

Supreme Judicial Court sitting as the Law Court  
Law Court Docket number KEN-25-281

State of Maine v. Kenneth D. Marin

Appeal from Unified Criminal Docket in  
Kennebec County

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## **Introduction**

Mr. Marin asserts that the trial court erred and abused its discretion in allowing the State to use a sexually explicit photograph to establish its case against Mr. Marin. The photograph was of unknown people, ran the risk of the jury using it as propensity evidence, and was highly prejudicial given its explicit sexual nature. Additionally, the three gross sexual assault charges against Mr. Marin do not require proof of mens rea and, therefore, evidence as to his mental state, including intent and motive, was irrelevant to the State's case.

The use of uncharged conduct occurring between Mr. Marin and [REDACTED] [REDACTED] in Mr. Marin's camper van was also error. The conduct principally occurred outside of the State of Maine, was not part of any of the charges against Mr. Marin, was highly prejudicial, suggested a propensity to commit the charged crimes, and the gross sexual assault charges against Mr. Marin do not require proof of mens rea, which marginalizes the importance of the uncharged conduct.

## Procedural History

Kenneth Marin, the appellant, was indicted on September 24, 2021, on three charges of Gross Sexual Assault (Class A) under Title 17-A M.R.S. § 253(1)(C);<sup>1</sup> two counts of Unlawful Sexual Contact (Class B) under Title 17-A M.R.S. § 255-A(1)(E-1);<sup>2</sup> two charges of Unlawful Sexual Touching (Class D) under Title 17-A M.R.S. § 260(1)(C);<sup>3</sup> and four charges of Possession of Sexually Explicit Material of a Minor under Title 17-A M.R.S. § 284(1)(C).<sup>4</sup> (App. at 3, 5, 8-9). A superceding indictment added a charge of Tampering with a Witness (Class C) under Title 17-A M.R.S. § 454(1)(A)(1).<sup>5</sup> Mr. Marin was arraigned on the

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<sup>1</sup> Title 17-A M.R.S. § 253(1)(C) provides that “[a] person is guilty of gross sexual assault if that person engages in a sexual act with another person and . . . [t]he other person, not the actor's spouse, has not in fact attained 12 years of age.”

<sup>2</sup> Title 17-A M.R.S. § 255-A(1)(E-1) state that “[a] person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and . . . [t]he other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older.”

<sup>3</sup> Title 17-A M.R.S. § 260(1)(C) states that “[a] person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and . . . [t]he other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older.”

<sup>4</sup> Title 17-A M.R.S. § 284(1)(C) states that: “[a] person is guilty of possession of sexually explicit material if that person . . . [i]ntentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and: (1) The other person has not in fact attained 12 years of age; or (2) The person knows or has reason to know that the other person has not attained 12 years of age.”

<sup>5</sup> Title 17-A M.R.S. § 454(1)(A)(1) provides: “A person is guilty of tampering with a witness or informant if, believing that an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted, the actor: [] [i]nduces or otherwise causes, or attempts to induce or cause, a witness or informant: [] [t]o testify or inform in a manner the actor knows to be false.”

superceding indictment on April 10, 2024. (App. at 8-9). Mr. Marin entered not guilty pleas to all charges. (App. at 9).

A motion for sanctions was filed on August 18, 2022. (App. at 6). The motion was denied on November 22, 2022. (App. at 6).

The State filed a number motions in limine on January 24, 2024; January 7, 2025; and February 6, 2025. (App. 8, 10). Among those motions was a motion regarding specific photographic images relating to M.R. Evid. 401 & 403. (App. at 10). The trial court granted the motion in part, allowing the State to present one of the requested photographs. (App. at 11). Mr. Marin did not raise an objection to another motion in limine, which pertained to uncharged conduct. (Tr. T. (Feb. 24, 2025) at 7-8). The State's other motion in limine, pertaining to the alleged victim's Child Advocacy Center's interview, was granted by the court after hearing. (App. at 11); (Tr. T. (Feb. 24, 2025) at 66-67).

Mr. Marin filed one motion in limine for relief from prejudicial joinder on February 6, 2025 which the trial court granted on the same date, severing the four charges of Possession of Sexually Explicit Material of a Minor under Title 17-A M.R.S. § 284(1)(C). (App. at 10); (Motion H. T. (Feb. 6, 2025) at 2-3).

A jury was selected on February 5, 2025. (App. at 10). A jury trial was held on the non-severed charges before the Kennebec County Unified Court over four

days, on February 24th, 25th, 26th and 27th of 2025. (App. at 11-12). The jury returned guilty verdicts on February 27, 2025. (App. at 12).

On May 23, 2025 Mr. Marin was sentenced by the Kennebec County Unified Court. (App. at 13). On Count 1, the charge of gross sexual assault, the court sentenced Mr. Marin to the Department of Corrections for a term of 25 years, with a lifetime period of supervised release. (App. at 13). On Counts 2 and 6, the charges of unlawful sexual contact, a concurrent 10 year sentence was imposed on both counts. (App. at 13, 14). On Counts 3 and 7, the charges of unlawful sexual touching, a concurrent 364 day sentence was imposed on both counts. (App. at 14, 15). On Counts 4 and 5, the charges of gross sexual assault, a concurrent 25 year sentence was imposed on both counts. (App. at 14). On Count 8, the charge of tampering with a witness, a concurrent 5 year sentence was imposed. (App. at 15).

A timely notice of appeal and application to allow an appeal of his sentence was filed by Mr. Marin. The application to appeal his sentence was denied by this Court.

## Statement of Facts

L.M. resided with his grandfather, Kenneth Marin, for most of his childhood.<sup>6</sup> (Tr. T. (Feb. 24, 2025) at 188); (Tr. T. (Feb. 25, 2025) at 11, 124-125, 168). While caring for L.M., Mr. Marin met an old acquaintance, Nicole Garfield, through L.M.'s soccer program. (Tr. T. (Feb. 24, 2025) at ); (Tr. T. (Feb. 25, 2025) at 6, 9-10, 23-24, 126). The acquaintance had a daughter, T.D. [REDACTED] who was around the same age as Mr. Marin's grandson. (Tr. T. (Feb. 24, 2025) at 126-128); (Tr. T. (Feb. 25, 2025) at 126). From around the age of six until twelve, T.D. would hang out with L.M. and Mr. Marin. (Tr. T. (Feb. 24, 2025) at 129); (Tr. T. (Feb. 25, 2025) at 14, 18, 126). They would hang out at Mr. Marin's residence and also go on trips together in a Volkswagen van.<sup>7</sup> (Tr. T. (Feb. 24, 2025) at 129, 131, 191-192, 212); (Tr. T. (Feb. 25, 2025) at 49-50; 127). In the summer, T.D. could stay at Mr. Marin's residence for weeks at a time.<sup>8</sup> (Tr. T. (Feb. 25, 2025) at 24-25, 129, 194). During the school year [REDACTED]

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<sup>6</sup> L.M. stated that he lived with Mr. Marin from when he can remember until twelve and then again from when he was fourteen and fifteen because his mother was unstable. (Tr. T. (Feb. 24, 2025) at 190, 196); (Tr. T. (Feb. 25, 2025) at 168). L.M. liked living with his grandfather, he was taken care of and provided with everything he needed. (Tr. T. (Feb. 24, 2025) at 190).

<sup>7</sup> They traveled out of state in the van to Storyland, Santa's Village, Disney World, and Massachusetts. (Tr. T. (Feb. 24, 2025) at 129); (Tr. T. (Feb. 25, 2025) at 129). They would sleep in the camper van when they went on trips. (Tr. T. (Feb. 24, 2025) at 129). Photographs of the camper van were entered into evidence. (Tr. T. (Feb. 25, 2025) at 59-60).

<sup>8</sup> Mr. Marin's residence at the time was in a basement to an unfinished house that he was building. (Tr. T. (Feb. 24, 2025) at 131, 192-193). T.D.'s bed at the house consisted of a cot placed by the stairs or in-between Mr. Marin's and L.M.'s beds. (Tr. T. (Feb. 24, 2025) at 131, 192).

T.D. was not at Mr. Marin's residence as much and would primarily go on weekends, if at all. (Tr. T. (Feb. 25, 2025) at 25-26, 28-29, 130). Mr. Marin's grandson L.M. would also spend time at T.D.'s house. (Tr. T. (Feb. 24, 2025) at 191). In 2019, at the age of twelve, T.D. told her mother that she had an inappropriate relationship with Mr. Marin. (Tr. T. (Feb. 24, 2025) at 133); (Tr. T. (Feb. 25, 2025) at 18, 27, 134). Prior to that Ms. Garfield has no concerns about inappropriate behavior happening between Mr. Marin and T.D. (Tr. T. (Feb. 25, 2025) at 19, 21). L.M., when he was twelve, denied seeing any inappropriate behavior.<sup>9</sup> (Tr. T. (Feb. 24, 2025) at 209); (Tr. T. (Feb. 25, 2025) at 42). But, when he was sixteen he spoke about seeing indecencies between Ms. Marin and T.D.<sup>10</sup> (Tr. T. (Feb. 24, 2025) at 196-203).

Mr. Marin was a grandfather figure to T.D. (Tr. T. (Feb. 24, 2025) at 127, 179-180); (Tr. T. (Feb. 25, 2025) at 45). She referred to Mr. Marin as

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<sup>9</sup> L.M. testified that Mr. Marin told him what to say when he was interviewed in 2019 at the age of twelve. (Tr. T. (Feb. 24, 2025) at 209-210; 229). He also stated that in 2019 after T. [REDACTED]'s allegations he went to live with his mother in a farmhouse Mr. Marin had purchased to move into. (Tr. T. (Feb. 24, 2025) at 223-225, 133); (Tr. T. (Feb. 25, 2025) at 140). While not living with him, Mr. Marin was concerned about L.M.'s wellbeing and checked on him, providing him with items and food. (Tr. T. (Feb. 25, 2025) at 138, 140-141). After a time, Mr. Marin came to live at the farmhouse as well. (Tr. T. (Feb. 24, 2025) at 224-225); (Tr. T. (Feb. 25, 2025) at 137, 138-139, 141, 181). Mr. Marin could not finish building his prior home due to health issues. (Tr. T. (Feb. 25, 2025) at 131).

<sup>10</sup> At that point L.M. went to live with his mother. (Tr. T. (Feb. 24, 2025) at 135). But, after a while he was able to live with Mr. Marin again. (Tr. T. (Feb. 24, 2025) at 228).

Opa.<sup>11</sup> (Tr. T. (Feb. 24, 2025) at 128); (Tr. T. (Feb. 25, 2025) at 11, 131, 180).

L.M. [REDACTED] testified that Mr. Marin treated [REDACTED] T.D. [REDACTED] the same as him, like family. (Tr. T. (Feb. 24, 2025) at 194). At some point, friction developed between L.M. [REDACTED] and [REDACTED] T.D. [REDACTED]. (Tr. T. (Feb. 25, 2025) at 132, 186). T.D. [REDACTED] [REDACTED] was coming to Mr. Marin's place because he considered her to be like a granddaughter and family. (Tr. T. (Feb. 25, 2025) at 185, 187, 191).

T.D. [REDACTED] testified that sometimes she slept in Mr. Marin's bed, that he spoke of inappropriate topics. (Tr. T. (Feb. 24, 2025) at 131-132). She testified that inappropriate conduct occurred from the age of six to twelve. (Tr. T. (Feb. 24, 2025) at 134). She stated that this conduct occurred in Mr. Marin's house or the camper van over 100 times. (Tr. T. (Feb. 24, 2025) at 134, 139, 172). This conduct was described as the touching of her vagina with hands and penis, touching of her butt with penis, touching of her breasts, her mouth on his penis, her touching his penis, use of a vibrator on her vagina, and watching porn. (Tr. T. (Feb. 24, 2025) at 135-139, 165-170). Some of this behavior was not mentioned in her 2019 Child Advocacy Center interviews that took place after she told her mother that inappropriate conduct was occurring. (Tr. T. (Feb. 24, 2025) at

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<sup>11</sup> [REDACTED] T.D. [REDACTED] called Mr. Marin Opa, which is German for grandfather. (Tr. T. (Feb. 24, 2025) at 128). She also considered him as her grandfather. (Tr. T. (Feb. 24, 2025) at 180). She asked if she could call Mr. Marin Opa and stated that “[e]veryone asks him that.” (Tr. T. (Feb. 24, 2025) at 180-181); (Tr. T. (Feb. 25, 2025) at 131). Mr. Marin never told her to call him Opa. (Tr. T. (Feb. 24, 2025) at 180-181). Mr. Marin's grandson L.M. [REDACTED] also called him Opa. (Tr. T. (Feb. 24, 2025) at 189-190).

147-149). [REDACTED] T.D. [REDACTED] also testified that there was nothing unusual about Mr. Marin's penis. (Tr. T. (Feb. 24, 2025) at 157). [REDACTED] L.M. [REDACTED] testified that he never saw oral sex or the touching of [REDACTED] T.D. [REDACTED]'s vagina, butt, or breasts. (Tr. T. (Feb. 24, 2025) at 212-213).

Mr. Marin testified that he was diagnosed with prostate cancer in 2018 or 2019. (Tr. T. (Feb. 25, 2025) at 123-124). He also testified to other physical conditions that affect his ability to have committed the alleged crimes. (Tr. T. (Feb. 25, 2025) at 150-154, 165-166). He also testified that he has no sexual interest in children, and denied any sexual acts or inappropriate touching. (Tr. T. (Feb. 25, 2025) at 154-155, 159, 193-194, 200, 213-214). Mr. Marin also stated that he did not rehearse testimony with [REDACTED] L.M. [REDACTED] before in Child Advocacy Center interview in 2019 and that he told [REDACTED] L.M. [REDACTED] to tell the truth. (Tr. T. (Feb. 25, 2025) at 172). Mr. Marin further testified that he did not access the image that was located on the minicomputer in his home, and which was entered into evidence. (Tr. T. (Feb. 25, 2025) at 208-209, 211).

A search of Mr. Marin's residence turned up a minicomputer with sexually explicit images. (Tr. T. (Feb. 25, 2025) at 70-72, 95-96). Mr. Marin objected to the images prior to trial and the trial court allowed one image into evidence. (Tr. T. (Feb. 26, 2025) at 7). Mr. Marin also objected to the photograph and minicomputer evidence at trial, which the court again overruled. (Tr. T. (Feb. 25, 2025) at 87-89).

Prior to admission of the sexually explicit photograph during the trial, the following exchange took place:

MR. BANDA: Well, I figured I'd come up now just to renew because we had talked about this pretrial. So we're getting to the point where the state is admitting the -- the acquisition photos. And the next bit is going to be the photo that we had talked about pretrial. So I just want to renew my objection to the admissibility of the minicomputer, the acquisition photos, anything to do with this-- and specifically the image that the state is going to be introducing. I'm just renewing--. . . We talked about it pretrial and I just want to make sure the record is clear that I'm objecting to it.

THE COURT: And that's fine. And you can -- when you move to offer the exhibits that -- that he's discussing, counsel, I can just simply indicate that your -- you previously had made an objection which is noted and you don't have to restate it, if you would prefer to proceed that way.

MR. BANDA: Yeah, just to -

THE COURT: That's fine.

MR. BANDA: Just to restate, I think the photo is a -- is a non explicit -- when I say non explicit, I mean it's -- it's an otherwise lawful pornographic image. And I think it's of two people having sex, or appearing to have sex, you correct me if I'm wrong, Shannon.

MS. FLAHERTY: I believe it's -- what I would say is an older gentleman having sex with —

THE COURT: Keep your voice down.

MS. FLAHERTY: Why can people hear me? It's an older gentleman having what I would say is sexual relations with not a child, I don't think, but a younger female. But there is a caption on it that says, oh, grandpa. That is the part where the state thinks it shows motive and intent, which is what we argued in the pretrial.

MR. BANDA: Yeah, and my position on that is it's -- it's -- it's an image that --

THE COURT: It will be used as propensity evidence and/or it's not relevant.

MR. BANDA: Yes, thank you.

THE COURT: Okay. Well, the reason I know that is because you articulated those objections very well at the hearing that we had on this a few weeks ago, at which I did -- I did hear the arguments and I had ruled against your position on that. And I will continue to maintain that position here today. I will admit the images. Your objection is -- is noted and you don't need to restate it, and -- I'll — when the state moves to admit, as I said, my thought on it was I would simply indicate that with defense counsel's objection noted they will be admitted.

(Tr. T. (Feb. 25, 2025) at 86-89).

When arguing pretrial, with regard to the motion in limine the State filed regarding sexually explicit images, the trial court ruled that in regards to the two sexually explicit images

that were submitted, and the four images now in the severed counts, as evidence with respect to the sexual assault counts, the Court is going to grant the motion to -- as to one of the images, which is the image that has a caption in it using the word grandpa.

With respect to that image, the Court finds that there is a purpose for offering that image -- a substantial purpose for offering that image with respect to proving motive and intent of the defendant that relates pretty specifically to what the Court finds to be unique allegations -- relatively unique allegations made by the alleged victim in the case, and so the Court finds there is a purpose beyond offering those as propensity evidence that's very substantial and outweighs the potential for unfair prejudice.

With regard to the remaining five images, for the reasons the Court stated with respect to the other four images, the Court would deny the State's motion to offer those on the sexual -- for the purpose of establishing sexual assault. The Court finds that they are not specific enough to issues around motive and intent, and that they have too great a likelihood to be used by the jury as propensity evidence and

that their potential unfair prejudice outweighs the probative value. (M. Hearing (Feb. 6, 2025) at 3-4.

After the State rested Mr. Marin made a motion for acquittal, which the trial court denied. (Tr. T. (Feb. 25, 2025) at 105, 112-119). Mr. Marin renewed his motion for acquittal prior to jury deliberations. (Tr. T. (Feb. 26, 2025) at 119). When discussing jury instructions prior to informing the jury of the law, the following exchange was placed on the record:

MS. FLAHERTY: And then just while we're on the record, just to-- for the sake of it, Mr. Banda did question whether you needed to have mens rea for gross sexual assault. We discussed it and I think Your Honor found a case, which I don't remember what the case was.

THE COURT: Yup, I did, I believe-- well, I think there are probably multiple cases but one I found quickly was State v Rega, R-E-G-A, which is 863 A.2d 917, which seems to clearly stand for the proposition that gross sexual assault does not have a culpable state of mind requirement.

(Tr. T. (Feb. 26, 2025) at 7).

The State discussed uncharged conduct occurring in Mr. Marin's camper van in its closing statement. (Tr. T. (Feb. 26, 2025) at 15, 36). The Child Advocacy Center's video that was played for the jury discussed uncharged conduct. (Tr. T. (Feb. 24, 2025) at 111). The State also discussed the sexually explicit image, Exhibit 9, that it entered into evidence during in its closing. (Tr. T. (Feb. 26, 2025) at 39).

The jury received instruction from the trial court and was sent to deliberate. (Tr. T. (Feb. 26, 2025) at 39, 92-117, 125). After deliberations, the jury reached guilty verdicts on all counts. (Tr. T. (Feb. 27, 2025) at 24-26).

On May 23, 2025, Mr. Marin received a twenty-five year sentence on Count 1 of the indictment, the sentences of the additional six charges ran concurrent. (Sent. T. at 1, 45, 47-48).

## **Issues Presented for Review**

- I. Whether the trial court erred and abused its discretion in admitting State's Exhibit 9, a photograph of a sexual act between unknown individuals captioned "Oh, Grandpa".**
- II. Whether the trial court abused its discretion in admitting testimony about uncharged conduct occurring outside of Kennebec County and the State of Maine.**

## **Statement of Issues Presented for Review**

The trial court erred and abused its discretion in allowing the State to use a sexually explicit photograph to establish its case against Mr. Marin. The photograph was allowed into evidence to show motive and intent due to the “grandpa” allusion in the photograph. The photograph was not linked in time to when the alleged crimes occurred, did not depict any of the actual parties involved in Mr. Marin’s case, would be viewed as propensity evidence by the jury, and was highly prejudicial given its explicit sexual nature. Additionally, the three gross sexual assault charges against Mr. Marin do not require proof of mens rea and, therefore, evidence as to his mental state, including intent and motive, had no basis in Mr. Marin’s case. As such, the trial court should have excluded the photograph from evidence.

The trial court erred in allowing testimony and evidence about uncharged conduct occurring in Mr. Marin’s camper van. The conduct principally occurred outside of the State of Maine and was not part of any of the charges against Mr. Marin. He was not charged with crimes pertaining to anything that happened in the camper van. The use of the uncharged conduct against Mr. Marin was highly prejudicial. Additionally, the uncharged conduct suggests a propensity to have committed to charged crimes. The probative value of the statements was minimal, when compared to the prejudicial effect to Mr. Marin. The State did not need to use the evidence to establish any part of its case. Furthermore, given the fact that

the gross sexual assault charges against Mr. Marin do not require proof of mens rea, allowing in evidence to establish his mental state or reasons for his actions was in error.

## Argument

### **I. The trial court erred and abused its discretion in admitting State's Exhibit 9, a photograph of a sexual act between unknown individuals captioned "Oh, Grandpa".**

"[A] trial court's ruling on evidentiary relevance [is reviewed] for clear error. Dolloff, 2012 ME 130, ¶ 24, 58 A.3d 1032." State v. Hassan, 2013 ME 98, ¶ 21, 82 A.3d 86, 92 (Me. 2013). A Rule 403 finding is reviewed by this Court for an abuse of the trial court's discretion. Id., ¶ 24, 92 (Me. 2013); see also State v. Pierce, 2001 ME 14, ¶ 28, 770 A.2d 630, 637 (Me. 2001). Evidence of prior bad acts under Rule 404(b) is reviewed for clear error. State v. Williams, 2024 ME 37, ¶ 28, 315 A.3d 714, 721 (Me. 2024).

The trial court erred and abused its discretion in allowing the State to use a sexually explicit photograph to establish its case against Mr. Marin.<sup>12</sup> The photograph was allowed into evidence to show motive and intent due to the "grandpa" allusion in the photograph. (M. Hearing T. (Feb. 6, 2025) at 21); (M. Hearing T. (Feb. 2, 2025) at 4). The photograph was not linked in time to when the alleged crimes occurred, did not depict any of the actual parties involved in Mr. Marin's case, would be viewed as propensity evidence by the jury, and was highly prejudicial given its explicit sexual nature. (M. Hearing T. (Feb. 6, 2025) at 7,

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<sup>12</sup> As Mr. Marin is arguing that Exhibit 9 should not have been admitted by the court, it logically encompasses Exhibits 8A, 8B, and 8C as well, which are photographs of Mr. Marin's minicomputer and its hard drive, which were also admitted into evidence over Mr. Marin's objection. (Tr. T. (Feb. 25, 2025) at 84-89).

20-21, 14, 29-30). As such, the trial court should have excluded the photograph from evidence.

Maine Rule of Evidence 401 states:

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

M.R. Evid. 401.

Maine Rule of Evidence 403 states

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

M.R. Evid. 403.

“Prejudice, in this context, ‘is an undue tendency to move the tribunal to decide on an improper basis . . . .’ State v. Hurd, 360 A.2d 525, 527 n.5 (Me. 1976) (citation and internal quotation marks omitted). State v. Pierce, 2001 ME 14, ¶ 28, 770 A.2d 630, 637 (Me. 2001).

Maine Rule of Evidence 404(b) provides that “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on

a particular occasion the person acted in accordance with the character.” M.R. Evid. 404(b).<sup>13</sup>

This Court has stated that it

has long recognized that evidence of prior or subsequent acts similar to the charged offense is admissible for any permissible purpose other than to prove the character of the defendant to show that he acted in conformity therewith. . . M.R. Evid. 404(b) excludes only ‘evidence of other crimes, wrongs or acts . . . to prove the character of a person in order to show that he acted in conformity therewith.’ Such evidence, however, may be admissible for any other permissible purpose. . . In the case at bar, evidence of prior [] acts w[ere] relevant and admissible to show the relationship between the parties that in turn sheds light on defendant’s motive (i.e., attraction toward the victim), intent (i.e., absence of mistake), and opportunity (i.e., domination of the victim) to commit the crimes with which he was charged. State v. DeLong, 505 A.2d 803, 805-806 (Me. 1986).

However, when a trial court is making such a determination, it still must take into consideration “the probative value of the evidence[, which] must not be substantially outweighed by any prejudicial effect pursuant to Rule 403. State v. Turner, 2001 ME 44, ¶ 5, 766 A.2d 1025, 1027.” State v. Krieger, 2002 ME 139, ¶ 8, 803 A.2d 1026, 1029 (Me. 2002).

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<sup>13</sup> The Advisers’ Notes stated that “The subdivision does not exclude the evidence when offered for another purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Maine law is in accord. State v. Aubut, 261 A.2d 48 (Me. 1970)(evidence of attempt to utter forged instrument of same tenor on same day admissible to show knowledge of forgery); State v. Wyman, 270 A.2d 460 (Me. 1970)(evidence of other crime of precisely similar nature admissible to show intent; jury must be carefully instructed as to limited purpose).”

The State sought to use the sexually explicit photograph to establish motive and intent. (M. Hearing T. (Feb. 6, 2025) at 11, 18, 19-20, 21, 23); State's Motion (Feb. 3, 2025) at 1, 2. The photographic image in question "depicts an adult male having sexual intercourse with a younger female with a caption that says 'Oh, Grandpa!'" State's Motion (Feb. 3, 2025) at 2; (Tr. T. (Feb. 25, 2025) at 88, 96).

Mr. Marin argued that

I mean, I understand the argument about motive, but .. but not .. you can't establish motive by saying that somebody has a propensity years after. It has to .. there has to be some nexus in time. You can't find something in the future to come back and say, well, he must have had the motive back then because we found this now. I just don't think that's proper; that's improper. And it's .. and it's .. and it's really the primary basis for the request to sever in addition to the .. in addition to the other reasons that I've laid out. (M. Hearing T. (Feb. 6, 2025) at 14).

The Court and State had a discussion about the use of the photograph as propensity evidence:

THE COURT: So that .. you're not arguing that it shows that he has a propensity to want to have sex with grandchildren. You're saying that in this particular case, it corroborates the allegation?

MS. FLAHERTY: If this was a situation where that .. T.D. never called him Opa, never called him grandpa, and was just another .. I don't think it would be relevant. I don't think it would come in. I don't think it would be more prejudicial than probative. . . . And then that .. that material, those photographs, show the motive, the intent, and the pattern which is allowable under case law. . . . (M. Hearing T. (Feb. 6, 2025) at 21).

The trial court ultimately ruled that

the Court finds that there is a purpose for offering that image -- a substantial purpose for offering that image with respect to proving motive and intent of the defendant that relates pretty specifically to what the Court finds to be unique allegations -- relatively unique allegations made by the alleged victim in the case, and so the Court finds there is a purpose beyond offering those as propensity evidence that's very substantial and outweighs the potential for unfair prejudice. (M. Hearing T. (Feb. 2, 2025) at 4).

First, the trial court erred in finding that the photograph in question, State's Exhibit 9, was relevant under Maine Rule of Evidence 401. (Tr. T. (Feb. 25, 2025) at 95-96); (M. Hearing T. (Feb. 6, 2025) at 4). There was nothing in the photograph for [REDACTED] T.D. [REDACTED] to identify. There was no direct link to the parties in the case. No parts of [REDACTED] T.D. [REDACTED] or Mr. Marin are depicted in the photograph. The State has argued the photograph's relevance is in the "Oh Grandpa" caption and the speculative ages of the people in the photograph. (M. Hearing T. (Feb. 6, 2025) at 21). The State noted that "[i]f this was a situation where that .. [sic] T.D. never called him Opa, never called him grandpa, and was just another .. I don't think it would be relevant." (M. Hearing T. (Feb. 6, 2025) at 21). The photograph is not essential to establishing the events of any of the alleged crimes. It does not actually prove any fact of consequence in the case. Trial testimony showed no other evidence making a link between the commission of the charges and the fact that Mr. Marin was a grandfather. Additionally, the trial testimony showed that [REDACTED] T.D. [REDACTED] asked to call Mr. Marin Opa and that everyone asked to call him

that.<sup>14</sup> (Tr. T. (Feb. 24, 2025) at 180-181). The photograph is tangential to the charges.

The trial court's rationale in allowing the photograph into evidence was because the victim called Mr. Marin grandfather and the court believed it went to establishing motive and intent.<sup>15</sup> (M. Hearing T. (Feb. 2, 2025) at 4). The pseudo grandparent aspect of the relationship with the victim was not addressed in any way that had a consequence on the actual commission of the crimes. There was no aspect to the case that centered on the commission of the crimes and Mr. Marin's position as a grandparent. The contact with the alleged victim was initiated because of a friendship with Mr. Marin's grandson. (Tr. T. (Feb. 24, 2025) at 127-126, 190-191); (Tr. T. (Feb. 25, 2025) at 10-12, 126). And, there was no instruction by Mr. Marin for the alleged victim to call him Opa. (Tr. T. (Feb. 24, 2025) at 180-181). There was also no indication that Mr. Marin viewed the photograph at the time period involved in the charges. (M. Hearing T. (Feb. 6, 2025) at 9-10, 29-30). As such, the photograph has no relevance to Mr. Marin's

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<sup>14</sup> T.D. called Mr. Marin Opa, which is German for grandfather. (Tr. T. (Feb. 24, 2025) at 128). She also considered him as her grandfather. (Tr. T. (Feb. 24, 2025) at 180). She asked if she could call Mr. Marin Opa and stated that “[e]veryone asks him that.” (Tr. T. (Feb. 24, 2025) at 180-181); (Tr. T. (Feb. 25, 2025) at 131). Mr. Marin never told her to call him Opa. (Tr. T. (Feb. 24, 2025) at 180-181). Mr. Marin's grandson L.M. also called him Opa. (Tr. T. (Feb. 24, 2025) at 189-190).

<sup>15</sup> See following section on gross sexual assaults charges and the use of intent and motive to prove such charges.

case and the trial court erred in allowing the sexually explicit image into evidence at trial.

Additionally, under Maine Rule of Evidence 403 the trial court should have excluded the photograph because of the unfair prejudice to Mr. Marin, which substantially outweighed any probative value from the photograph. Testimony that the photograph was found on Mr. Marin's minicomputer clearly prejudiced Mr. Marin in the eyes of the jury. (Tr. T. (Feb. 25, 2025) at 94-96). The photograph was sexually explicit, and not just described, but displayed to the jury. (Tr. T. (Feb. 25, 2025) at 95-96). Admission of the photograph and testimony about it, encouraged the jury to have an emotional reaction to the evidence, and to base its analysis of the evidence on an improper basis, resulting in prejudice to Mr. Marin.

A case in New Hampshire found error in a trial court admitting "photographs of the victim as she appeared in each year the conduct was alleged to have occurred" noting that "photographs added little to the jurors' evaluation of [the victim's] testimony. . . [and] there was a risk that the admission of the photographs would elicit sympathy from the jury when testimony of the alleged conduct was juxtaposed with the images of the young child." State v. Cook, 148 N.H. 735, 738, 813 A.2d 480, 484 (N. H. 2002).

The probative value of Exhibit 9 was minimal. It did not have relevance to proving an actual element of the alleged crime. The State sought to use it for evidence of intent or motive, suggesting a minimal probative value. (Motion H. T.

(Feb. 6, 2025) at 11, 18, 19-20, 21, 23). The State was fully capable of presenting evidence to establish its case without the photograph. The photograph only served to elicit emotions from the jury and encourage it to decide Mr. Marin's case on emotions and not the evidence necessary to prove the State's case.

The prejudice to Mr. Marin was huge. Exhibit 9 and the testimony about the image being located on Mr. Marin's computer distracted from the actual charges and encouraged the jury to base its finding on emotions and its gut reaction to seeing disturbing evidence tangential to the charges. Photographs that are merely calculated to arouse the sympathies or prejudices of the jury should not be admitted.

Furthermore, a Louisiana Court found an abuse of a trial court's discretion when the trial court allowed videos and photographs into evidence, relying partly on the fact that "motive and intent [were] not genuinely at issue[ as a]ggravated rape is a general intent crime, which means that the criminal intent necessary to sustain a conviction is established by the very doing of the proscribed act." State v. Curtin, 376 So. 3d 918, 930-931 (La. 2022).<sup>16</sup>

The three gross sexual assault charges involved in Mr. Marin's case do not have a specific intent requirement, as the Maine

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<sup>16</sup> Also citing a Louisiana case with a similar holding: "See State v. Morgan, 99-1895 (La. 6/29/01), 791 So. 2d 100, 103 (per curiam)('[B]ecause aggravated rape is a general intent crime, in which the [S]tate need prove only that the defendant voluntarily committed the proscribed act of sexual penetration, evidence of the accused's sexual assaults on other victims is not admissible to prove the accused's intent or motive.')." State v. Curtin, 376 So. 3d 918, 931 (La. 2022).

Legislature opted not to require intent in cases of gross sexual assault in order to focus the proof in such cases on whether the victim has been subjected to certain specified conduct by the defendant providing a specified state of mind in the victim without regard to the state of mind of the defendant. We have consistently held that no proof of mental culpability or specific intent is required to sustain a conviction pursuant to Section 253. See, e.g., State v. Taplin, 489 A.2d 1107, 1108 (Me. 1985); State v. Pierce, 438 A.2d 247, 251 (Me. 1981). Mut. Fire Ins. Co. v. Hancock, 634 A.2d 1312, 1314 (Me. 1993).

This Court has clearly stated that the “crime of gross sexual assault does not contain a mens rea element.<sup>17</sup> See 17-A M.R.S. § 253 (2016); State v. Stewart, 2007 ME 115, ¶ 11, 930 A.2d 1031.” State v. Proia, 2017 ME 169, 168 A.3d 798, fn. 3 (Me. 2017); see also State v. Stewart, 2007 ME 115, ¶ 11, 930 A.2d 1031, 1034 (Me. 2017)(citing State v. Ashley, 490 A.2d 226, 229 (Me. 1985) for holding “gross sexual misconduct involving a minor requires no mens rea”).

And, this Court has stated that

**In criminal trials involving an intent element**, we have repeatedly held that evidence of the prior relationship between the accused and the victim is relevant and admissible to establish the accused's motive, intent, or opportunity to commit the crime, or to demonstrate the absence of any mistake or accident. See State v. Roman, 622 A.2d 96, 98-99 (Me. 1993); State v. Young, 560 A.2d 1095, 1096 (Me. 1989); State v. Lewisohn, 379 A.2d 1192, 1201 (Me. 1977). State v. Dilley, 2008 ME 5, ¶ 30, 938 A.2d 804, 811 (Me. 2008) (emphasis added).

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<sup>17</sup> The trial court was aware that gross sexual assault lacked a mens rea element and that fact was placed on the record. (Tr. T. (Feb. 26, 2025) at 7).

The three gross sexual assault charges under Title 17-A M.R.S. § 253(1)(C) do not require a mental state. The trial court should not have allowed Exhibit 9 into evidence because the mental state of Mr. Marin was not an issue. The gross sexual assault charges were the most serious, as Class A crimes, that Mr. Marin faced. See Title 17-A M.R.S. § 253(1)(C). The trial court should have been extra guarded in letting Exhibit 9 into evidence at trial given the serious nature of the alleged crimes.

Moreover, the act depicted in State's Exhibit 9, most aligns with conduct contained within the charge of gross sexual assault, which requires a sexual act. See Title 17-A M.R.S. § 253(1)(C); (Tr. T. (Feb. 25, 2025) at 95-96). This also logically means that the greatest impact from Exhibit 9 was on these charges. The trial court's use of Exhibit 9 to establish motive and intent should not have been allowed, even if there were other specific intent crimes involved in the trial. See Title 17-A M.R.S. § 255-A(1)(E-1); Title 17-A M.R.S. § 260(1)(C); Title 17-A M.R.S. § 454(1)(A)(1). The risk of the jury using Exhibit 9 in rendering its verdict on the gross sexual assault charges was too great.

Moreover, the impact of the photograph was heightened and highlighted by the State in its closing remarks:

And the we get into defendant's motive and intent. And I'm going to talk about the defendant's testimony in a moment. But you heard testimony from Victoria Brennan and Detective Nyberg about a minicomputer that was seized from the defendant's property, from his house. And you also heard from the defendant that this

minicomputer was bolted to the back of his TV in his bedroom, his Anne Frank bedroom, the secluded bedroom that he had to create to get away from his daughter, Lindsey. So it's in a very specific area in a part that's supposed to be just his area. It's the same minicomputer that caused the defendant's demeanor to change when it was discovered by law enforcement. You heard Detective Nyberg say when they were doing the search that the defendant appeared kind of cocky, he didn't seem that worried about anything, wasn't that friendly. But the second that he saw that they had that his demeanor changed. He's talking to them all of a sudden. And he likes talking that he used to be a cop, he brings it up a lot, bringing up rapport, saying, you know, I'm one of you. And the second he sees that minicomputer, he's engaged again. If he has no idea there is anything on there that's concerning, it's up to you decide, I find it's interesting that's the only thing he cared about that they took from his couch.

On that picture, I'm not going to show it to you again, I'm assuming you remember it, it has the picture of a grandfather having sex with a granddaughter with a caption saying oh, grandpa, okay? That image directly depicts the relationship the defendant had with **T.D.** based on the evidence in this case. It shows his motive and his intent. It's reflective of the exact evidence that's in this case, okay? It's about his motive and his intent.

(Tr. T. (Feb. 26, 2025) at 38-39).

The focus on the use of Exhibit 9 to prove motive and intent should have also been excluded as character evidence under Maine Rule of Evidence 404(b). The photograph was propensity evidence that was excludable under Maine Rule of Evidence 404(b) as it was used to show Mr. Marin's particular behavior on an occasion to assert that he acted in accordance therewith. This is particularly so when intent is not an element of a substantial portion of the charges that Mr. Marin stood accused of.

In all, the trial court erred in allowing Exhibit 9 into evidence because intent and motive are not relevant to the gross sexual assault charges and the photograph is therefore ensnared by Maine Rule of Evidence 404(b) and it should have been excluded as improper character evidence.

**II. The trial court abused its discretion in admitting testimony about uncharged conduct occurring outside of Kennebec County and the State of Maine.**

A Rule 403 finding is reviewed by this Court for an abuse of the trial court's discretion. Id., ¶ 24, 92 (Me. 2013); see also State v. Pierce, 2001 ME 14, ¶ 28, 770 A.2d 630, 637 (Me. 2001). Evidence of prior bad acts under Rule 404(b) is reviewed for clear error. State v. Williams, 2024 ME 37, ¶ 28, 315 A.3d 714, 721 (Me. 2024). Unpreserved errors are reviewed by this Court under an obvious error standard.<sup>18</sup> See State v. Brine, 1998 ME 191, ¶ 13, 716 A.2d 208, 212 (Me. 1998); State v. Thomes, 1997 ME 146, ¶ 7, 697 A.2d 1262, 1264 (Me. 1997); State v. Bedrin, 634 A.2d 1290, 1292 (Me. 1993); State v. Shackelford, 634 A.2d 1292, 1295 (Me. 1993); State v. Naoum, 548 A.2d 120, 125 (Me. 1988); M.R.Crim.P. 52(b).

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<sup>18</sup> The test for establishing obvious error has been concisely stated to include a showing, by the defendant, of "(1) an error, (2) that is plain, and (3) that affects substantial rights. . . [e]ven if these three conditions are met. . . a jury's verdict [is] only [set aside] if. . . (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." State v. Dolloff, 2012 ME 130, ¶ 35, 58 A.3d 1032, 1043 (Me. 2012)(internal citations and quotations omitted); see also State v. Poulos, 1998 ME 43, ¶ 3, 707 A.2d 1307, 1307 (Me. 1998)(reviewing under an obvious error standard of review).

The State filed a pretrial motion to allow evidence of prior uncharged conduct occurring in Mr. Marin's camper van to be presented at trial. (M. Hearing T. (Feb. 6, 2025) at 1-4). When addressing the motion, Mr. Marin did not raise objection. (Tr. T. (Feb. 24, 2025) at 4-8).

Maine Rule of Evidence 403 states

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. M.R. Evid. 403.

Maine Rule of Evidence 404(b) provides that “[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.” M.R. Evid. 404(b).<sup>19</sup>

As noted in Section I, this Court has ruled that

[i]n cases involving sexual offenses, evidence of prior similar uncharged conduct has been admitted to show ‘the relationship between the parties that in turn sheds light on defendant's motive (i.e., attraction to the victim), intent (i.e., absence of mistake), and opportunity (i.e., domination of the victim) to commit the crime with which he was charged.’ State v. Nadeau, 653 A.2d 408, 410 (Me. 1995)(citation omitted).

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<sup>19</sup> The Advisers' Notes stated that “The subdivision does not exclude the evidence when offered for another purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Maine law is in accord. State v. Aubut, 261 A.2d 48 (Me. 1970)(evidence of attempt to utter forged instrument of same tenor on same day admissible to show knowledge of forgery); State v. Wyman, 270 A.2d 460 (Me. 1970)(evidence of other crime of precisely similar nature admissible to show intent; jury must be carefully instructed as to limited purpose).”

State v. Poulos, 1998 ME 43, ¶ 4, 707 A.2d 1307, 1307 (Me. 1998).

However, as additionally noted Section I, Mr. Marin has been charged with three Gross Sexual Assault charges that do not require a mens rea element, and, as such, evidence that would go to establish mental state is not relevant at trial. See State v. Proia, 2017 ME 169, 168 A.3d 798, fn. 3 (Me. 2017); see also State v. Curtin, 376 So. 3d 918, 930-931 (La. 2022); State v. Stewart, 2007 ME 115, ¶ 11, 930 A.2d 1031, 1034 (Me. 2017)(citing State v. Ashley, 490 A.2d 226, 229 (Me. 1985) for holding “gross sexual misconduct involving a minor requires no mens rea”).

Moreover, the discussion of conduct occurring outside of the State of Maine in the camper van had no bearing on the charges against Mr. Marin and were highly prejudicial. The probative value of the statements was minimal, particularly given the fact that the gross sexual assault charges do not require proof of mens rea.

Additionally, the camper van was used for trips, most of which, if not all, were outside of the State of Maine, which provides the potential for jury confusion and the basing of a verdict on conduct occurring outside of the State of Maine. (Tr. T. (Feb. 24, 2025) at 129). The uncharged camper van conduct was a central theme in the State’s case against Mr. Marin. (Tr. T. (Feb. 24, 2025) at 81, 84, 86, 129, 130, 132, 134, 163, 192, 198, 202, 203, 212); (Tr. T. (Feb. 25, 2025) at 49, 56, 59-60, 127, 129, 154, 191-192, 193); (Tr. T. (Feb. 26, 2025) at 15, 34, 36, 38).

In the third paragraph of its opening statement the State highlighted this point to the jury, stating that “[h]e would take [REDACTED] T.D. and [REDACTED] L.M. on trips to places like Santa’s Village, Storyland, they even went to Disney World. . . [a]nd they would do all of that in an old Volkswagen camper van.” (Tr. T. (Feb. 24, 2025) at 81).

The words camper or van were mentioned to the jury around 37 times during trial testimony. (Tr. T. (Feb. 24, 2025) at 129, 130, 132, 134, 163, 192, 198, 202, 203, 212); (Tr. T. (Feb. 25, 2025) at 49, 56, 59-60, 127, 129, 154, 191-192, 193). The camper van was mentioned by the State in its opening statement to the jury. (Tr. T. (Feb. 24, 2025) at 81, 84, 86). The camper van was discussed by law enforcement. (Tr. T. (Feb. 25, 2025) at 49, 56, 59-60). Photographs of the camper van were entered into evidence. (Tr. T. (Feb. 25, 2025) at 49, 56, 59-60). Both [REDACTED] T.D. [REDACTED] and [REDACTED] L.M. [REDACTED] discussed the camper van, and conduct occurring therein, in their testimony. (Tr. T. (Feb. 24, 2025) at 129, 130, 132, 134, 163, 192, 198, 202, 203, 212). The camper van was mentioned in the Child Advocacy Center’s interview with [REDACTED] T.D. [REDACTED]. (Tr. T. (Feb. 24, 2025) at 111). Mr. Marin’s testimony encompassed traveling in the camper van. (Tr. T. (Feb. 25, 2025) at 127, 129, 154, 191, 193). The State relied on Mr. Marin’s interviews with law enforcement, which were played for the jury and involved discussion of the camper van. (Tr. T. (Feb. 25, 2025) at 43-45, 47-50, 54-56, 61-62, 134-135); (Tr. T. (Feb. 26, 2025) at 135-136, 138); (Tr. T. (Feb. 27, 2025) at 11-12, 16, 18-19).

The State highlighted the camper van conduct in their closing statements to the jury. (Tr. T. (Feb. 26, 2025) at 15, 34, 36, 38). And, Mr. Marin had to address the camper van in his closing remarks to the jury as well. (Tr. T. (Feb. 24, 2025) at 62, 76).

The State used uncharged conduct as a central tenet of its case. The testimony about the uncharged conduct occurring in the camper van should have been excluded by the trial court. The testimony was propensity evidence that was highly prejudicial to Mr. Marin, affecting his rights and the fairness of the proceeding against him. The uncharged conduct was a core element of the State's case and deeply affected Mr. Marin's ability to be tried on just the charges laid out in the indictment against him.

In all, given that some of the charges against Mr. Marin do not require proof of mens rea, the use of the evidence to show propensity to commit a crime, and the hugely prejudicial effect of the testimony about uncharged conduct at Mr. Marin's trial, it was error for the trial court to have allowed the evidence before the jury.

### **Conclusion**

For the above-reasons, the Appellant asks this Court vacate his convictions and remand his case to the Kennebec County Courts for further proceedings.

Dated: September 30, 2025

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**Certificate of Service**

I, Jeremy Pratt, Esquire, hereby certify that on this date I sent by electronic mail one copy of the foregoing Brief of Appellant, later to be followed by one printed copy, via the U. S. Postal service, to Shannon Flaherty, Esq., Office of the District Attorney, 95 State Street, Augusta, ME 04330.

Dated: September 30, 2025

/s/ Jeremy Pratt  
Jeremy Pratt, Esquire