STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. KEN-25-299

STATE OF MAINE,

Appellee

v.

STEVEN TRUMAN,

Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET OF KENNEBEC

APPELLANT'S BRIEF

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. Background of Charges

On September 19, 2024, a grand jury indicted the defendant, Steven Truman, for tampering with a victim under 17-A M.R.S. section 454 (1-B)(A)(1), a class B offense, and improper contact with victim pre-bail, a class D offense.[1] (A. at 31.) The State alleged that on July 28, 2024, Mr. Truman tampered with A.D. [redacted] whom it named as the victim in criminal charges the next day, July 29, 2024, (State's Ex. 7), charges that it dismissed before trial, (Def's Ex. 19).

The basis of the charges were conversations between Mr. Truman and A. [redacted] after his arrest. These conversations were captured in the Kennebec County Correctional Facility's recording system, which recorded Mr. Truman saying "play it off" on July 28, 2024, before the complaint was filed, while discussing the origin of marks on A.D. [redacted]'s body. (State's Ex. 3.) The State argued that Mr. Truman's statement was an inducement for A.D. [redacted] to lie. (Trial Tr. vol. 2, 66:18–67:15, Mar. 18, 2025.) Mr. Truman, on the other hand, argued that the context of the statements demonstrated that he was not inducing A.D. [redacted] to lie, but reminding her that the marks were from roughhousing with children the previous day, a theory that had corroborating evidence. (Trial Tr. vol. 2, 73:3–21.) In other recordings, A.D. [redacted] was recorded admitting that she had

[1] The State later dismissed Count 3 of the indictment, Violation of Condition of Release.

lied to police (Def's Ex. 11), insisting that Mr. Truman had not been trying to tamper with her, (Def's Ex. 12), describing the charges as "ridiculous" (Def's Ex. 15), and encouraging Mr. Truman to fight them (Def's Ex. 18).

These recordings were admitted over objection through the testimony of Phillip Lynch, an investigator for the District Attorney's office who was not an employee of the jail, but had access to the jail's recording system and testified that he was able to identify and date calls made by Mr. Truman using a PIN number associated with his name. (Trial Tr. vol. 1, 115:17–116:25, Mar. 17, 2025.)

II. Definition of "Victim"

Before trial, Mr. Truman filed a Motion *in Limine*, arguing that the State needed to prove that A.D. was an actual, not alleged, victim to convict him of victim tampering, and asking the court to exclude evidence that merely showed that A.D. was an alleged victim. (A. at 42-43.) The State filed its own motion, asking for clarification of what the word "victim" means for purposes of the tampering charge and asking that the state not be required to prove beyond a reasonable doubt that Mr. Truman committed a crime against A.D. . (A. at 45.) Relying on legislative history, the court granted the State's motion and denied the Defendant's, stating, "regarding whether or not the State has to prove beyond a reasonable doubt that A.D. was the victim of a crime. That is not an element that the jury will be instructed about." (A. at 21:4-8.)

A.D. did not testify at trial and the State did not attempt to prove that she was the actual victim of a crime. Nevertheless, the State referred to her as a "victim" during its presentation of evidence, (Trial Tr. vol. 1, 38:9, 69:23, 73:9–10, 77:5–7), elicited witness testimony that referred to her as a victim (Trial Tr. vol. 1, 72:16–19), and introduced a documentary exhibit that referred to A.D. as Mr. Truman's victim. (A. at 70.)

At the close of evidence, Mr. Truman moved for acquittal, arguing again, among other things, that the State had not proven that Mr. Truman tampered with a "victim," as required to prove the charge of victim tampering. (Trial Tr. vol. 2, 17:6–18:1.) The trial court denied the motion, determining that "the State does not have to prove beyond a reasonable doubt that there was a domestic violence, that the defendant committed assault, a domestic assault beyond a reasonable doubt." (Trial Tr. vol. 2, 39:9–17.)

Mr. Truman also asked for a mistrial based on the inappropriate admission of testimony and exhibits referring to A.D. as a "victim." (Trial Tr. vol. 2, 34:23–35:2.) That request was denied. (Trial Tr. vol. 2, 42:18–22.)

On the charge of tampering with a victim, the court instructed the jury that the State needed to prove:

> [T]hat A.D. was the *alleged victim* in the official proceeding or the official investigation that was pending or would be instituted in the future, and that Mr. Truman did induce or cause or

> attempt to induce or cause A.D. either to testify or inform falsely.

(Trial Tr. vol. 2, 93:22–94:1) (emphasis added). Mr. Truman objected to this instruction on the basis that it did not conform to the law and did not require the State to prove that A.D. was the actual victim of a crime beyond a reasonable doubt. (A. at 22:22-23:14.)

III. Burden Shifting in Closing Arguments

During its closing argument, the State made comments that shifted the burden of proof onto the defense. Specifically, counsel for the State said:

> At the end of the day, at the end of this case, and I've said it before and I'll say it again, and I'll probably say it again, in order for this all just to be one great big misunderstanding, the defendant has to have a definition of the phrase "play it off" that doesn't mean to minimize, to falsify, to come up with a story, to pretend it didn't happen.

(Trial Tr. vol. 2, 67:1–6.) Mr. Truman raised an objection and asked for a mistrial on the basis that the State had improperly shifted the burden of proof on the defense. (A. at 25:20-26:5.) The Court denied the request for a mistrial but agreed to "emphasize the burden and that the defendant doesn't have to prove anything." (A. at 26:12-15.)

IV. Victim/Witness Advocate Records

Before trial, Mr. Truman asked the trial court to conduct an *in camera* inspection of victim/witness advocate records over which the State had invoked a

privilege. (A. at 33.) Mr. Truman explained to the court that *in camera* review of those records was necessary because the alleged victim had given statements to detectives and investigators that tended to negate the defendant's guilt, that she described her initial report as exaggerated, and that she said that Mr. Truman did not belong in jail. (Mot. for *in Camera* Inspection of Victim/Witness Advocate Rs. Hr'g Tr., Dec. 20, 2024, 6:22–7:11.) After Mr. Truman filed that motion in December, the State provided an August 21, 2024, letter from the State's victim/witness advocate in which she stated that on July 29, 2024 "[The alleged victim] said that nothing happened between her and Steven."[2] (Hr'g Tr. 7:12–18; A. at 71.) Mr. Truman argued that the disclosure was incomplete and perhaps misleading, pointing out that discovery included a partial recording of a conversation between A.D. and the victim/witness advocate in which A. [redacted] did not say that "nothing happened," but provided details about the incident that led to Mr. Truman's arrest. (Hr'g Tr. 7:19–24.) The recording included the otherwise undisclosed statement: "The felony that he is being charged with is ridiculous, and he doesn't deserve this." (Hr'g Tr. 7:19–24.)

[2] Maine Rule of Criminal Procedure Rule 16(a)(2)(D) requires the state to automatically provide "A statement describing any matter or information known to the attorney for the State that may not be known to the defendant and that tends to create a reasonable doubt of the defendant's guilt as to the crime alleged." This letter, which was apparently drafted long after the July 29, 2024, incident that it describes, omits important details about the incident and therefore does not satisfy this discovery requirement. As the victim/witness advocate's court testimony would later confirm, there was more detail of an exculpatory nature within the advocate's recollection that should have been included in that summary.

Notwithstanding the concerning difference between what the advocate disclosed in her letter and what was partially captured in an audio recording, counsel for the State assured the court that "I would guarantee that if this Court were to grant this motion, they would look at any information we had, and they would say there's nothing there. I would guarantee it." (Hr'g Tr. 9:1–6.) Although the State conceded that there could be disagreement about what is, in fact "exculpatory," it argued that the question should be left to the prosecutor's own judgment. (Hr'g Tr. 10:18–11:5.)

Based, at least in part, on these reassurances, the court denied Mr. Truman's motion, calling his concerns about undisclosed exculpatory evidence "speculative" and stating that it was "unwilling to review otherwise privileged communications over speculative concerns." (A. at 12-13.)

As it turned out, there was more. At trial, the victim witness advocate testified and provided previously-undisclosed exculpatory information. Specifically, she testified that she spoke to the alleged victim and that "she was indicating that she didn't know why he was arrested. She wanted him home. She—he was a financial person, and that nothing happened." (Trial Tr. vol. 1, 136:23–137:1.) On cross-examination, when confronted with the partial recording of that conversation, she conceded that there was even more to the conversation than what she had included in her August 21 letter. (Trial Tr. vol. 1, 147:1–147:25.) Mr.

Truman moved for acquittal due to the failure to disclose information, but the trial court denied the motion. (Trial Tr. vol. 1, 155:6, 177:3–6.)

To date, no court has conducted *in camera* inspection of victim/witness advocate records to determine whether they contain exculpatory information. What is in those records is only known to the State.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred by providing jury instructions on the charge of victim tampering that allowed a finding of guilt when the object of tampering was an alleged, not actual, victim contrary to the plain language of 17-A M.R.S. section 454.

2. Whether the trial court erred by admitting unfairly prejudicial evidence over Defendant's objection contrary to Maine Rule of Evidence 403.

3. Whether the trial court erred by admitting jail recordings through the testimony of a non-custodian witness.

4. Whether the trial court erred by denying Defendant's request for an *in camera* inspection of victim witness advocate records as permitted under 16 M.R.S. section 53-C.

5. Whether the trial court wrongly denied Defendant's motion for a mistrial after the State improperly shifted the burden of proof to the defendant in its closing argument.

ARGUMENT

I. The trial court misinterpreted 17-A M.R.S. section 454 as not requiring proof that a person is, in fact, a "victim" to sustain a conviction for victim tampering.

The trial court permitted the State to convict Steven Truman of victim tampering without any proof that there was, in fact, a victim. This was contrary to the plain language of the victim tampering statute, 17-A M.R.S. section 454 (1-B), which states:

> A person is guilty of tampering with a victim 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:
> A. Induces or otherwise causes, or attempts to induce or cause, a victim:
> (1) To testify or inform falsely; or
> (2) To withhold testimony, information or evidence.

Proof that a tampered individual is "a victim" is the key element that distinguishes victim tampering from juror or witness tampering, which are defined separately under section 454. *Compare* 17-A M.R.S. § 454(1-B) *with* 17-A M.R.S. § 454(1)-(1-A). That language is not ambiguous and must be given its plain and ordinary meaning. Unfortunately, the trial court failed to apply well-established rules of interpretation and broadened the statute beyond that plain meaning. This error resulted in prejudice to Mr. Truman throughout the trial, including the instructions to the jury.

a. The word "victim," as used in section 454 should be given its plain and ordinary meaning.

"Statutory interpretation is a question of law that [the Court] review[s] de novo." *State v Beaulieu*, 2025 ME 4, ¶ 14 (citing *State v. Santerre*, 2023 ME 63, ¶ 8). The Court looks first to determine the plain meaning of the statute "to determine its meaning if we can do so while avoiding absurd, illogical, or inconsistent results." *State v. Marquis*, 2023 ME 16, ¶ 14. "Unless the statute itself discloses a contrary intent, words in a statute must be given their plain, common and ordinary meaning, such as the average person would usually ascribe to them." I*d.* When interpreting criminal statutes, the rules of lenity and of strict construction also guide the Court's interpretation. *See id.* Under those rules, "any ambiguity left unresolved by a strict construction of the statute must be resolved in the defendant's favor." *Id.*

Dictionary definitions are often useful for interpreting language where the legislature has not provided a statutory definition. In *State v. Marquis*, for example, the Court was asked to interpret the phrase "other official" as used in 17-A M.R.S. section 253(2)(F), which defines gross sexual assault as a sexual act committed on a student by a teacher, employee, or "other official" of a school. *See id.* at ¶10.

The Court determined that the phrase was not ambiguous. Although the phrase "official" had a broad meaning, that meaning was clear. *See id.* at ¶ 16. Referring to various dictionary definitions, the Court read "official" as meaning

"someone whom an organization has empowered to exercise authority." *Id.* at ¶ 17. Consequently, a driver's ed teacher whom the school authorized to teach students at the school was an "other official" for purposes of section 253(2)(F).

Like the word "official" in *Marquis*, the word "victim" lacks a statutory definition that is strictly applicable to section 454. But, as was the case in *Marquis*, the word is easily defined. Merriam-Webster defines "victim" as "one that is acted on and usually adversely affected by a force or agent." *Victim*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/victim (last visited Sept. 8, 2025). Black's Law Dictionary similarly defines the term as "[a] person harmed by a crime, tort, or other wrong." *Victim,* Black's Law Dictionary 749 (2d Pocket Ed. 1996). These definitions reflect common usage and, importantly, would only include individuals who have actually suffered harm, not those who merely allege that they have been harmed or those whom others believe to have been harmed.

Although there is no statutory definition of the word "victim" that is strictly applicable to section 454(1-B), definitions found elsewhere in Maine statutes carry the same hallmark as those from the dictionaries: a victim is one who is *actually* harmed, not supposedly or allegedly harmed. *See* 17-A M.R.S. § 2002 ("'Victim' means a government that suffers economic loss or a person who suffers personal injury, death or economic loss as a result of a crime or the good faith effort of any person to prevent a crime."); 17-A M.R.S. 2101(2) ("'Victim' means a person who

is the victim of a crime."); 16 M.R.S. § 53-C (1)(B) ("'Victim' means a person against whom a crime has been committed.").

Notably, where the legislature has meant to broaden the scope of a victim-protection law to include alleged—and not just actual—victims, it has done so explicitly. *See* 24 M.R.S. § 2907 (creating a rule of admissibility for statements made to an "alleged victim"); § 2986 (addressing forensic examinations of "alleged victims" of sexual assault); 5 M.R.S. § 3360-M (governing payment for forensic examinations of "alleged victims"); 30-A M.R.S. § 287 (governing payment for physical examination of "alleged victims"). Indeed, in a statute closely analogous to section 454, the legislature deliberately used the phrase "alleged victim" to delineate the individuals whom it protects. *See* 15 M.R.S. § 1094-C ("A person is guilty of improper contact with an *alleged murder victim's* family or household member if . . . [t]he person is being detained as a result of the person's arrest for the intentional or knowing murder of the *alleged victim*.") (emphasis added).

The legislature's separate use of the words "victim" and "alleged victim" reflects that those words have different meanings and that the legislature is capable of recognizing that difference. Moreover, one can easily make the distinction but looking at common usage. Few that are familiar with the English language would use the word "victim" to describe someone who claimed to have been harmed, was said to have been harmed, or could have been harmed, but, in fact, suffered no

actual harm or injury whatsoever. Such people would better be described as "ostensible victims," "supposed victims," or, as the legislature has chosen, "alleged victims."

b. Giving the word "victim" its plain and ordinary meaning would not result in absurd or illogical results.

The Court should give effect to the plain language of section 454 because doing so would not yield "absurd, illogical, or inconsistent results." *State v. Marquis*, 2023 ME 16, ¶ 14. As at least one other jurisdiction has recognized, and as this case illustrates, there are sound reasons for limiting the application of victim tampering statutes to actual victims.

Although this appears to be a novel question in Maine, the Missouri Court of Appeals has addressed this same issue and concluded that a conviction for "victim tampering" requires proof that the object of tampering was, in fact, a victim of a crime, not merely an alleged victim. *See State v. Owens*, 270 S.W.3d 533, 539 (Mo. Ct. App. West. Dt. 2008). In *Owens*, the trial court convicted a defendant of victim tampering, but also acquitted him of the underlying charge of statutory sodomy.[3] *Id.* at 537. These verdicts, the court determined, were inconsistent with

[3] The victim tampering statute applied in *Owens* read:

> A person commits the crime of "victim tampering" if, with purpose to do so, he prevents or dissuades or attempts to prevent or dissuade any person who has been a victim of any crime or a person who is acting on behalf of any such victim from:
> (1) Making any report of such victimization to any peace officer, or state, local or federal law enforcement officer or prosecuting agency or to any judge;

the "plain and ordinary meaning" of the victim tampering statute. *Id.* at 538. The Missouri law did not extend to alleged victims, and for that reason, the court determined, "giving the language of [the victim tampering statute] its plain and ordinary meaning, a jury must find that the object of the tampering is 'a victim of any crime' before an accused can be found guilty under the statute." *Id.* at 538. The court noted that the same statute that defined victim tampering also defined the separate offense of "witness tampering," which did not require proof that the subject of tampering efforts was the victim of a crime and therefore could be applicable to alleged, but not actual, victims. *See id.* at 539. This bolstered its view that the victim tampering statute need not be expanded beyond its plain language. *Id.*

Like Missouri's, the plain and ordinary meaning of Maine's victim tampering statute does not extend to alleged victims. Also like Missouri's, Maine's statute defines victim and witness tampering separately and the availability of witness tampering for alleged victims avoids absurd or inconsistent results. Indeed, Maine's statute makes witness tampering a class C offense whereas victim tampering is a more serious class B offense. It is logical that the more serious

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> (2) Causing a complaint, indictment or information to be sought and prosecuted or assisting in the prosecution thereof;
> (3) Arresting or causing or seeking the arrest of any person in connection with such victimization.

State v. Owens, 270 S.W.3d 533, 537 (Mo. Ct. App. West. Dt. 2008).

offense would require a more stringent burden of proof. As *Owens* illustrates, there would be absurd and inconsistent results if a defendant could be convicted of victim tampering when there was no proven victim.

c. Given the plain language of section 454, the trial court should not have relied on legislative history.

When there is no ambiguity in a statute, courts should not search for hidden meanings behind it. As the U.S. Supreme Court recently explained:

> We cannot approve such a casual disregard of the rules of statutory interpretation. In statutory interpretation disputes, a court's proper starting point lies in careful examination of the ordinary meaning and structure of the law itself. Where, as here, that examination yields a clear answer, judges must stop. Even those of us who sometimes consult legislative history will never allow it to be used to 'muddy' the meaning of 'clear statutory language.

Food Marketing Institute v. Argus Leader Media, 588 U.S. 427, 436 (2019). Maine follows this rule of construction. *See State v. Gessner*, 2021 ME 41, ¶ 9 ("Only if the meaning of a statute is not clear will we look beyond the words of the statute to examine other potential indicia of the Legislature's intent, such as the legislative history."). The mere fact that a statute is awkward or even ungrammatical does not render it ambiguous. *See Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) ("We should prefer the plain meaning since that approach respects the words of Congress. In this manner we avoid the pitfalls that plague too quick a turn to the more controversial realm of legislative history.").

There are sound reasons for avoiding legislative history. A statute represents the legislature's final and complete pronouncement of law, formed after deliberation and sanctified by vote. Legislative history, on the other hand, is a compilation of a law's discarded drafts, commentary from individual legislators, and other statements that were not subject to the same level of scrutiny as language deemed fit for the final draft.[4] As one U.S. Supreme Court Justice put it:

> The greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators. As the Court said in 1844: "The law as it passed is the will of the majority of both houses, *and the only mode in which that will is spoken is in the act itself...." Aldridge v. Williams,* 3 How. 9, 24, 11 L.Ed. 469 (emphasis added). But not the least of the defects of legislative history is its indeterminacy. If one were to search for an interpretive technique that, *on the whole,* was more likely to confuse than to clarify, one could hardly find a more promising candidate than legislative history.

Conroy v. Aniskoff, 507 U.S. 511, 519 (1993) (Scalia, J., concurring) (emphasis in original).

The use of legislative history to override the plain language of a statute is especially problematic when, as was done by the trial court here, it is used to expand the apparent scope of a criminal statute. Principles of due process require that a statute provide a "person of ordinary intelligence fair notice of what is prohibited." *U.S. v. Williams*, 553 U.S. 285, 304 (2008). The so-called "fair

[4] "'Legislative history' is a broad term that encompasses the entire history of a statute, from proposal through enactment and amendment." *Corinth Pellets, LLC v. Arch Specialty Ins. Co*., 2021 ME 10, ¶ 32. It includes "statements of fact" such as the one relied upon by the court to interpret section 454. *See id.*

warning requirement" dictates that a criminal statute not be applied beyond its clear terms. *See U.S. v. Lanier*, 520 U.S. 259, 265 (1997) ("The principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."). Accordingly, "the canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered." *Id.* at 266. Additionally, "due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope." *Id.*; *see also Marks v. U.S.*, 430 U.S. 188, 192 (1977) ("An unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, such as Art. I, s 10, of the Constitution forbids. . . . If a state legislature is barred by the Ex Post Facto Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction.").

The trial court broke both these tenets of fair warning when it looked past the plain language of section 454 and expanded the scope of that plain language by adopting an interpretation of statute found in the statute's legislative history.[5] Even

[5] This Court treats statements of fact associated with bills as "legislative history" and relies upon them only when a statute is ambiguous. *See Corinth Pellets, LLC v. Arch Specialty Insurance Co.*, 2021 ME 10, ¶ 32.

if the word "victim" in section 454 were ambiguous, which it was not, the rule of lenity required the court to resolve the ambiguity in Mr. Truman's favor, so that he would not be convicted for conduct that was not clearly prohibited. Moreover, the trial court improperly adopted a novel interpretation of section 454, one that was not based on statute or any prior judicial decision, and one that could not be deciphered by a person of ordinary intelligence.

The criminal justice system operates under the useful fiction that citizens will know the law and act accordingly. But it cannot deem a citizen to have fair warning of legislative history that was not enacted into law or even pronounced by a higher court, but, rather, was plumbed from the legislative archives before trial by a studious clerk.

d. The trial court's jury instructions create a definition of "victim" that is not based on any applicable statute or legislative history.

Jury instructions must inform a jury "correctly and fairly in all necessary respects of the governing law." *State v. Hanscom*, 2015 ME 68, ¶ 10. Reviewing courts presume that jurors follow the instructions that they are given. *See State v. Baker*, 2015 ME 39, ¶ 18. "A jury instruction is erroneous if it creates the possibility of jury confusion and a verdict based on impermissible criteria." *State v. Delano*, 2015 ME 18, ¶ 13. When an objection to jury instructions is made at trial, they must be reviewed "as a whole for prejudicial error, and to ensure that they informed the jury correctly and fairly in all necessary respects of the governing

law." *State v. Lester*, 2025 ME 21, ¶ 11. "Prejudice occurs when an erroneous instruction on a particular point of law affects the jury's verdict, or alternatively, when the instruction was so plainly wrong and the point involved so vital that the verdict must have been based upon a misconception of law." *Id*.

The trial court erred by providing a jury instruction that neither conformed to the plain meaning of the statute, as it should have, or the definition of "victim" that it could have taken from legislative history. The trial court told the jury that, to convict on the charge of victim tampering, it must find "that A.D. was the *alleged victim* in the official proceeding or the official investigation that was pending or would be instituted in the future." (Trial Tr. vol. 2, 93:22-24). Use of the phrase "alleged victim" does not comport with the plain language of section 454, as explained above.

Notably, however, the instructions do not conform to the definition that could have been gleaned from the very legislative history that the trial court cited as its authority. The Statement of Facts attached to LD 1119, the enactment that modified section 454 in 1989, states that "[t]he victim of a crime for purposes of this bill is the person named in the charging instrument as the object of the criminal conduct or a person who suffered the consequences or result of the prohibited acts." *See* L.D. 1119, Statement of Fact (114th Legis. 1989). This definition, if it had been applied, would have been favorable to Mr. Truman because, at the time

of the alleged tampering, A.D. had not yet been named in the State's complaint. The trial court thus crafted its own definition, untethered to the plain language or legislative history of section 454, that was suitable to secure a conviction.

The trial court instructed the jury that it could convict Mr. Truman of victim tampering even without proof that there was, in fact, a victim. This was not a sound explanation of the law, and it resulted in a conviction that must be reversed because it was based on a misconception of the law.

e. The trial court's misinterpretation resulted in the admission of unfairly prejudicial evidence.

The failure to properly distinguish between actual and alleged victims resulted in the admission of highly prejudicial evidence and excessive use of the word "victim" without proper qualification. Under Maine Rule of Evidence 403, "the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of," among other concerns, creating "unfair prejudice, confusing the issues," or "misleading the jury." M.R. Evid. 403. "[U]se of the term 'victim' during a criminal trial can raise serious concerns." *State v. Gervais*, 2025 ME 27, ¶ 31, 334 A.3d 645, 655. This is especially true when there is a dispute as to whether any offense occurred. When there is such a dispute, "then it is correct to exclude the use of the term [victim] during the evidentiary stage of trial, at least when the complaining witness's credibility is central to the State's ability to prove

its case." *Id.* In Mr. Truman's case, the issue of whether an offense against A. D. actually occurred was very much in dispute, and evidence that labeled her a "victim" should have been excluded or, at the very least, been admitted with special instructions to avoid unfair prejudice.

This was not done. Because the trial court misconstrued the meaning of "victim," it permitted the State to offer evidence that A.D. was an alleged victim even while the question of whether she was actually a victim was heavily disputed. Mr. Truman raised this concern in a motion *in limine* as well as during trial. (Trial Tr. vol. 2, 34:23–35:28).[6] It should have been made clear to the jury that references to A.D. as a "victim" or the appearance of her name on a complaint or indictment was not relevant to the issue of whether she was a victim for purposes of the tampering charge.

This was highly prejudicial. By describing A.D. as a victim, it put Mr. Truman before the jury in the position of a domestic violence perpetrator, even though he was innocent of those charges. Even if some evidence referring to A. D. as a victim may have been relevant to another charge, the court was obligated to "restrict the evidence to its proper scope."[7] *See* M.R. Evid. 105. As it

[6] This Court issued *State v. Gervais* during trial, which prompted Mr. Truman to renew his objection, as stated in his motion *in limine*, to evidence that merely demonstrated that A.D. was an *alleged* victim, and to ask for a mistrial based on the prejudicial use of the term "victim."

[7] Truman presented these specific objections to the evidence through a motion *in limine* filed with the trial court on March 7, 2025. A motion *in limine* serves to preserve a claim of error when, as here, the court's

was, the evidence was not restricted to its proper scope and this prevented Mr. Truman from receiving a fair trial.

II. The trial court erred by admitting recordings without adequate foundation.

Maine Rule of Evidence 901 requires evidence to be authenticated with evidence "sufficient to support a finding that the item is what the proponent claims it is. "A party seeking the admission of a recording must provide a sufficient foundation to show that the recording was created and stored securely and systematically." *State v. Cotton*, 2019 ME 141, ¶ 9. In *Cotton*, for example, the State offered the testimony of a Penobscot County jail administrator and a Dexter police officer, who were able to explain the means by which the jail's phone calls were recorded, preserved, and retrieved. *Id.* at ¶ 3.

The trial court erred by admitting jail phone recordings through the testimony of Detective Lynch, who was neither an employee of the jail nor affiliated with the Securus recording program that it used to record Mr. Truman. Detective Lynch could only testify that he was "familiar" with the Securus program and had the ability to access and search recordings, which were associated with a specific inmate by a corresponding PIN number.

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ruling on the motion is final *State v. Allen*, 2006 ME 21, ¶ 9 n.3, 892 A.2d 456, 458. Therefore, Truman is entitled to the "more beneficial" standard of review; abuse of discretion. *Id*. at 458-59.

This foundation is inadequate because it is not based on firsthand knowledge as to how recordings are created and stored. Unlike the jail commissioner in *Cotton*, Detective Lynch did not have the firsthand knowledge to vouch for the reliability of the recording method. *See* Robert P. Mosteller et al., McCormick on Evidence § 216 (9th ed. 2025) ("If no witness testifies that he or she overheard the crucial information being recorded, then the record must be authenticated by the 'silent witness' process; that is, testimony concerning the accuracy of the recording system and the absence of tampering, often through its chain of custody.").

The Court also overlooked a related, but separate consideration: the component of the record that was inadmissible hearsay. Rule 802 of the Maine Rules of Evidence generally prohibits hearsay, which Rule 801 defines as "a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Hearsay within hearsay may be admissible, but each level of hearsay must conform to an exception to the hearsay rule. *See* Rule 805.

Even if the content of the Securus recordings was admissible as non-hearsay, documentary aspects of those recordings—information about the date, time, and source of the recordings that were critical to tying them to Mr. Truman—were nevertheless hearsay and were only admissible if they qualified for a hearsay exception.

Had the Court entertained Mr. Truman's hearsay objection, the State may have attempted to admit the documentary information associated with the recordings under Rule 803(6), which allows for records of a regularly conducted activity. However, the foundation for such admission would require testimony from "the custodian or another qualified witness." Detective Lynch was neither. Although he apparently had access to the Securus system, simple access does not qualify him to give the kind of assurance of authenticity anticipated by that rule.

III. The trial court improperly denied Defendant's request for an *in camera* inspection of victim witness advocate records as permitted under 16 M.R.S. section 53-C.

Ordinarily, the rules of open discovery require the State to automatically provide access to information pertinent to pending charges, including exculpatory information, information about alleged victims, and statements of witnesses. *See* M.R.U. Crim. P. 16(a). 16 M.R.S. section 53-C, however, creates a privilege over "confidential communications" between a victim and a victim witness advocate or coordinator. This privilege is limited, however, and section 53-C explicitly reinforces the State's duty to disclose "[e]vidence of an exculpatory nature." 16 M.R.S. § 53-C (3)(E) ("Evidence of an exculpatory nature must be disclosed to the criminal defendants pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16.").

Section 53-C also contains a mechanism for *in camera* review of withheld information so that prosecutors do not invoke this privilege unchecked. Privileged communications may be disclosed "[w]hen a court in the exercise of its discretion determines the disclosure of information necessary to the proper administration of justice, an inspection of records may be held *in camera* by the judge to determine whether those records contain relevant information." *See* § 53-C (3)(C).

Notably, section 53-C does not require a showing of good cause for *in camera* review of records. Precedent suggests that to require good cause would be inappropriate. "*In camera* review is a routine and appropriate means for judicial review of documents where disclosure is sought." *See Dubois v. Dep't Envtl. Prot.*, 2017 ME 224, ¶ 9. The process provided by section 53-C represents a balancing between competing interests—the interest in preserving confidentiality on one hand, and the interest in giving a litigant a fair opportunity to prosecute or defend a legal claim. The interests of criminal defendants weigh heavily on the scales because withheld evidence can be a denial of their constitutional rights. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. U.S.*, 405 U.S. 150, 154 (1972). Indeed, the type of information that victim witness advocate records may contain—alleged victims' sentiments about defendants and charges, their recollections of events, information indicative of bias or ulterior motive, etc.—make *in camera* review of those records especially important. Because defendants

have no way of knowing what is within those files, judicial oversight is the only safeguard against prosecutors using them as black boxes, a result that they could achieve by adopting an unduly narrow view of what constitutes "exculpatory" evidence.

The trial court abused its discretion by refusing to conduct an *in camera* review of victim/witness advocate records. [8] The Court set an impossibly high bar for defendants and afforded prosecutors virtually unfettered discretion. *In camera* review, it seems, would only be appropriate if a defendant can demonstrate that such a review will uncover discoverable information. But requests to review privileged information are inherently speculative—if a party knew what information lay behind the curtain of privilege, such a request would be unnecessary in the first place.

Moreover, although section 53-C does not impose a "good cause" showing on defendants, in this case there was ample reason for *in camera* inspection. The victim/witness advocate provided a disclosure that was clearly incomplete as evidenced by an audio recording that was also incomplete. Both disclosures

[8] The trial court identified the "critical issue" in the trial as "whether or not [Mr. Truman] was trying to get [the alleged victim] to say something that was a lie." (Trial Tr. vol. 2, 39:15–17.) In closing, the State argued that the alleged victim's behavior during her interaction with the victim/witness advocate was contrived. (Trial Tr. vol. 2, 66:12–14.) The defense argued, to the contrary, that the details of that conversation were indicative of the alleged victim's sincerity. (Trial Tr. vol. 2, 75:20–76:5.) The alleged victim's behavior and statements was thus a key aspect of the evidence.

contained exculpatory evidence and there was good reason to believe that the hidden records would also contain exculpatory information.

The trial court gave a troubling level of trust and deference to the State. Even in the face of evidence that the State had not disclosed all exculpatory information, the court took the prosecution at its word. Even as the State acknowledged that there might be disagreement as to what constitutes exculpatory evidence, the trial court nevertheless left it to the State to use its own judgment without any adversarial check or judicial oversight.

A criminal defendant cannot receive a fair process if he or she must accept the State's word that undisclosed evidence is privileged. Requests for *in camera* review should routinely be granted as a "a routine and appropriate" means of balancing the State's interest in preserving a privilege with a defendant's need for an assurance that the privilege is not abused. The trial court abused its discretion in refusing to conduct an *in camera* inspection in records that it claimed to be privileged, especially in light of the troubling manner in which disclosures were provided.

IV. The trial court erred by denying Defendant's motion for a mistrial after the State improperly shifted the burden of proof to the defendant in its closing arguments.

The State committed prosecutorial error when it shifted its burden onto Mr. Truman during its closing arguments. To decide whether a judgment should be

vacated for prosecutorial error, the Court must first determine whether an error occurred and then, if there was error, "review the State's comments as a whole, examining the incidents of error both alone and cumulatively. *State v. Lipscombe*, 2023 ME 70, ¶ 12. When, as here, a defendant objects at trial, the Court will review the comments for harmless error and affirm the conviction only "if it is highly probable that the jury's determination of guilt was unaffected by the prosecutor's comments." *State v. Cheney*, 2012 ME 119, ¶ 34. In this case, the Court must vacate the conviction because (1) the prosecution improperly shifted the burden of proof onto Mr. Truman, and (2) the jury's verdict was likely affected.

a. The State committed prosecutorial error.

Shifting the burden of proof to the defendant in closing argument or suggesting that the defendant must present evidence in a criminal trial is improper. *See State v. McNally*, 2007 ME 66, ¶ 10; *State v. Cheney*, 2012 ME 119, ¶ 34. "It is essential that the State avoid making any statement suggesting that a criminal defendant has any burden to disprove the charges against him or her." *Cheney*, 2012 ME 119, ¶ 35. *State v. Cheney*, for example, involved a manslaughter charge where the defendant raised a theory of an alternative suspect. *Cheney*, 2012 ME 119, ¶ 34. In its opening argument, the prosecution argued: "with all due respect, because they know Mr. Cheney is right there, they've got to somehow convince you, oh, it wasn't Mr. Cheney. It was somebody else. But they don't have any

evidence of that." *Id.* at ¶16. The prosecution made a similar comment in its closing, which prompted an objection. *Id.* at ¶ 17.

This Court determined that those arguments were improper. *See id*. at ¶ 35. Although a prosecutor may comment on the plausibility of a defendant's theory of the case, he or she may not suggest that the defendant must prevent evidence in a criminal trial. *See id.* The focus must be "on the evidence itself and what the evidence shows or does not show, rather than on the defendant and what he or she has shown or failed to show." *Id.*

Like the prosecution in *Cheney*, the State here suggested to the jury that it was the defendant's responsibility to prove a fact in dispute. As in *Cheney*, this was prosecutorial error. Mr. Truman did not need to prove or persuade the jury that the phrase "play it off" had a harmless meaning. Rather, it was the State's burden to prove that the phrase constituted tampering beyond a reasonable doubt.

b. The State's prosecutorial error was not harmless.

This prosecutorial error entitles Mr. Truman to a new trial unless "it is highly probable that the jury's determination of guilt was unaffected by the prosecutor's comments." *Id.* at ¶ 34. Because the circumstances do not rule out the possibility that the verdict is tainted, the Court should order a new trial.

Notably, the prosecutorial error involved perhaps the central question for the jury: whether Mr. Truman's intent was to cause the alleged victim to testify falsely

or withhold testimony. The language that Mr. Truman used, "play it off" was colloquial, subject to interpretation and susceptible to different meanings in different contexts. The jury was tasked with determining Mr. Truman's subjective intent based on that language and the context. It would be natural for a juror to look to Mr. Truman as the person responsible for explaining his intent, and the prosecutor's statements invited them to do so. The verdict, therefore, is tainted and the Court should order a new trial.

CONCLUSION

To convict a defendant of victim tampering, Maine law requires the State to prove that the defendant tampered with a victim. This rule, axiomatic as it may seem, was not followed by the trial court. Rather, the trial court adapted and expanded the law to permit the conviction of Mr. Truman for victim tampering even when there was no proof that the object of his influence was, in fact, a victim. This violated rules of statutory interpretation, fair notice, and due process. It also resulted in the admission of prejudicial evidence that otherwise would have been excluded or qualified.

For this reason, and for the other improprieties explained more fully above, Mr. Truman respectfully asks the Court to reverse his convictions and remand the case to the trial court for further proceedings.

Dated:

Respectfully Submitted,

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