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 REPLY BRIEF

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I. A life sentence is a misapplication of the lesson of *State v. Fortune* and is not proportionate to the facts of this case.

The State asks this Court to reject Mr. Carter's argument to "overturn well-reasoned and settled law." Red Brief 17. The problem is Mr. Carter never made any such argument, either before the Trial Court or in its opening brief. Mr. Carter argues that the Trial Court's life sentence was disproportionate to his convictions, not that the Trial Court lacked the power to impose it. Here, the State conflates constitutional validity with sentencing proportionality, thereby skewing its argument. The Trial Court made the same mistake, which is why Mr. Carter's sentence should be vacated.

A. *State v. Fortune* addressed constitutional validity, not a sentencing equivalence between murder and attempted murder.

State v. Fortune, the only case where a life sentence was imposed for attempted murder, upheld the constitutionality of imposing a life sentence under 17-A M.R.S. § 152-A. 2011 ME 125, ¶ 38-40, 34 A.3d 1115. This Court concluded a life sentence under this provision does not offend "the Maine Constitution's affirmative command that all 'penalties and punishments' be 'proportioned to the offense' and it does not violate the Constitution's prohibition against 'cruel and unusual punishments.'" *Id.* (*quoting* Me. Const. art. I, § 9). *Fortune's* constitutional analysis spans only three paragraphs, but in determining that a life

sentence is constitutionally permitted, the Court addressed only whether the aggravated attempted murder statute facially violated the Maine Constitution by *permitting* life imprisonment as a sentencing option. *Id.* ¶ 38.

In rejecting *Fortune*'s facial challenge to 17-A M.R.S. § 152-A, the Court noted that "the culpability of the actor is the same in an attempted murder as it is in a completed murder" and that "the only difference between attempted murder and murder is the fortuitous circumstance that the victim did not die." *Id.* ¶ 39. However, this observation was made solely to establish that the statutory maximum punishment does not render the statute unconstitutional on its face - not that attempted murder and murder are equivalent in all respects or that every attempted murder warrants the same punishment as murder. *Fortune's* analysis addressed whether life imprisonment for aggravated attempted murder could *ever* be constitutional, applying the standard of whether the punishment – a life sentence – is "greatly disproportionate to the offense" and whether it "shocks the conscience." *Id.* (*citing State v. Ward*, 2011 ME 74, ¶ 18 & n. 4, 21 A.3d 1033.). The Court concluded that when aggravating factors under § 152-A(1) are present, the statute's allowance of life imprisonment does not facially violate constitutional proportionality requirements.

This is fundamentally different from an individualized proportionality analysis at sentencing. *Fortune* does not stand for the proposition that attempted

murder is equivalent to murder for purposes of determining an appropriate sentence in a particular case. Instead, it holds only that the Legislature constitutionally *may* authorize life imprisonment as a sentencing option when specific aggravating circumstances are proven.

The distinction between facial constitutionality and as-applied proportionality is critical because, as demonstrated below, Carter's sentence falls far outside the range of sentences imposed in comparable cases.

B. Only one case, *Fortune,* has imposed a life sentence for attempted murder, and this case is not *Fortune.*

The flaw in the State's analysis, like the Trial Court before it, is confusing a permissible sentence with a proportionate one. This is not how this Court has reviewed sentences.

> In conducting a disproportionality analysis, a court must begin by comparing the gravity of the offense and the severity of the sentence. Factors affecting the proportionality of a sentence to the offense are determined on a case-by-case basis because no one factor will be dispositive in a given case. When determining whether the punishment imposed is proportional to the offense, regard must be had to the purpose of the enactment, and to the importance and magnitude of the public interest sought by it to be protected. We have previously compared a defendant's offense to his 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. Lopez, 2018 ME 59, ¶ 16, 184 A.3d 880, 886 (cleaned up) (emphasis added). This Court has evaluated the sentences not only by determining whether

the legislature authorized them, but also by assessing where they fell within a permissible range and whether that matched the goals of sentencing.

Compare the cases where this has been addressed. *Lopez* ¶ 18 (twenty-year term of imprisonment for felony murder "is not unconstitutionally disproportionate"); *State v. Bennett*, 2015 ME 46, ¶ 15, 114 A.3d 994, 1000 (14-day not excessive where "sentence falls within the lower range of the lowest quadrant of the incarceration time authorized by the Legislature for a Class D crime"); *State v. Gilman*, 2010 ME 35, ¶ 24, 993 A.2d 14 ("A mandated sentence for [operating after habitual offender revocation] on the lower end of the zero-to-five-years scale [authorized by the Legislature] is not the rare, extreme, or shocking case, and does not violate the proportionality requirement of article 1, section 9."); *State v. Reardon*, 486 A.2d 112, 121 (Me. 1984) ("The potential sanction of imprisonment for the period of twenty years [at the time, the maximum sentence for felony murder] ... does not denote such punitive severity as to shock the conscience of the public, nor our own respective or collective sense of fairness.")

This Court has not found a proportionality issue when cases fall near the low end of the permissible sentence range. *See Bennett* and *Gillman*. Nor has there been one when the sentence was twenty (then a maximum sentence) or thirty-year sentences for acts that led to the death of another person. *See Lopez* and *Reardon*.

This gets onto unstable ground when we address a life sentence – the maximum sentence the legislature allows for *any* crime.

The cases the State describes in the section addressing this issue, Red Br. 23-27, illustrate Mr. Carter's point. None of them involves a life sentence. *See State v. Weddle II*, 2024 ME 26, 314 A.3d 234 (a sentence of 30 years, all but 25 years suspended for a OUI vehicular manslaughter involving the death of two people); *State v. Burdick*, 2001 ME 143, 782 A.2d 319 (a sentence of 40 years for attempted murder)[1]; *State v. Ward*, 2011 ME 74, 21 A.3d 1033 (an overall sentence of 50 years, all but forty-five to serve on charges of attempted murder, kidnapping and robbery).

The State does not attempt to engage with the idea that this life sentence puts this case on par with the top quartile of murder cases that received a life sentence. Murder convictions between 1990 and 2020 average sentences of 43 to 53 years of imprisonment (53 years when treating life sentences as 80 years for purposes of calculating an average). Blue Br. 32-34. Of 236 murder sentences during this period, only 62 (approximately one-quarter) resulted in life imprisonment. For aggravated attempted murder, only one case in modern Maine history (*Fortune*)

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[1] The only case involving a life sentence offered by the state in its argument was to *State v. Williams*, 2020 ME 128, 241 A.3d 835 which itself distinguished Williams's case, a murder case involving the "execution" of a police officer, from *Burdick*, an attempted murder of a police officer where the officer was shot in a bullet-proof vest and relatively uninjured. *Id.* FN 12

has resulted in a life sentence, and *Fortune* involved multiple victims and planned machete attacks on five individuals. Recent aggravated attempted murder cases have resulted in sentences ranging from 9 to 40 years to serve. See Blue Br. at 32-34.

The State offers no principle that would justify placing Carter's single-victim, non-fatal assault in the same category as the top quarter of murder cases. That is because those cases have a quality not present here. In just the last 6 years, this Court has published opinions approving life sentences involving uniquely horrible crimes of violence that have led to the death of one or more people. These cases have involved violent crime sprees and double murders. *State v. Lord*, 2019 ME 82, 208 A.3d. 781. Or a man who burned two victims to death while he listened to their cries for help. *State v. De St. Croix*, 2020 ME 142, 243 A.3d 880. It has reviewed shootings of double murders. *State v. Nightingale*, 2023 ME 71, 304 A.3d 264. A defendant who shot two people to death in front of their young children. *State v. Penley*, 2023 ME 7, 288 A.3d. 1138 (sentence vacated), *aff'd on remand*, 2024 WL 494552 (Feb. 1, 2024) (unpublished).

No sentencing principle supports treating a single victim, non-fatal assault as a proportional equivalent to these types of murder cases. While Mr. Carter committed a terrible act, it did not merit a life sentence.

II. The evidence did not establish conduct at the outermost portion of extreme cruelty.

The State's extreme cruelty argument conflates severity with the statutory standard. While "any murder is a cruel and unfeeling act," extreme cruelty requires facts "at the outermost portion of the range" of murderous behavior. *State v. St. Pierre*, 584 A.2d 618, 621-22 (Me. 1990). The State never engages with this standard.

The State asks that this case be treated as if it were a murder case. Red Br. 16. Because no case other than *Fortune* has answered the question of what is "extreme cruelty" in the context of attempted murder, the State needs to create that linkage to justify the life sentence imposed below. It is not clear, though, that the State understands what factual elements have been necessary in the context of a finding of extreme cruelty. "Imposition of a life sentence on the basis of extreme cruelty alone will require a showing that the viciousness of the murder differed in a substantial degree from that which inheres in the crime of murder." *De St. Croix*, at ¶ 13 (*citing St. Pierre* at 621). Even when "savagery of [an act] is unquestioned," the facts of a case must "establish behavior at the outermost portion of the range of cruelty that would constitute the aggravating circumstances of extreme cruelty." *St. Pierre* at 622. Extreme cruelty requires more than just severe injuries over a period of time.

The State cited no cases supporting its extreme cruelty argument beyond the single case establishing the standard of review. Red Br. 15. The State likewise failed to distinguish any of the cases cited in Appellant's opening brief. Blue Br 20. The State seems to suggest a formula: severe injuries plus an extended duration equals extreme cruelty. But this is not how the Court has found extreme cruelty and what factors help define the "outermost portion of the range" of "murderous cruelty." *St. Pierre* at 621-22. The State does not engage with the standard at all.

A review of this Court's cases setting that "outermost portion" reveals common themes. They involve acts, such as:

- Breaking into a house to attack a family, repeatedly hacking at two family members with a machete before three others escaped. *Fortune*, 2011 ME 125, 34 A.3d 1115

- Locking two people into the cargo area of a box truck, setting it on fire, and watching the fire and listening to the sounds of them burning to death. *De St. Croix*, 2020 ME 142, 243 A.3d 880

- Shooting and killing of a defendant's wife and a childhood friend in front of their four children. *State v. Hayden*, 2014 ME 31, ¶ 19, 86 A.3d 1221

- The killing of two people in the home of one of the victims, and then subsequently returning with the defendant's children in the car, and with one of them accompanying the defendant while he retrieved evidence from the scene. *State v. Waterman*, 2010 ME 45, ¶¶ 45-46, 995 A.2d 243

- Sexually assaulting a victim and stabbing her over fifty times, including in the head, before killing her. *State v. Hutchinson*, 2009 ME 44, ¶¶ 13, 40-43, 969 A.2d 923.

- Killing multiple victims while each of them watched. *State v. Cookson*, 2003 ME 136, ¶¶ 2, 39, 44, 837 A.2d 101

- Killing of a victim who had been bound, gagged, and asphyxiated, as well as sexually assaulted and sodomized. *State v. Wilson*, 669 A.2d 766, 768 (Me. 1996)

Five of the seven cases above involve multiple victims. Most involve premeditation. Others involve sexual assault. All but *Fortune* (which involved numerous victims and premeditation) involved the deaths of the victims.

Each of the cases above involves gratuitous sadistic abuse or degradation beyond what inheres in attempted murder itself—sexual assault, torture instruments, binding, multiple victims, or prolonged torture while the defendant derives satisfaction from the victim's suffering. The State's theory – that an assault over a period of time – would effectively eliminate the distinction between attempted murder and aggravated attempted murder based on extreme cruelty.

None of these factors exists here. There was no premeditation or sexual assault, nor were there multiple victims. Further, there was no evidence of instruments designed for torture, binding or gagging of victims, or gratuitous acts of sadism. The State points to the subjective observations of officers on the scene and the doctors at the hospital to describe the injuries Ms. [redacted] sustained. It ignores the objective factors, such as the injuries themselves, which were considered non-life-threatening. The medical evidence directly contradicts the State's torture narrative. Dr. Messahel testified that while the injuries were severe,

neurosurgeons "did not feel that they had to dive in and treat her immediately" but "opted for a more cautious approach" rather than emergency intervention. D1 Tr. 46-47. Before surgery, Ms. [redacted] was "relatively alert and oriented." D1 Tr. 40. This clinical assessment is fundamentally incompatible with the torture narrative the State advances. When asked about the threat to life, Dr. Messahel confirmed it "did not appear to be the case" that immediate intervention was necessary. D1 Tr. 47.

The State even implies a level of cruelty to the location where Mr. Carter drove the car, repeatedly calling it "remote." Blue Br. 10, 16, 21. But the record shows the vehicle was parked 150 feet from Argyle Road, less than a mile from Route 16, and approximately 0.8 miles from Alton Middle School, in an area with "a decent amount of residences." D1 Tr. 86-87, 101. The location was visible from a public road. D1 Tr. 87.

Even acts that lead to "horrific" injuries are required to be placed on the continuum. *See State v. Nichols*, 2013 ME 71, ¶ 27, 72 A.3d 503. Extreme cruelty requires those acts to be of a qualitatively different, and extreme, level of viciousness that exceeds those other acts that fall on that continuum. *See De St. Croix* at ¶ 13. These elements are absent here. The extreme cruelty finding cannot stand, and the conviction must be vacated.

III. Law enforcement did not scrupulously honor Mr. Carter's invocation of his right to silence.

The State three-factor test from *Michigan v. Mosley*, 423 U.S. 96, 96 S.Ct. 321 (1975) as a way to view this case. *Mosley* and its progeny in Maine courts, culminating in *State v. Grant*, 2008 ME 14, 939 A.2d 93, laid out the test for whether law enforcement has "scrupulously honored" a prior invocation of self-incrimination rights. The court in *Mosely* said the inquiry required asking "1) whether the police immediately cease the interrogation on the invocation of that right; 2) whether the police resume questioning only after the passage of a significant period of time and provide fresh *Miranda* warnings; and 3) whether the later interrogation is restricted to matters distinct from the former." *State v. Rossignol*, 627 A.2d 524, 527 (Me. 1993) (citing the test established in *Mosley*, 423 U.S. at 104–07, 96 S.Ct. at 326–28). This Court clarified in *Grant* that this is a four-part test by separating the two parts of step two (passage of time and new warning). *Grant* ¶ 42.

The State correctly notes that questioning ceased after Mr. Carter invoked his rights. App. 13. Likewise, law enforcement read Mr. Carter his warnings a second time when they resumed their interrogation on May 29, 2023. Id. The fourth factor, however, clearly favors Mr. Carter: law enforcement interrogated him about the same matters to which he had previously invoked his right to silence, a point the State does not dispute, as it does not mention it. *See Grant* ¶ 50.

It is helpful to note that the purposes of Maine's constitutional protections against self-incrimination were recently explored in *State v. McLain*, 2025 ME 87, __ A.3d. __. In *McLain*, this Court clarified the law governing the waiver of self-incrimination rights, including the right to counsel. The Court conducted an extensive review of history and common law, setting out the origins of the privilege of self-incrimination. *Id.* ¶¶ 40-46. "The privilege against self-incrimination 'reflects a high priority commitment to the principle that excluded as available to government is any person's testimonial self-condemnation of crime unless' the privilege is 'freely and knowingly' waived." *Id.* ¶ 45 (*quoting State v. Collins*, 297 A.2d 620, 626 (1972)). The history of the right "reflects an understanding of the importance of protecting the privilege, including by providing a recitation of rights and obtaining a clear waiver of the privilege prior to interrogating a suspect." *McLain* ¶ 46. Further, the Court looked to the economic and sociological underpinnings of the need for the protections inherent in the self-incrimination clause, particularly "more likely to have a lower socioeconomic status, or be a juvenile, person of color, immigrant, or woman." *Id.* ¶¶ 47-49. Finally, the Court noted that caselaw from other jurisdictions helps support the conclusion that "Maine has a longstanding commitment to preserving the value reflected in the privilege against self-incrimination, even at the expense of highly probative evidence." *Id.* ¶ 58.

The critical question is whether the passage of time was sufficient. Viewed through the constitutional principles McLain articulates, it was not. First, the State points to their contention Mr. Carter 'initiated' contact by asking the trooper, "Who's the detective on my case?' Red Br. p.36. But asking for a detective's identity is an administrative inquiry about who is handling the case, and materially different from *Oregon v. Bradshaw's* "What's going to happen to me now?", which at least showed willingness to discuss criminal consequences. 462 U.S. 1039, 1045-46 (1983). Asking for a name is no more an invitation to interrogation than requesting medical care or asking the time. The trooper's response, "Do you want to talk to him?" transformed a neutral inquiry into an interrogation opportunity, precisely the subtle overreach *Miranda*'s bright-line rule prevents.

Second, even if Mr. Carter's question constituted "initiation," his subsequent waiver was involuntary. The State does not address that Mr. Carter was recovering from gunshot wounds, on opioid pain medication, and withdrawing from a multi-day methamphetamine binge when he purportedly waived his previously-invoked rights. "A confession is voluntary [only] 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." *Williams* at ¶ 43. The totality of circumstances demonstrates Carter lacked the capacity to make a

"free and deliberate choice." *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135 (1986).

CONCLUSION

This Court should vacate Mr. Carter's conviction and sentence and remand for proceedings consistent with this Court's mandate.

Dated: December 9, 2025

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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).

/s/ James Mason

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