in outlining what facts it deemed relevant to sentencing in step one and considered Carter's history to be "significantly aggravating" in step two. (S. Tr. 48 – 51). These comments go to the goals of

preventing crime through the restraint of individuals when required in the interest of public safety and not diminishing the gravity of the offense.

In *State v. Ward* the defendant was convicted of robbery, kidnapping and attempted murder. *State v. Ward*, 2011 ME 74, 21 A.3d 1033. Ward was sentenced to the maximum, 30 years, on the attempted murder charge and sentenced consecutively amongst other counts resulting in an overall sentence that required Ward to serve forty-five years of a fifty-year aggregate sentence, followed by four years of probation. *Id*. In conducting a proportionality review of the maximum sentence on the attempted murder this Court stated:

> Given the court's findings concerning the "magnitude and ferocity and violence and inhumanity of this crime," its imposition of the maximum allowable sentence for Ward's conduct "is not the rare, extreme, or shocking case" that would offend either the Eighth Amendment or article I, section 9

State v. Ward, 2011 ME 74, ¶ 20, 21 A.3d 1033.

The same deference and conclusion are supported and should be accorded here. An inference of gross disproportionality between the gravity of the offense and the severity of the sentence is not supported and this Court can end its proportionality review here.

ii. Sentences of other offenders in the same jurisdiction.

Given that there is not an inference of gross disproportionality between the gravity of the offense and the severity of the sentence, this Court need not consider

the sentences of other offenders in the same jurisdiction. Nonetheless, the State will address the cases raised in Carter's brief.

In *Burdick* the defendant shot a police officer who was wearing a bullet proof vest and sustained "minor injuries." *State v. Burdick*, 2001 ME 143, ¶ 6, 782 A.2d 319. Burdick was sentenced to 40 years on what was then the equivalent of aggravated attempted murder. *State v. Burdick,* 2001 ME 143, 782 A.2d 319. At sentencing the trial court described the sentence as "probably a de facto life sentence." *Id.* In *State v. Williams*, which upheld the imposition of a life sentence for the murder of a police officer, this Court took note that even though there were only minor injuries in the *Burdick* case, Burdick at 50 years old was sentenced to a "de facto life sentence" thus supporting the imposition of an actual life sentence on the more serious *Williams* case. *State v. Williams*, 2020 ME 128, n. 12, 241 A.3d 835 *as revised* (Dec. 1, 2020). Similarly, the facts and injuries are more severe in the instant case and warrant an elevated sentence.

The trial court in the instant case specifically contemplated *Fortune* as discussed supra. (S. Tr. 50).

In *State v. Ford* the defendant fled police who attempted to stop him on suspicion of theft and led law enforcement on a chase. *State v. Ford*, 2013 ME 96, 82 A.3d 75. During the chase Ford repeatedly used his truck to ram the pursuing police cruisers, which damaged the cruisers, and one officer "narrowly escaped

being struck by Ford's dump truck by scrambling up an embankment moments before . . . ." *Id.* Ford was convicted of aggravated attempted murder and sentenced to twenty years, all but nine years suspended, with six years' probation. There is no description in this Courts opinion that anyone at all other than Ford himself was injured during this offense. *Id.* There is also no discussion of Ford's criminal history (this was not a sentence focused appeal). *Id.* Anyone can see the difference between the facts of the *Ford* case and the intentional domestic violence attack perpetrated against Victim. Just because a life sentence is available does not mean it will *always* be imposed, nor should the State always seek it. In his brief, Carter writes about the "danger of false equivalencies," an offense he commits in comparing for to the facts of the instant case.

The trial court specifically considered *Freeman* and noted that it considered the instant case to be closer to *Fortune* than to *Freeman*. (S. Tr. 50). Like Carter, *Freeman* was an act of domestic violence, the defendant had set two fires in the basement of his ex-girlfriend's home while her and other members of her family were asleep. *State v. Freeman*, 2014 ME 35, 87 A.3d 719. A member of the family opened the basement door believing there was a problem with the furnace and saw flames. *Id.* She and other members of the household were able to extinguish the fire using pots and pans full of water. *Id.* Freeman was sentenced to a basic sentence of thirty to forty years. *State v. Freeman*, 2014 ME 35, ¶ 10, 87 A.3d 719. The

sentencing court then considered aggravating factors such as Freeman's lengthy criminal history and the fact that several young girls had protection orders against him. *Id.* The court found no mitigating factors. *Id.* The final sentence imposed was fifty years, all but forty years suspended with four years of probation. *Id.* This Court reviewed and affirmed the sentence on appeal. *State v. Freeman*, 2014 ME 35, ¶ 23, 87 A.3d 719. From the State's perspective *Freeman* only bolsters the proportionality of the instant case. Although *Freeman* was a serious and terrifying incident of domestic violence that could have resulted in the deaths of multiple victims, there were no injuries described in this Court's opinion. *Id.* Although Freeman had a lengthy history which included domestic violence, his criminal history was made up entirely of misdemeanors, almost all of which were committed in the nine month period preceding the aggravated attempted murder case. *State v. Freeman*, 2014 ME 35, ¶ 19, 87 A.3d 719. Despite Freeman's comparatively minor history and the fact that there were no injuries sustained, Freeman still received a very lengthy sentence. Surely the instant case, in which the defendant has a much more serious history—having already served nearly two decades in prison—and wherein the victim sustained horrific injuries, warrants an upward departure from fifty years to life.

Finally, Carter raises *State v. Murray-Burns,* however, it is reductive to say that Murray-Burns was sentenced to "45 years, all but 30 suspended." (Blue Br. 34). Murray-Burns was sentenced consecutively on ten counts of aggravated attempted

murder, one count of failure to stop, and one count of theft to 225 years of incarceration, with no less than thirty years to be served, and 20 years of probation. *State v. Murray-Burns*, 2023 ME 21, 290 A.3d 542. This court vacated that sentence because the sentencing court did not make the requisite findings to sentence consecutively. *Id*. Nonetheless, *Murray-Burns* is factually distinguishable from the instant case. In *Murray-Burns* the defendant fled police while firing off multiple rounds from an "AR-15 style" rifle at two different police cruisers, striking one officer twice – once in each arm. *Id.* This was a significant and dangerous event. However, it lacked both the type of "appallingly horrific" injury that Victim sustained and the element of domestic violence.

Carter's brief states: "When a defendant who strikes one person with a hammer receives the same punishment as those who systemically torture victims or murder children in front of their families . . . ." (Blue Br. 35). This is a gross simplification of what occurred in the instant case. Carter, having already served nearly two decades in prison, beat his victim in the skull with a hammer repeatedly causing "extensive, severe and horrific injuries". (S. Tr. 49, 51). He endangered the lives of the officers who were forced to respond to his crimes. (S. Tr. 49). He subjected Victim not only to hours of intense physical and mental torture on the day of the incident, but months and years of sustained trauma. (S. Tr. 16 – 21, 51). Victim is not just "one person struck in the head with a hammer," she is the victim of domestic

violence perpetrated against her by a serial abuser of women. (S. Tr. 51). Carter's actions have profoundly impacted she and her family. (S. Tr. 16 – 21). Carter's sentence reflects the gravity of the crime he committed, and it is proportional to the sentences of others.

All the cases presented in Carter's brief bolster the proportionality of his sentence. This Court does not need to analyze Carter's sentence in comparison to other offenders in the same district, but even if it did, the offense in the instant case is proportionate to the existing sentences in this district.

iii. *The sentence does not offend prevailing notions of decency, it does not shock the conscience of the public and it is not inhumane or barbaric.*

Since the imposition of a life sentence in the instant case does not result in an inference of gross disproportionality, the next consideration of this Court would be whether the sentence offends prevailing notions of decency, whether it shocks the conscience of the public or our own respective or collective sense of fairness, or whether it is inhuman or barbarous. *State v. Ward*, 2011 ME 74, ¶ 18, 21 A.3d 1033. However, this issue was not raised, so this Court again could end it's analysis with the first step of the proportionality review. *State v. Lopez*, 2018 ME 59, n. 3, 184 A.3d 880 (see footnote explaining that Lopez only argued that the sentence was disproportionate, not that it offended prevailing notions of decency and so the claim was limited to disproportionality). However, like in *Lopez*, even if this Court

considered the issue of whether the sentence offended prevailing notions of decency, the sentence of life imprisonment on an aggravated attempted murder is not cruel or unusual "in the sense that it is inherently barbaric." *Id.* (citing *State v. Ward*, 2011 ME 74, ¶ 17, 21 A.3d 1033); *see State v. King*, 330 A.2d 124 (Me. 1974).

In sum, Carter's sentence was within the trial court's sentencing power, it was imposed without error, and it does not offend either the constitutions of the State of Maine or the United States.

III. The imposition of a life sentence was not a trial penalty.

In *State v. Chase* this Court ruled that a sentence is invalid if it reasonably appears that the court relied in whole or in part on the defendant's decision to stand trial. *State v. Chase*, 2023 ME 32, ¶ 32, 294 A.3d 154, *as revised* (June 13, 2023). In *Chase* the sentencing court made statements about the defendant's decision to go to trial, even going so far as to opine that "it's difficult to argue that someone is taking responsibility if they insist on a trial. *Id. at* ¶ 31.This is a far cry from the trial court's affirmative denial of any consideration at all of Mr. Carter's decision to go to trial. (S. Tr. 50).

The issue of a "trial penalty" was raised at sentencing based on an offer that was extended in a judicial settlement conference of 30 years, all but 21 years

suspended on an attempted murder. (S. Tr. 40, 44)[2]. Carter also concedes that this settlement conference offer being so much lighter than what the State argued for after trial is the only evidence in the record of a trial penalty. (Blue Br. 40). The reality is that any practitioner of criminal law knows that trial is a risk, and one cannot know how the evidence will come in and land in front of a jury, particularly when dealing with offenses that involve victims. The State argued as much at sentencing. (S. Tr. 44 - 45). As the testimony bore out, Victim continued to struggle with substance abuse even after her release from the hospital, ultimately being charged and convicted of both class B trafficking and class C possession of cocaine in the time between the attack and the trial. (II Tr. 47 – 48). Fortunately for the State and Victim, she was sober and in drug court by the time a trial occurred, but there was no guarantee that was going to happen. (II Tr. 51 – 52).

There are many considerations outside of the risk of a trial that may persuade the State to make a plea offer lower than what the case could actually garner for a sentence, including the impact of a trial on a victim, available resources, etc., and the State should not have the insinuation of bad faith thrust upon it for engaging in a good faith negotiation at a judicial settlement conference. To do so threatens a chilling effect on the negotiation process. When this issue was raised at sentencing

[2] The state does not concede that it is in any way appropriate for the defense to take an offer made at a judicial settlement conference and throw it up at sentencing as affirmative evidence of a trial penalty.

the State reminded defense and noted to the court that in the judicial settlement conference the judge had been very clear that if Carter were convicted at trial in front of her, he would receive a sentence much more severe than the one being contemplated that day. (S. Tr. 44). That is exactly what happened here, and that is an inherent risk of trial. There is nothing on the record to support the argument that the trial court relied at all on Carter's decision to go to trial in fashioning his sentence.

IV. The Suppression Court did not err in denying Carter's motion to suppress his statements made in the hospital interviews.

This Court reviews the legal conclusions of suppression decisions de novo and the factual findings underlying the trial court's decision for clear error. *State v. McNaughton*, 2017 ME 173, ¶ 28, 168 A.3d 807. This Court has remarked on multiple occasions, to include as recently as August 2025, that if any reasonable view of the evidence supports the trial court's decision to suppress then this Court will uphold that decision. *Id.*; *State v. McLain*, 2025 ME 87, ¶ 12 ___ A.3d ___.; *State v. Cooper*, 2017 ME 4, ¶ 9, 153 A.3d 759.

Carter moved to suppress his statements via motion filed on January 8, 2024 and heard in front of Judge Michael Roberts on March 22, 2024. (A. 4); (A. 23 – 25). At the motion hearing the court heard testimony of State Police trooper Cameron Barnes and Cpl. Andrew Pierson. (A. 13).

The crime in the instant case occurred on May 26, 2023. (App. 13). Carter was shot by police while being taken into custody and subsequently transported to Northern Light Eastern Maine Medical Center, where he remained for a number of days. *Id.* Carter's treatment at the hospital included the administration of opiates for pain management. *Id.* On May 27, 2023, detectives attempted to interview Carter in his hospital room. *Id.* Although Carter was able to accurately summarize his *Miranda* rights, he was in apparent discomfort, and his answers were often labored and inaudible. *Id.* Carter ultimately elected not to waive his right to remain silent. *Id.* The detectives did not ask Carter further questions, and Carter was left in his hospital room under the supervision of a trooper. *Id.*

Two days later, on May 29, Carter asked the trooper guarding his room who the detective was in his case. The trooper asked if Carter wanted to speak to the detective, and Carter answered in the affirmative. *Id.* State Police detectives Andrew Pierson and Dana Austin returned to Carter's room, reintroduced themselves, and confirmed he wished to speak with them. *Id.* The detectives then read Carter his *Miranda* rights, and Carter gave an appropriate interpretation of each right, affirmatively waived his right to remain silent, signed a written waiver, and opted to speak with the detectives. (A. 13 -14). The suppression court denied Carter's motion to suppress, stating in a written decision that Carter's decision to speak with the detectives was "voluntary and with full understanding of his *Miranda* rights." (A.

14). The May 29 interview was subsequently admitted at trial as State's exhibit 86.[3] (II Tr. 144); (SX 86).

A. *There was no constitutional violation based on Carter's invocation of his right to remain silent because the detectives scrupulously honored that right and Carter later decided to speak with the detectives, at which point fresh Miranda warnings were given and properly waived.*

A previous invocation of the right to remain silent, or even the right to counsel, may be waived if the suspect initiates further communication, exchanges, or conversations with the police. *Edwards v. Arizona*, 451 U.S. 477 (1981). Law enforcement officers may again attempt interrogation of a suspect who initiates further communications, exchange, or conversations with the police that may be fairly said to represent a desire on the part of the accused to open up a discussion relating directly or indirectly to the investigation as long as fresh Miranda warnings are given and properly waived. *Oregon v. Bradshaw*, 462 U.S. 1039 (1983).

In the May 29 interview Detective Austin can be heard saying to Carter "I understand you wanted to speak to me?" which Carter did not correct. Instead, Carter asked for the cards of the detectives, asked if he was being recorded, and then asked "so where we at?" (SX 86: 00 – 1:30). This all occurs within the first minute and a half of the detectives' entrance to Carter's room. *Id.*

[3] The May 29 interview was admitted at the motion to suppress as State's Exhibit 2 but will continue to be referred to as SX 86. The May 27 interview was admitted at the motion to suppress as State's Exhibit 1.

In *Oregon v. Bradshaw* the defendant had invoked his right to counsel and then, while being transferred from the police station to the jail, said "well what is going to happen to me now?" which the Supreme Court categorized as ambiguous, but nonetheless, evidenced a willingness and a desire for generalized discussion about the investigation. *Oregon v. Bradshaw*, 462 U.S. 1039, 1046 (1983). The *Bradshaw* Court distinguished this from a question or comment born purely from the custodial relationship, such as asking for a glass of water. *Id*.

Once the defendant initiates further communication, the next prong is whether the defendant then gave a valid waiver of his rights. *Id*. In this case Detective Austin again gave Carter fresh *Miranda* warnings and even began by stating, "[s]o where the other day you didn't want to speak to me, but you do now, I just – before we get into anything – I just want to make sure you understand your rights okay? It's important to me." (SX 3:14 – 3:27). Detective Austin then asked Carter to explain what each right meant to him, which Carter was able to do, and ultimately signed a *Miranda* waiver. (SX 86: 3:15 – 9:30). Even after Carter signed the *Miranda* waiver Detective Austin reiterated to Carter: "even though you're not free to leave the hospital, at any time if you want Detective Peirson and I to leave, just ask and we'll gladly step out and leave". (SX 86: 10:25 – 10:37).

This several minute discussion of *Miranda*, capped by an affirmative waiver of each right, is a "clear and unequivocal" waiver of the privilege against self-incrimination as required by *Mclain*. *State v. McLain*, 2025 ME 87, ___ A.3d ___.

Carter was the one to initiate further communication related to the investigation with the detectives and was given fresh *Miranda* warnings, which he properly waived. There was no constitutional violation in this case. However, even if this Court were inclined to analyze this set of facts as if the detectives were the ones who initiated communication with the defendant, the defendant's argument would still fail. Under the long standing "*Mosley* Rule" the admissibility of statements after a defendant has decided to remain silent hinges on whether the defendant's right to cut off questioning was "scrupulously honored." *Michigan v. Mosley*, 423 U.S. 96 (1975). The *Mosley* court held that if the police failed to scrupulously honor a decision of a person in custody to cut off questioning, either by refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind, a constitutional violation would occur. *Id.*

When the detectives attempted to interview Mr. Carter on May 27, he was read *Miranda* and declined to answer questions. (App. 13). There was no attempt at questioning for the next roughly day-and-a-half until detectives returned at Carter's

behest on May 29. *Id.* The detectives read *Miranda* again which Carter waived and confirmed his desire to answer questions. (App. 13 – 14).

When determining whether or not law enforcement has "scrupulously honored" the suspect's invocation to remain silent four factors are weighed: (1) whether police immediately cease the interrogation when the defendant invokes the right to remain silent; (2) whether a significant amount of time passes before questioning is resumed; (3) whether fresh *Miranda* warnings are provided; and (4) whether the later "interrogation is restricted to matters distinct from the former. *State v. Grant*, 2008 ME 14, ¶ 42, 939 A.2d 93. None of the four factors standing alone is determinative. *State v. Grant*, 2008 ME 14, ¶45, 939 A.2d 93. As for the four-factor analysis in this case:

On May 27 when Carter was read *Miranda* and answered that he did not want to answer questions law enforcement asked no further questions. (App. 1). More than a day passed between the two interactions with Carter. *Id.* The first attempt was on May 27, and the actual interview occurred, at Carter's behest, on the May 29. *Id.* To put the significance of this amount of time in perspective, in *State v. Mosley* the two interviews occurred on the same day a few hours apart. *Michigan v. Mosley*, 423 U.S. 96 (1975). No questioning took place on May 27.

The detectives were within the bounds of the law when they interviewed Carter on May 29, 2023. Carter initiated conversation, was read his *Miranda* rights

again, and properly waived. Even if the Court considered this interview under the *Mosley* rule, there still would not be a constitutional violation.

B. Carter's statements were voluntary because they were the result of the free choice of a rational mind, not a product of coercive police conduct, and their admission was fundamentally fair.

Carter was shot and hospitalized on May 26. (A. 13). The interview at issue occurred on May 2, meaning Carter had been receiving treatment for his gunshot wound, and was presumably methamphetamine free, for about three days. Carter, through both trial and appellant counsel, raised the issue of methamphetamine withdrawal, but there was no testimony or evidence about any particular withdrawal symptoms that he was suffering at the time of the interview on May 29, 2023. In the interaction on May 27, 2023, Carter was labored and difficult to hear. (A. 13); (States Motion Exhibit 1). This was in contrast to the May 29 interview in which Carter spoke clearly and demonstrated mental acuity and situational awareness.

The first line of *State v. Lowe* reads:

> Eighteen-year-old Kristina Lowe lay in the hospital, sedated, frostbitten, immobilized, and severely injured when a Maine State Police trooper, without providing *Miranda* warnings, questioned her about the car accident that caused Lowe's injuries.

State v. Lowe, 2013 ME 92, 81 A.3d 360.

In *Lowe*, Kristina Lowe had been in a motor vehicle crash which killed two of her passengers. *Id.* This Court can conclude that Lowe had some alcohol or drugs

in her system that night based upon her later charges of aggravated operating under the influence and manslaughter. *Id.* After the crash, which occurred shortly after midnight, Lowe was sedated with morphine and fentanyl for several hours while being transported from one hospital to another. *Id*. She had suffered multiple injuries to include a concussion. *Id.* Soon after Lowe arrived at Maine Medical Center she was interviewed by a trooper. She remained medicated and vomited twice during the interview. *Id.* Despite all of that she appeared to understand the questions that were asked and gave appropriate answers. *Id*.

This Court found that Lowe's statements were made voluntarily. *State v. Lowe*, 2013 ME 92, 81 A.3d 360. In its discussion of voluntariness, this Court said that a statement may be voluntary even if the defendant is injured, medicated or in distress. *State v. Lowe*, 2013 ME 92, ¶ 22, 81 A.3d 360 (citing *State v. Philbrick,* 481 A.2d 488 (Me.1984)) (upholding the voluntariness of a confession made while the defendant was traumatized from the victim's shooting); see also *State v. Lockhart*, 2003 ME 108, ¶ 33, 830 A.2d 433 ("The fact that an individual is mildly sedated does not, standing alone, establish that any statement he or she makes is no longer the product of a free will and rational intellect."); *State v. Bleyl,* 435 A.2d 1349, 1360 (Me.1981) ("The fact that a person being interrogated in custody is under the influence of drugs does not, in itself, render a confession involuntary.").

A confession is voluntary if it "results from the free choice of a rational mind, if it is not a product of coercive police conduct, and if under all of the circumstances its admission would be fundamentally fair." *State v. Williams*, 2020 ME 128, ¶ 43, 241 A.3d 835 *as revised* (Dec. 1, 2020) citing *Wiley*, 2013 ME 30, ¶ 16, 61 A.3d 750.

To determine whether a statement was made voluntarily the court is to assess the totality of the circumstances, including factors specific to the defendant like age, physical/mental health, and external factors such as the persistence of the officers or police trickery. *State v. Nightingale,* 2012 ME 132, 58 A.3d 1057.

The interrogation was custodial and was conducted by two detectives in Carter's hospital room. (A. 13). However, Carter was read *Miranda*, and even after being read *Miranda* and explaining, quite aptly, what each right meant to him, Detective Austin reiterated: "even though you're not free to leave the hospital, at any time if you want Detective Peirson and I to leave, just ask and we'll gladly step out and leave." (SX 86: 10:25 – 10:37).

There is no evidence of persistence by the detectives. Consider the May 29 interview when the detective was asking about when the incident turned to trying to kill the victim and Mr. Carter said, "But how the fuck am I supposed to answer that man?". (SX 86: 1:04:50 – 1:05:30). Detective Austin responded "You don't have to if you don't want. I appreciate you speaking to us. It is – you are filling in a lot of

blanks right now". *Id.* This was the tone of the entire interview; it did not cross the line into police persistence. Similarly, the detectives did not promise Carter anything. Rather, when Carter asked if the charge would be attempted murder, Detective Austin told Carter that the charge would be up to the DA and that there could be attempted murder as a charge. (SX 86: 1:03:20 – 1:04:06).

Per the May 29 interview, this was a defendant in his mid-forties, who completed up to tenth grade, and said he felt rested enough to speak with the officers. (SX 86: 10:45 – 11:13, 12:35 – 16:00). The detectives obtained this information from Carter following a discussion with him about voluntariness. (SX 86: 12:35 – 16:00). The nature and tone of the interview was calm. (SX 86). Carter demonstrated on a number of occasions throughout the interview that he was able to engage in organized thinking and was aware of his circumstances and implications of those circumstances. *Id.* Within the first minute-and-a-half of the detectives arriving on May 29, Carter asked if he was being recorded and asked for the detectives' cards. (SX 86: 00 – 1:30). Carter then noticed and pointed out that Detective Austin had given Carter the wrong business card. (SX 86: 2:20 – 2:37). At another point in the interview Detective Austin asked Carter at what point it turned into Carter wanting to kill the victim, to which Carter responded, "Ugh, man… that's attempted murder". (SX 86: 1:04:24 – 1:05:01). This statement shows that Carter had a clear grasp of his situation.

The second prong of voluntariness, that the confession is not a product of coercive police conduct, was discussed *supra* and does not warrant further consideration. There were no coercive tactics by the detectives in this case.

The third prong to consider is whether under all circumstances the admission of the statements would be fundamentally fair. *State v. Williams*, 2020 ME 128, ¶ 43, 241 A.3d 835 *as revised* (Dec. 1, 2020) (citing *Wiley*, 2013 ME 30, ¶ 16, 61 A.3d 750). In this case the admission is fair. The detectives respected the boundaries of the law and, just as the suppression court stated, Carter 's decision was "voluntary and with full understanding of his *Miranda* rights". (A. 14).

There is ample evidence to support the suppression court's decision to deny Carter's motion to suppress, and as such this Court should uphold that decision.

CONCLUSION

The attack on Victim [redacted] was horrific. It was committed by a man with an unusually significant criminal history and a pattern of domestic violence. The evidence presented at trial was more than sufficient to support a guilty verdict as to aggravated attempted murder. At sentencing, the court engaged in an appropriate analysis and came to a sentence that was within its discretion. This Court should affirm the judgement and sentence.

CERTIFICATE OF SERVICE

I certify that I have this 15th of November, served a copy of this brief on Attorney James Mason by email in accordance with PMO-SJC-3(F) and caused two copies of the State's brief to be mailed by U.S. mail, postage prepaid, to James Mason, 16 Union Street, Brunswick, ME 04011.

/s/Chelsea R. Lynds

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