THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
Sitting as the Law Court

Law Court Docket Number: KEN-25-281

STATE OF MAINE

v.

KENNETH D. MARIN

On Appeal from a criminal conviction entered by the Unified Criminal Court sitting in Kennebec County.

Brief for Appellee – The State of Maine

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STATEMENT OF THE CASE

Procedural History

On September 24, 2021, the Appellant was indicted on eleven charges including three counts of Gross Sexual Assault (Class A), two counts of Unlawful Sexual Contact (Class B), two counts of Unlawful Sexual Touching (Class D) and four counts of Possession of Sexually Explicit Material (Class C). (A. 3, 27-30.) A warrant was issued and the Appellant had his initial appearance set for November 15, 2021. (A. 4.) A superseding indictment was obtained on March 12, 2024, and a charge of Tampering with a Witness (Class C) was added. (A. 8, 22-26.) On April 10, 2024, the Appellant plead not guilty to the twelve count superseding indictment and the matter was set for trial. (A. 9, 10.)

Prior to trial, both parties filed motions in limine that were heard by the trial court in early February 2025. (A. 10-11.) The Appellant had filed a motion to sever Counts 9-12, which was granted over the State's objection. (A. 10.) The State filed three motions in limine, one seeking to admit the Child Advocacy Center video (hereinafter "CAC"), another involving admission of photographic evidence, and the third regarding uncharged conduct. (A. 10-11, 31-37.) The State's CAC Motion was handled on the first day of trial and was admitted over Appellant's objection. (Trial Tr. 64-66 (Feb. 24, 2025)). The second two motions filed by the State were seeking to admit evidence that showed the Appellant's motive, intent, pattern, and

relationship with the named victim. (A. 31-37.) The State's motion regarding specific photographic images was fully litigated, and over Appellant's objection, the trial court granted the motion in part, allowing one picture to be admitted, which was later identified as State's Exhibit 9. (A. 21, 31-33) (Trial Tr. 95 (Feb. 25, 2025)). The State's motion regarding uncharged conduct was not challenged by Appellant and said evidence was admitted at trial. (Trial Tr. 7-8 (Feb. 24, 2025)).

A jury trial was held from February 24, 2025 through February 26, 2025 and a verdict of guilty on counts 1-8 of the superseding indictment was returned on February 27, 2025. (A. 11-12.) The Appellant was granted post-conviction bail and sentencing was set for May 23, 2025. (A. 12-13.) After argument, the Appellant was sentenced as follows:

- Count 1 – Gross Sexual Assault – 25 Years with Lifetime Supervised Release;
- Count 2 – Unlawful Sexual Contact – 10 Years Concurrent;
- Count 3 – Unlawful Sexual Touching – 364 Days Concurrent;
- Count 4 – Gross Sexual Assault – 25 Years Concurrent;
- Count 5 – Gross Sexual Assault – 25 Years Concurrent;
- Count 6 – Unlawful Sexual Contact – 10 Years Concurrent;
- Count 7 – Unlawful Sexual Touching – 364 Days Concurrent; and,
- Count 8 – Tampering with a Witness – 5 Years Concurrent

(A. 13-14).

The severed counts, 9 through 12, remain on the criminal docket in the Kennebec Superior Court and are pending resolution. (A. 15.) The Appellant timely filed this appeal. (A. 15.)

Statement of Facts

Starting at the age of six, and continuing until she was twelve, T.D. was sexually assaulted by the Appellant. (Trial Tr. 126-180 (Feb. 24, 2025).) T.D. met the Appellant through her mother, [redacted], who had known the Appellant as an old friend of her father's. (Trial Tr. 9-12 (Feb. 25, 2025).) When T.D. met the Appellant, he had custody of his grandson, L.M., who was approximately the same age as T.D. (Trial Tr. 127-128 (Feb. 24, 2025); *Id.* 9-14 (Feb. 25, 2025).) At the request of the Appellant, T.D. started spending significant time with him and L.M. (Trial Tr. 11 (Feb. 25, 2025).) In fact, T.D. and the Appellant became so close she began to call him "Opa," the German word for grandfather. (Trial Tr. 128 (Feb. 24, 2025); Trial Tr. 11 (Feb. 25, 2025).)

For those six years, T.D., L.M. and the Appellant became a unit that spent an enormous amount of time together. (Trial Tr. 126-180 (Feb. 24, 2025).) The Appellant would take the children on trips to places like Santa's Village, Storyland, and Disney World. (*Id.* at 129.) There were also camping trips to areas around New England in the Appellant's camper van. (*Id.*) T.D. also spent time with Appellant and L.M. at the Appellant's home in Augusta. (*Id.* at 131.)

The Appellant's home was in a constant state of construction during this time period. (*Id.*) Due to that construction, the Appellant, L.M., and T.D. lived in the basement. (*Id.*) In that basement was a makeshift kitchen, a bathroom with a tub and

shower, the Appellant's bedroom area and sleeping areas for L.M. and T.D. (*Id.*) There were no walls, individual rooms, or doors, just an open space for the Appellant, L.M., and T.D. to share. (*Id.*)

A majority of the sexual abuse occurred in the basement. (*Id.*) Some of the abuse happened continuously. For example, the Appellant continuously touched T.D.'s breasts as she sat in a chair in the middle of the room. (*Id.* at 137.) When she bathed, he would watch her and reach his hands in to touch her breasts and vagina. (*Id.* at 137-138.) The Appellant would bring T.D. into his bed and force her to watch porn with him. (*Id.* at 139.) When T.D. would have nightmares, and get in bed with the Appellant for comfort, he would regularly touch T.D. on her breasts and vagina. (*Id.* at 138.) T.D. also remembered the Appellant regularly touching her anus with his penis. (*Id.* at 113; *see* State's Exhibit 1.) The Appellant commonly used lube to prepare T.D. for the abuse. (*Id.* at 113; *see* State's Exhibit 1.) Sometimes, he would use a vibrator on T.D. instead of his hands, specifically on her vagina. (*Id.* at 165-166.) The Appellant would even force T.D. to hold his penis while he peed. (*Id.* at 138.) T.D. disclosed this abuse happened over 100 times between the ages of six to twelve. (*Id.* at 139.)

Along with the consistent abuse, T.D. discussed specific incidents from her memory. T.D. outlined a time where she woke up to the Appellant attempting to have sexual intercourse with her by touching her vagina with his hands and penis.

(*Id.* at 136; *see* State's Exhibit 1.) Once while T.D. was showering, the Appellant forced T.D. to engage in oral sex by putting his penis in her mouth. (*Id.* at 139.) The Appellant forced T.D. to perform oral sex a second time in his bed, while he wore a blood pressure cuff, to see how the stimulation impacted his blood pressure. (*Id.* at 138-139.)

The sexual relationship between the Appellant and T.D. existed outside the basement as well, namely in the Appellant's camper van. While on trips, either to amusement parks or to campsites, T.D. would stay with L.M. and the Appellant in a small Volkswagen camper van. (*Id.* at 113; *see* State's Exhibit 1 & Def.'s Exhibit 1.) During these trips, the Appellant would attempt to get T.D. to allow him to touch her inappropriately. (*Id.*) The Appellant would also invite T.D. into his bed. (*Id.* at 202.) On the last trip T.D. attended, in Salem, Massachusetts, she refused to have sexual relations with the Appellant. (*Id.* at 113; *see* State's Exhibit 1.) This resulted in a fight between the two, where the Appellant told T.D. to no longer call him "Opa." (*Id.*)

It was shortly after this exchange that T.D. gathered the courage to disclose what the Appellant had been doing to her for the past six years. (*Id.* at 141-142.) That courage manifested during health class where T.D. learned that keeping secrets from your parents is not a safe choice. (*Id.*) After confiding in one of her friends, T.D. finally told her mother what the Appellant had been doing to her, and they

promptly reported it to the authorities. (*Id.* at 113); (*see also* Trial Tr. 39 (Feb. 25, 2025); *see also* State's Exhibit 1.

After T.D.'s disclosure in 2019, Detective Todd Nyberg of the Augusta Police Department was assigned to investigate the case. (Trial Tr. 38-39 (Feb. 25, 2025).) Det. Nyberg received a referral from the Department of Health and Human Services and quickly scheduled interviews with the parties. (*Id.*) Specifically, Det. Nyberg set up CAC interviews for both T.D. and L.M. (Trial Tr. 41-42 (Feb. 25, 2025).) Those interviews of T.D. and L.M. depicted very different versions of what happened. (Trial Tr. 113, 120 (Feb. 24, 2025); *see* State's Exhibit 1 and Def. Exhibit 1.)

During L.M.'s CAC interview, when he was approximately twelve years old, he stated he never saw anything inappropriate happen between T.D. and the Appellant. (Trial Tr. 120 (Feb. 24, 2025); *see* Def. Exhibit 1.) In fact, he explained that it was impossible for anything to have ever happened between T.D. and the Appellant because he, L.M., was always there when T.D. and the Appellant spent time together. (*Id.*) L.M. explained T.D. was simply upset about money and that he generally did not like spending time with her, but the Appellant continued to invite T.D. to the house and on trips. (*Id.*) L.M. further outlined that prior to his interview, he and the Appellant had discussed what types of questions would be asked, even rehearsing how L.M. would respond. (*Id.*) L.M. disclosed he was very concerned about what would happen to him if anyone believed T.D., because he wanted to

continue to live with the Appellant. (*Id.*) L.M. informed the interviewer that the Appellant spoke to him about how he may go to jail if anyone believed T.D. (*Id.*)

Once both T.D. and L.M. had been interviewed, Det. Nyberg reached out to the Appellant. (Trial Tr. 43 (Feb. 25, 2025).) The Appellant willingly agreed to speak to law enforcement at the Augusta Police Department. (*Id.*) During their conversation, the Appellant made numerous comments about his many illnesses, T.D.'s motive being money centric, and that T.D. was an over sexualized child. (*Id.* at 45-55; *see* State's Exhibit 3.) The Appellant stated he never shared a bed with T.D., that he barely even hugged or touched her. (*Id.*) Additionally, the Appellant repeatedly denied T.D.'s allegations and claimed they were impossible. (*Id.*) This impossibility was based on the Appellant's assertions that because of his living situation, in the open basement, and L.M.'s continuous presence when he was with T.D., nothing inappropriate could have happened between him and T.D. without L.M. seeing it. (*Id.*) The Appellant implored law enforcement to speak to L.M., who would corroborate his story. (*Id.*) He even invited them to see his home and camper, continuously emphasizing the abuse could not have happened in those spaces without L.M. seeing. (*Id.*) Det. Nyberg did view the Appellant's home and camper van, documenting how close L.M., T.D., and the Appellant were in those spaces. (*Id.* at 56-60.)

After interviewing the Appellant, the investigation became stagnant until 2021, when Det. Nyberg received a second referral from the Department. (*Id.* at 70.) This referral again involved L.M., who had come forward with new and different information from his original interview in 2019. (*Id.* at 188-211.) L.M. disclosed that his previous statements about never seeing anything inappropriate between T.D. and the Appellant were untrue. (*Id.* at 230.) In fact, L.M. physically observed the Appellant engage in inappropriate behavior involving T.D. on a regular basis. (*Id.* 194-204.) For example, L.M. explained the Appellant often just wore his underwear when T.D. spent the night, he would touch her often, and the Appellant would watch T.D. bathe and even assist her in the bath when she was nude. (*Id.* at 200-201, 203.) L.M. even discovered the Appellant had lubricant in his bedside table. (*Id.* at 208.)

Additionally, L.M. noted the Appellant and T.D. often shared a bed, both in the basement and the camper. (*Id.* at 197-198.) L.M. shared that while T.D. was allowed in the Appellant's bed, he was not, causing him to snoop. (*Id.* at 198.) At night, L.M. would sneak out of his bed to try and see what the Appellant and T.D. were doing in bed together. (*Id.*) He detailed seeing the Appellant force T.D. to watch pornographic videos while lying in bed next to him. (*Id.*) L.M. said T.D. seemed uncomfortable when forced to watch these videos. (*Id.* at 199.)

L.M. also observed the Appellant making T.D. physically uncomfortable. (*Id.* at 199-200.) L.M. recalls seeing the blankets move frequently when the Appellant and T.D. shared a bed, hearing a buzzing noise at times, and seeing T.D. have a strange reaction. (*Id.*) L.M. described it looked like T.D. needed to pee, her legs were twitching, and that something was irritating her while she lay in bed next to the Appellant. (*Id.* at 200.) L.M. detailed he once confronted the Appellant about what he had seen, and in response the Appellant sent him to sleep upstairs, leaving T.D. and the Appellant alone in the basement. (*Id.* at 201-202.)

When asked about his previous statement, L.M. asserted the Appellant had coached him prior to that CAC interview. (*Id.* at 209.) The Appellant went over what the questions may be, told L.M. how to respond, and said if things did not go "correctly" L.M.'s life would be miserable. (*Id.*) The Appellant even offered to buy L.M. certain video games if the interview went well. (*Id.* at 210.) The Appellant made clear if anyone believed T.D., L.M. may have to live with his mother, who was unstable at the time. (*Id.* at 210-211.) L.M. very much wanted to live with the Appellant and was scared that if he was taken away from him, he "would not be in a good situation." (*Id.* at 210-211.) That ongoing fear and pressure from the Appellant led L.M. to lie in his initial interview. (*Id.* at 230.) However, after moving out of the Appellant's home and escaping his influence, L.M. felt safe in coming forward with what he observed the Appellant do to T.D. (*Id.*)

With this updated statement from L.M., Det. Nyberg reopened his investigation and applied for a search warrant for the Appellant's home. (Trial Tr. 70 (Feb. 25, 2025).) During the execution of that warrant, law enforcement collected numerous electronic devices, including a minicomputer from the Appellant's bedroom. (*Id.* at 71.) Det. Nyberg noted the Appellant was generally calm when they were collecting items, but that his demeanor changed when he saw law enforcement had found the minicomputer. (*Id.*) After collection, the devices were provided to the Maine Computer Crimes Unit to be analyzed. (*Id.* at 72.)

Analyst Victoria Brennan examined the minicomputer and found identifying features on the device. (*Id.* 93-94.) Specifically, she was able to find both an email and profile under the Appellant's name on the minicomputer. (*Id.*) Under the Appellant's profile, Analyst Brennan found an image of interest, which was later admitted into evidence as State's Exhibit 9. (*Id.* at 94-95.) The image depicted an older male, fully nude, engaging in sexual intercourse with a young nude female. (*Id.* at 96.) On the image was a written statement, located over the young female's head, which stated "Oh, Grandpa!" (*Id.*; see State's Exhibit 9.) Shortly after collecting the forensic evidence, Det. Nyberg submitted his investigation for prosecution and this case followed.

ISSUES PRESENTED

I. Whether the trial court abused its discretion by admitting State's Exhibit 9 as relevant evidence that depicted the Appellant's motive, intent, and relationship with the victim?

II. Whether the trial court erred by admitting evidence involving uncharged conduct?

SUMMARY OF ARGUMENTS

1. The trial court was well within its discretion to grant the State's motion in limine regarding admission of State's Exhibit 9 as it directly related to the Appellant's motive, intent, and relationship with the victim. State's Exhibit 9 depicted the Appellant's attraction to the victim, illustrating his motive to sexually abuse T.D. Any unfair prejudice was outweighed by the probative value the evidence encompassed by depicting the exact relationship that existed between the Appellant and the victim, thus complying with M.R. Evid. 403 and relevant case law in cases involving sexual abuse.

2. The trial court should not entertain the Appellant's arguments as to uncharged conduct because admission was expressly waived at trial. If this Court does consider the Appellant's argument, the trial court properly permitted evidence of uncharged conduct as it again established the parties' relationship. Evidence of uncharged conduct has been consistently permitted in cases involving sexual abuse to show how the history of that relationship goes to a defendant's motive, intent, and opportunity to commit the crime.

ARGUMENT

I. The trial court did not abuse its discretion by admitting State's Exhibit 9 as relevant evidence that depicted the Appellant's motive, intent, and relationship with the victim, as permitted by case law.

When faced with a challenge to a trial court's decision in admitting certain evidence, this Court reviews the findings under an abuse of discretion or clear error standard. *State v. Mooney*, 2012 ME 69, ¶ 9, 43 A.3d 972. Clear error is applicable when a factual dispute exists, and this Court "will not disturb the court's factual findings if they are 'supported by competent evidence in the record.'" *State v. Thomas*, 2010 ME 116, ¶ 14, 8 A.3d 638 (citing *Efstathiou v. Aspinquid, Inc.,* 2008 ME 145, ¶ 35, 956 A.2d 110.) If there is a challenge to evidence being admitted under Rule 403, this Court reviews the trial court's findings under an abuse of discretion standard. *State v. Pierce*, 2001 ME 14, ¶ 28, 770 A.2d 630. "The decision to admit or exclude evidence is more frequently reviewed under an abuse of discretion standard 'because the question of admissibility frequently involves the weighing of probative value against considerations militating against its admissibility.'" *State v. Sargent*, 656 A.2d 1196, 1199 (Me. 1995) (citing *State v. Robinson,* 628 A.2d 664, 666 (Me.1993)).

Under the Maine Rules of Evidence, specifically M.R. Evid. 401, evidence is admissible 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." With that, even relevant evidence can be deemed inadmissible if its probative value is substantially outweighed by the risk of unfair prejudice. Rule 403 states a 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. In addition to concerns about prejudicial evidence, the Rules provide 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).

Focusing on the issue of character evidence, this Court has held that even though M.R. Evid. 404(b) generally prohibits character evidence for the purposes of propensity, cases involving sex offenses are analyzed differently. *State v. Hunt*, 2023 ME 26, ¶ 51, 293 A.3d 423. Specifically, this Court has held that:

> evidence of prior similar uncharged conduct has been admitted to show the relationship between the parties that in turn sheds light on the 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. The probative value of the evidence must not be substantially outweighed by any prejudicial effect pursuant to [M.R. Evid.] 403.

Id. (citing *State v. Krieger*, 2002 ME 139 ¶ 8, 803 A.2d 1026.).

Here, State's Exhibit 9 was properly admitted pursuant to the Maine Rules of Evidence and case law detailed above. First, on the issue of relevance under Rule

401, the image depicted an unknown adult male having sexual intercourse with an unknown female, one of the sex acts the Appellant engaged in with T.D. Not only does it portray similar sex acts, but it is an image about the parties' relationship, grandfather and granddaughter. The fact the Appellant has an image on his personal computer illustrating his exact relationship with T.D., engaging in the criminal activity alleged, is certainly relevant as it has a tendency to show the facts at issue are "more or less probable." M.R. Evid. 401.

Moving to Rule 403, the probative value of State's Exhibit 9 outweighed any potential prejudicial concerns. As noted throughout the record, specifically in State's Exhibit 3, the Appellant stated numerous times the sexual abuse could not have happened because he had no sexual desire. *See* (Trial Tr. 50, 153-154 (Feb. 25, 2025).) At trial, the Appellant even identified himself as asexual. (*Id.* at 153.) This image, which was found on the Appellant's private computer in his secluded bedroom, contradicts the Appellant's continuous claims that he is not capable of sexual desire. (Trial Tr. 141, 206 (Feb. 25, 2025).) Even more probative is that the photograph is not simply a sexual image, it is an image that is directly correlated to the Appellant's relationship with T.D. *See* State's Exhibit 9. Any prejudicial aspect of the image is substantially outweighed by the probative value it holds on contradicting any significant defense. Additionally, and as will be further addressed

below, the image encapsulates the Appellant's motive, intent, and relationship with T.D., which substantially outweighs any prejudice the image may carry.

Finally, the Appellant's concern about the image violating Rule 404 is misguided based on this Court's precedent. This Court has held for over 20 years that application of Rule 404 differs in cases involving sexual offenses. *Hunt*, 2023 ME 26, ¶ 51, 293 A.3d 423 (citing *State v. Krieger*, 2002 ME 139 ¶ 8, 803 A.2d 1026). Also, as noted in the record, this case originally had several charges regarding possession of sexually explicit material that were severed over the State's objection. (A. 21). This Court has found that sexually explicit images, even if they do not involve the named victim, are relevant because they "demonstrate[] [the Defendant's] motive and intent in the physical contact that occurred . . . and to show the similarity between some of the conduct displayed on the sexually explicit materials and the conduct about which the victim testified." *State v. Parsons*, 2005 ME 69, ¶ 14, 874 A.2d 875. State's Exhibit 9 plainly shows the Appellant's motive, attraction, and intent regarding his relationship with T.D. We are not dealing with random sexual images that have no connection to the facts at issue. This is an image that goes directly to the nature of the parties' relationship, a sexual one between a grandfather and his granddaughter, and depicts the sexual abuse T.D. suffered.

It is also important to note there were numerous images on the Appellant's minicomputer that were sexual in nature. (A. 21.) The State sought to admit these

images. (A. 31-33.) The trial court reviewed that request, did a Rule 403 analysis, and found that only State's Exhibit 9 was "unique" enough, based on the Appellant's grandfather role to T.D., to substantially outweigh any prejudicial or character concerns. (*Id.*) The trial court's thoughtful review, and later admission of State's Exhibit 9, was not an abuse of discretion and is not a basis for overturning the conviction.[1]

II. This Court should not entertain Appellant's arguments as to uncharged conduct as any challenge was waived at trial. With that, even if this Court were to grant review, the trial court did not err by admitting evidence involving uncharged conduct as it showed the Appellant's pattern, motive, intent, and relationship with the victim.

Appellate review is not allowable if the challenge at trial was expressly waived. More specifically, "[i]f a defendant explicitly waives the delivery of an instruction or makes a strategic or tactical decision not to request it, we will decline to engage in appellate review, even for obvious error." *State v. Harding*, 2024 ME 67, ¶ 21, 322 A.3d 1175 (quoting *State v. Nobles*, 2018 ME 26, ¶ 34, 179 A.3d 910); *see also State v. Rega*, 2005 ME 5, ¶ 17, 863 A.2d 917 (finding "[w]hen a party affirmatively agrees to a court action, that party has failed to preserve the action for appellate review.")

[1] Even if this Court finds an error did occur, such error was harmless. This Court has made findings that if evidence is admitted in error, it can be harmless if the error did not affect the verdict. *State v. Rega*, 2005 ME 5, ¶ 19, 863 A.2d 917. Here, there was other evidence regarding the sexual abuse the Appellant inflicted on T.D. Specifically T.D.'s CAC statement, her testimony, L.M.'s testimony, even portions of the Appellant's own statements and testimony, supported the verdicts rendered by the jury. While the State maintains no error occurred, admission of State's Exhibit 9 would be harmless error if reviewed under the totality of the circumstances.

If this Court does entertain the Appellant's arguments as to uncharged conduct, challenges to a trial court's ruling that was not preserved by a defendant are reviewed by this Court under an obvious error standard. *State v. Dolloff*, 2012 ME 130, ¶ 35, 58 A.3d 1032. To establish obvious error, a defendant has the burden to show there is "(1) an error, (2) that is plain, and (3) that affects substantial rights." *State v. Pabon,* 2011 ME 100, ¶ 29, 28 A.3d 1147. However, even if those three factors are met, this Court will only reverse if it finds that "the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.*

The evidence being challenged in this case involves uncharged conduct. (Blue Br. 32-36.) As detailed above, uncharged conduct that goes to a defendant's motive, intent, and relationship with a victim can be admissible so long as it complies with other relevant Rules of Evidence. *Hunt*, 2023 ME 26, ¶ 51, 293 A.3d 423.

First, the Appellant waived any argument to the admissibility of this evidence at trial. In fact, the Appellant is challenging his ***agreement*** to the admission of uncharged conduct at trial. (Trial Tr. 5-8 (Feb. 24, 2025).) This is not just an issue of not preserving an objection, the State filed a motion in limine, the trial court was prepared to address it, and the Appellant ***consciously*** did not object. (*Id.*) The Appellant further notes the number of times the camper van was mentioned at trial but does not acknowledge that ***he*** brought that ***same*** evidence in numerous times.

See (Trial Tr. 99, 117, 176 (Feb. 24, 2025) (Trial Tr. 129 (Feb. 25, 2025) (Trial Tr. 62-63 (Feb. 26, 2025), *see also* Def. Exhibit 1.

This Court should not address this challenge as it was so clearly waived. With that, even if this Court did entertain the Appellant's argument, admission of the uncharged conduct evidence does not rise to obvious error as it most definitely is not one that "seriously affects the fairness and integrity or public reputation of judicial proceedings." *Pabon,* 2011 ME 100, ¶ 29, 28 A.3d 1147. The State and Appellant both used the uncharged conduct in their case in chief, the fact that it was more successful for the State is not a basis for reversal.

Second, as mentioned above, there is decades long precedent that uncharged conduct in sex offense matters which show motive, intent, and the relationship between the parties is regularly admissible at trial. *Hunt*, 2023 ME 26, ¶ 51, 293 A.3d 423. As applied to this case, T.D.'s allegations of sexual abuse on trips in the camper van, and L.M.'s later corroboration, is conduct directly connected to the parties' relationship. (Trial Tr. 120-180 (Feb. 24, 2025).)

Third, the Appellant argues, as to both the admission of State's Exhibit 9 and the uncharged conduct, that evidence regarding motive or intent should not be admitted in cases with charges of gross sexual assault due to a lack of mens rea. (Blue Br. 20, 29, 34, 36.) Specifically, the Appellant argues that since there is no element requirement to prove mens rea, any evidence that goes to mental state is

irrelevant. (*Id.* at 34.) A ruling as requested by the Appellant would deem evidence of the ***relationship*** between the parties irrelevant to any fact finder. *Id.* That means any evidence of grooming, attraction, or sex acts that happened in other jurisdictions is automatic error. Such a finding goes against years of precedence and should not be considered by this Court. *Hunt*, 2023 ME 26, ¶ 51, 293 A.3d 423; *see also Krieger*, 2002 ME 139 ¶ 8, 803 A.2d 1026.

CONCLUSION

For the aforementioned reasons, the State requests this Court to affirm the verdicts of the jury consistent with the arguments made above.

Respectfully Submitted,

Date:

_____
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CERTIFICATE OF SERVICE

I, Shannon Flaherty, Assistant District Attorney, hereby certify that one (1) copies of the within Brief for Appellant were mailed to Appellant's Attorneys addressed as follows:

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The State has sent a native .pdf file for submission to the court (at lawcourt.clerk@courts.maine.gov).

Respectfully Submitted,

Date:

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