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 REPLY BRIEF

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ARGUMENT

I. Victim tampering, as defined in 17-A M.R.S. section 454(1-B), extends only to tampering with a "victim," not an "alleged victim."

a. The plain language of section 454(1-B) cannot be read to extend to alleged victims.

The State asks the Court to find the word "alleged" in section 454(1-B) where it does not exist. (Red Br. 11-15.) It cites the presence of language relating to "an official proceeding" as somehow expanding the meaning of the word "victim." (Red Br. 12.)

The State's reasoning on this point is unclear. Section 454(1-B) makes a person guilty of victim tampering only if they act while "believing that an official proceeding, . . . or an official criminal investigation is pending or will be instituted." This language has an obvious function: it invokes a *mens rea* requirement to establish the temporal boundaries of the law. With that language, victim tampering only occurs while the actor believes an investigation or official proceeding is pending or will be instituted, not after a case has concluded. As a simple matter of grammatical construction, the language does not modify the meaning of the word "victim." Even if it did, it would logically seem to *narrow* the scope of the word "victim" to mean only individuals whom an actor believes to be an actual victim, not expand the term to include alleged victims.

b. Public policy considerations do not dictate that the word "victim" be treated as "alleged victim."

The State cites public policy to support the proposition that the plain meaning of the victim tampering statute encompasses alleged victims. (Red Br. 13.) Such an interpretation is necessary, the State argues, to prevent defendants from benefitting from their unlawful conduct. To apply the dictionary definition of "victim" would give suspects incentive to "tamper as forcefully as they possibly can."[1] (Red Br. 13.)

It seems unlikely that the legislature was ignorant of such considerations when it opted to use the word "victim" in section 454(1-B) whereas it used the phrase "alleged victim" elsewhere in the criminal code. *See, e.g.*, 17-A M.R.S. § 254-A. In any case, it is not the Court's role to mend a law that the State deems in need of repair, and insertion of the word "alleged" for the reasons argued would intrude upon the province of the legislature. *In re Matter of Bundles*, 856 F.2d 815, 823 (7th Cir. 1988) ("Any change deemed desirable on policy grounds should be addressed to Congress rather than to this court. Our duty is simply to interpret the language of the statute.").

[1] The fact that a suspect could benefit from committing a crime of evasion is not unusual to tampering, nor is it a reason to relax the necessary burden of proof. A suspect who flees from police in high-speed chase will, of course, have a better chance of escaping the faster he or she drives. Sentencing is the appropriate method for separating bad from worse conduct and for disincentivizing more egregious offenses. *See* 17-A M.R.S. 1501 (identifying a purpose of sentencing as "the deterrent effect of sentences."). The State's desire to secure convictions is not a proper basis for relaxing the interpretation of a penal statute.

In any case, the State's policy argument is weakened by the fact that those who tamper with an alleged, but not actual, victim can be prosecuted for tampering with a witness or informant under section 454(1). Thus, there is a disincentive to tamper with victims and ordinary witnesses alike. Indeed, although the Legislature did not draft section 454 in this way, one can think of victim tampering as being a form of aggravated witness tampering. Like aggravated offenses, victim tampering carries a more severe sanction, but only when there is proof beyond a reasonable doubt of an aggravating circumstance. The State's proffered interpretation is highly unusual in that it would allow the State to seek enhanced sanctions without actual proof of the added element: for the State's purposes, a mere suspicion of victimization would be sufficient. *See* 17-A M.R.S. § 32 ("A person may not be convicted of a crime unless each element of the crime is proved by the State beyond a reasonable doubt.").

In addition, if the Court's task were to amend section 454 to address policy considerations, which it is not, it would also need to consider the worrying policy implications of the State's interpretation. The State anticipates only scenarios in which an accused person avoids responsibility for an underlying crime by interfering with the judicial process. But viewed through another lens, one more consistent with the presumption of innocence, it is the State's interpretation that is more concerning.

When applied to a situation involving false allegations, the State's interpretation could yield Draconian results. When an individual is falsely accused of a crime, the impulse to plead his or her case to the false accuser will be especially strong. Acting on that temptation, however, would be especially perilous under the State's interpretation of section 454: the falsely accused would face up to ten years in prison for victim tampering rather than a maximum of five years for witness tampering. This notwithstanding the fact that the accuser falsified the allegations. As this illustrates, the enhanced punishment imposed for victim tampering only makes sense when the target of tampering is an actual victim. It strains logic to rationalize why tampering with a false accuser should be treated as a more serious offense under the law than tampering with an ordinary witness.

In short, there is an important distinction between the tampering of actual victims of a crime and of those who are victims by mere supposition or even false allegation. The Legislature recognized this distinction. The State invites the Court to ignore it. The Court must uphold it.

c. The State's interpretation of section 454 would raise new questions and complications.

To interpret "victim" to include alleged victims, as the State requests, would be to steer offroad into a legal swamp. Whereas "victim" is relatively easy to define, "alleged victim" is not. Is it a person identified by police as a victim? Does it matter if the accused was aware that authorities had identified a victim as such?

Is it the person named in a charging instrument? Does the special status of "victim" only arise when some formal notice is presented or filed?[2]

The absence of clarity on this point supports the notion that the law means what it says: victim tampering applies only when there is an actual, proven victim. A broader meaning would beg for clarifying language which is conspicuously absent and which the Court cannot furnish without intruding upon the legislative function.

Indeed, the jury instructions in this case illustrate the hazards of offroad jurisprudence. The trial court ruled that jurors should be instructed that the object of tampering "was an alleged victim in a—in an official investigation that was pending would be instituted in the future." (A. at 24.) Not only does this definition have no foundation in statute, but it is legally problematic. It would grant victim status retroactively to individuals who are only later identified in an investigation. Based on this definition, a defendant could find him or herself guilty of victim tampering based on facts outside of his or her possible knowledge. *See* 17-A M.R.S. § 34(1); *Staples v. United States*, 511 U.S. 600, 605 (1994) ("[T]he existence of a *mens rea* is the rule of, rather than the exception to, the principles of

[2] Again, the State only anticipates circumstances in which a crime has been committed and all parties understand who was the victim of that crime. But the law should not presume guilt, nor it should assume that the accused knows more about unproven allegations than what they have been given formal notice of. *See State v. Talbot*, 198 A.2d 163, 165 (Me. 1964); *State v. Farnham*, 112 A. 258, 259 (Me. 1921) (stating that presumption of innocence leads to a presumption that defendant is ignorant of the facts of the charge).

Anglo-American criminal jurisprudence."); *Johnson v. United States*, 576 U.S. 591, 595 (2015) (stating that criminal statutes must give "fair notice" of prohibited conduct).

II. The trial court's refusal to review victim/witness advocate records *in camera* was not harmless error.

In its brief, the State does not argue that the trial court's refusal to review victim/witness advocate records *in camera* was a sound exercise of discretion when it denied Mr. Truman's motion on January 14, 2025. Nor should it. As explained in the Defendant's primary brief, *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, 174 A.3d 314. Given the information available to the trial court at the time, *in camera* review was obviously warranted. There were indications that a critical witness had provided relevant and exculpatory information to the victim/witness advocate. The disclosures from the State varied in form and content. *In camera* review was necessary to determine whether there was discoverable material in the victim/witness advocate records. Instead, the Court imposed on the defendant the impossible burden of proving what the State had withheld.

The State argues, in essence, that the issue is moot because the trial court questioned the victim witness advocate in open court and that this procedure

should be a satisfactory substitute for *in camera* inspection of the advocate's records. (Red Br. 22-23.)

It is not. Firstly, a disclosure at trial is not a substitute for disclosure in advance of trial. If it were, there would be no need for discovery. *State v. Thurlow*, 414 A.2d 1241, 1244 (Me. 1980) (Underlying purpose of discovery is "enhancing the quality of the pretrial preparation of both the prosecution and defense and diminishing the element of unfair surprise at trial"); *see also State v. Poulin*, 2016 ME 110, ¶ 29, 144 A.3d 574. Defendants have a need for, and the rules governing procedure entitle them to, material relevant to their case well in advance of trial. This affords them a fair opportunity to conduct their own investigations and prepare a defense. The presentation of information only at trial defeats these purposes.

Secondly, in-court testimony regarding events that occurred many months in the past is not a substitute for more contemporaneous records. In this case, the State provided at least three accounts of interactions between the alleged victim and the victim/witness advocate: a partial recording of a conversation between the two, a July 29, 2024 letter from the victim/witness advocate with an account that significantly differs from that recording, and testimony from the victim/witness advocate at trial that significantly differed from both. Mr. Truman asked for a review of records that could resolve discrepancies between these varying accounts

and that, given the State's slow-trickle disclosures, might have yielded yet more useful information.

The State asks the Court and the defense to take it at its word that there is nothing further to disclose. The discrepancies between its disclosures does not engender trust in that assurance. More importantly, however, defendants should not be required to accept such assurances without any oversight. 16 M.R.S. section 53-C(3)(C) permits *in camera* review of undisclosed records for this very reason.

III. The issue of prosecutorial error was preserved.

The State argues that the issue of burden shifting was not preserved because the objection was made after the State's rebuttal when, in fact, the statements in question were made during the State's primary closing argument. However, "[t]o preserve a claim of improper prosecutorial comment, defense counsel must object 'within a reasonable time of the offending comments.' . . . The requirement is to object at a time when the court retains the ability to prove a meaningful corrective instruction." *See State v. Daluz*, 2016 ME 102, ¶ 49.

Although defense counsel misidentified the problematic statements as being in the rebuttal, he identified them by substance and did so at a time that allowed the Court to take meaningful corrective action. For that reason, the issue was preserved.

For these reasons, and for the reasons stated in Appellant's main brief, Mr. Truman respectfully requests that the Court reverse his conviction for victim tampering and remand the case to the trial court for necessary action.

Dated:

Respectfully Submitted,

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