

STATE OF MAINE  
Androscoggin, ss.

SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT  
LAW DOCKET NO. And-25-463

**STATE OF MAINE,**

Appellee

v.

**JAMES R. FOOTMAN, JR.**

Appellant

---

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

---

**BRIEF OF APPELLEE**

---

Alexandra W. Winter  
Attorney for the State  
Assistant District Attorney  
Maine Bar No. 5245  
184 Main St.  
Suite 400  
Lewiston, Maine 04210  
(207) 753-2500  
Alexandra.winter@maineprosecutors.com

Neil E. McLean Jr.  
District Attorney  
Prosecutorial District III

## TABLE OF CONTENTS

Table of Authorities	3
Statement of Facts and Procedural History	5
Issues Presented for Review	12
Argument	12
I. The trial court did not abuse its discretion when it admitted limited evidence of a second, charged robbery	12
A. The admission of the evidence was proper under M.R. Evid. 404(b) and was preserved for appellate review	12
B. The trial court’s M.R. Evid. 403 analysis was not an abuse of discretion	17
C. There was no obvious error in the absence of a limiting or unanimity instruction	19
II. The State concedes that the sentencing court erred in treating failure to accept responsibility as an aggravating factor, but correctly considered addiction	21
Conclusion	25
Certificate of Service	26

## TABLE OF AUTHORITIES

### CASES

<i>State v. Aldrich</i> , 2026 ME 8, ___ A.3d ___ .....	12, 23
<i>State v. Ardolino</i> , 1997 ME 141, 697 A.2d 73 .....	18
<i>State v. Ashley</i> , 666 A.2d 103 (Me. 1995) .....	20
<i>State v. Asante</i> , 2020 ME 90, 236 A.3d 464 .....	20
<i>State v. Baker</i> , 2015 ME 39, 114 A.3d 214 .....	20
<i>State v. Brockelbank</i> , 2011 ME 118, 33 A.3d 925 .....	22
<i>State v. Brown</i> , 1998 ME 129, 712 A.2d 513 .....	14
<i>State v. Chase</i> , 2023 ME 32, 294 A.3d 154 .....	20
<i>State v. Connors</i> , 679 A.2d 1072 (Me. 1996) .....	13-14, 16-17
<i>State v. Ellis</i> , 2025 ME 56, 339 A.3d 794 .....	23-24
<i>State v. Hurd</i> , 360 A.2d 525 (Me. 1976) .....	18
<i>State v. Joubert</i> , 603 A.2d 861 (Me. 1992) .....	17
<i>State v. Lilley</i> , 624 A.2d 935 (Me. 1993) .....	23
<i>State v. Plummer</i> , 2020 ME 143, 243 A.3d 1184 .....	23
<i>State v. Schooley</i> , 2025 ME 84, 345 A.3d 78 .....	20
<i>State v. Waterman</i> , 2010 ME 45, 995 A.2d 243 .....	24 n.4
<i>State v. Williams</i> , 2024 ME 37, 315 A.3d 714 .....	12

**STATUTES**

15 M.R.S. § 1092(1)(A) (2025)..... 5  
17-A M.R.S. § 152(1)(B) (2025)..... 5  
17-A M.R.S. § 651(1)(E) (2025)..... 5

**RULES**

M.R. App. 7A(2)(A) ..... 16 n.1  
M.R. Evid. 403 ..... 12, 17, 25  
M.R. Evid. 404(b)..... 12-13, 16-17

**TREATISES**

Alexander, Maine Appellate Practice § 419(a) (5th ed. 2018) ..... 13, 17  
Field & Murray, Maine Evidence § 404.4 (6th ed. 2007) ..... 13

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

On January 7, 2025, Mr. Footman was indicted by the Androscoggin County Grand Jury for Robbery, 17-A M.R.S. § 651(1)(E) (2025), and Violation of Condition of Release, 15 M.R.S. § 1092(1)(A) (2025) for a robbery of the Big Apple that occurred on November 11, 2024. (A. 4.) He pleaded not guilty to both charges. (A. 5.) Also on January 7, 2025, Mr. Footman was indicted for Robbery, 17-A M.R.S. § 651(1)(E), Attempted Robbery, 17-A M.R.S. § 152 (1)(B), 651(1)(E) and Violation of Condition of Release, 15 M.R.S. § 1092(1)(A) for a robbery that occurred at the 7 Eleven on November 14, 2024. (A Superseding Indictment was filed on or about June 2, 2025, upon which Mr. Footman plead not guilty). (Sentencing Transcript, page 35.)

On July 23, 2025, prior to trial, the trial court (Androscoggin County, *Archer, J.*) conducted a hearing on motions *in limine*, filed both by defense counsel and the State's attorney, including a hearing on the State's motion *in limine* to admit evidence concerning the robbery of 7 Eleven on November 14, 2024. (Hearing on Motion in Limine, page 16 (July 23, 2025).) The trial court granted and denied the motion in part: the ruling permitted testimony regarding the facts of the 7-Eleven investigation, including the introduction of two brief surveillance videos showing the event, but denied testimony

concerning the specific charges pending, reasoning it to be unduly prejudicial. (MIL Tr. 25 (July 23, 2025).)

A jury was selected on July 16, 2025, and trial began on July 24, 2025. At trial, the jury heard that on November 11, 2024, around 11:00 pm, a man entered the Big Apple, located on Main Street, in Lewiston, Androscoggin County, Maine. (Jury Trial Transcript Vol. 1, page 48-49, (July 24, 2025).) The man approached the register where two clerks were working. (Tr. 48 (Jul. 24, 2025).) The man demanded money. (Tr. 49 (Jul. 24, 2025).) The clerk saw that the man was holding a box cutter. (Tr. 49 (Jul. 24, 2025).) The clerk gave the man some money. (Tr. 49 (Jul. 24, 2025).) The man demanded more and the clerk gave him “the remaining 10s” that were in the drawer. (Tr. 49 (Jul. 24, 2025).) And then the man left. (Tr. 49 (Jul. 24, 2025).)

The clerk testified that the man was holding a retractable foldable box cutter with a black and red handle. (Tr. 50 (Jul. 24, 2025).) The clerk called 911 after the man fled the store and Lewiston Police Department officers arrived shortly after. (Tr. 51 (Jul. 24, 2025).)

The State admitted and published to the jury two surveillance videos depicting the robbery as it occurred. (Tr. 53 (Jul. 24, 2025).) The State also admitted and published the clerk’s call to 911 following the robbery. (Tr. 69 (Jul. 24, 2025).)

The second clerk also testified that the man walked up to his co-worker with a red and black handled box cutter, pointed it at him and demanded money. (Tr. 74 (Jul. 24, 2025).)

The suspect was described by responding law enforcement officers as wearing “white and black Nike sneakers, gray pants, a red sweatshirt with a black winter jacket, and a white face mask.” (Tr. 85 (Jul. 24, 2025).)

The State also admitted limited evidence concerning another robbery that occurred at the 7 Eleven, also on Main Street, in Lewiston, that occurred on November 14, 2025. (Jury Trial Transcript Vol. 2, page 14, July 25, 2025). The State admitted and published two brief surveillance videos depicting that robbery as it occurred as well as screen shots from the videos. (Tr. 20-21 (Jul. 25, 2025).) The screenshots depict the suspect holding a red and black handle box cutter and wearing black and white Nike shoes as seen here in State’s Exhibit 40: (Tr. 21 (Jul. 25, 2025).)



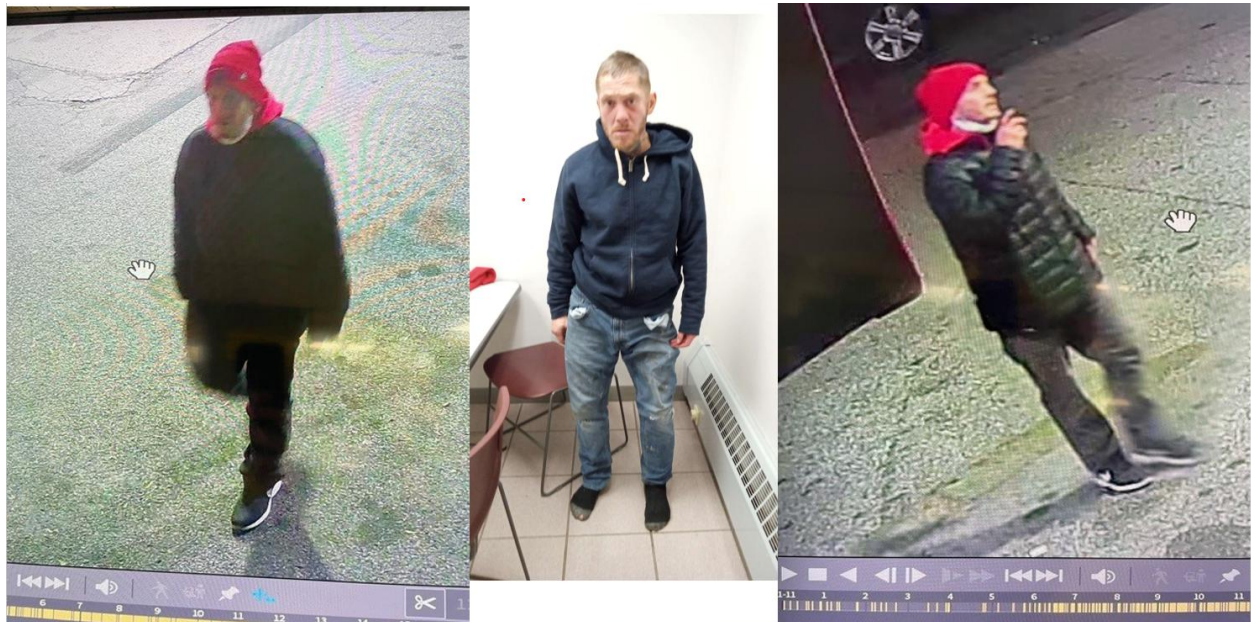
Lewiston Police Department Officer Nixon testified that he interacted with the Defendant, Mr. James Footman, Jr., on November 16, 2024. (Tr. 92; 94 (Jul. 24, 2025).) Officer Nixon documented that Mr. Footman was wearing black and white Nike shoes and was carrying a red and black box cutter in his pocket. (Tr. 97 (Jul. 24, 2025).)

Lewiston Police Department Detective Cloutier also testified regarding his interactions with Mr. Footman on November 18, 2024. (Tr. 159 (Jul. 24,

2025).) Det. Cloutier photographed Mr. Footman as he appeared on that day, including his black and white Nike shoes.

The jury was also presented with surveillance footage immediately prior to the robbery of the city of Lewiston and businesses of the area surrounding the Big Apple. (Tr. 142-143 (Jul. 24, 2025).) Including a video taken from Dave’s Place, located within short distance of the Big Apple; this video showed the suspect, as he appeared immediately prior to the robbery, wearing identical clothing, without a face covering. (Tr. 130 (Jul. 24, 2025).)

In its closing, the State utilized a PowerPoint with still shots previously admitted during the trial. In its closing remarks, as State’s counsel asked the jury to find that “this is the same man”, (Tr. 76 (Jul. 25, 2025)) State’s counsel was directing the jury to consider State’s Exhibit 19, 20 and 27 as depicted here:



Ultimately, the jury unanimously determined that the evidence showed beyond a reasonable doubt that the individual depicted in the videos preceding the robbery and who committed the robbery itself was in fact the same man, and that man was Mr. Footman. (Tr. 100 (Jul. 25, 2025).)

At sentencing for this matter, ANDCD-CR-25-51, the court sentenced Mr. Footman on Count 1 to a straight sentence of 12 years to the Department of Correction, on Count 2 a sentence of six months incarceration to be served concurrent to Count 1. (S. Tr. 25 (Sept. 30, 2025).) The court further addressed all of Mr. Footman's pending matters. In docket number ANDCD-CR-22-2676, Mr. Footman had previously entered an admission to a pending motion to revoke probation dated August 1, 2024. (S. Tr. 28 (Sept. 30, 2025).) At sentencing, Mr. Footman admitted to the motion to revoke probation dated November 20, 2024, alleging a failure to refrain from new criminal conduct, failure to obtain permission from probation before changing address, and failure to complete counseling and treatment as an outpatient basis for substance abuse issues. (S. Tr. 28-29 (Sept. 30, 2025).) He admitted to the third motion to revoke probation dated December 16, 2024, alleging a failure to refrain from new criminal conduct, and failure to refrain from new criminal attempted conduct. (S. Tr. 29-30 (Sept. 30, 2025).) On all three motions the

court sentencing Mr. Footman to a full revocation of two years. (S. Tr. 31 (Sept. 30, 2025).) This was to be served concurrently to the sentence imposed in the underlying matter. (S. Tr. 31 (Sept. 30, 2025).)

Additionally, Mr. Footman pleaded guilty to the single count of the indictment in ANDCD-CR-24-1500, a Class C Theft and was sentenced to 12 months to the Department of Corrections to be served concurrent to the sentence imposed in ANDCD-CR-25-51. (S. Tr. 27, 35 (Sept. 30, 2025).)

Finally, in ANDCD-CR-25-52, Mr. Footman pleaded guilty to Count 2, Attempted Robbery and Count 3, a Violation of Condition of Release and was sentenced by agreement to 10 years to the department of corrections on Count 2, and six months to the Department of Corrections on Count 3. (S. Tr. 35 (Sept. 30, 2025).) The sentences were imposed concurrent to each other and concurrent to the sentence imposed in ANDCD-CR-25-51.

This appeal follows.

## **ISSUES PRESENTED FOR REVIEW**

- 1. Did the trial court abuse its discretion when it admitted limited evidence of a second, charged identical robbery three days later at a different location by a person of similar build and statute, using the same weapon and wearing the same footwear?**
- 2. Did the sentencing court err when it considered Mr. Footman's addiction and his lack of responsibility in its sentencing analysis?**

## **ARGUMENT**

- I. The trial court did not abuse its discretion when it admitted evidence of a second charged robbery.**
  - A. The trial court's analysis of the evidence pursuant to 404(b) was not made in error.**

The issue addressing the admission of this evidence was properly preserved for appeal. *See e.g.* (MIL Tr. 26 (July 23, 2025) and (Tr. 15 (Jul. 25, 2025)).

The prevailing standard of review of a trial court's decision to admit evidence pursuant to M.R. Evid. 404(b) is for clear error and its subsequent M.R. Evid. 403 analysis is for an abuse of discretion. *State v. Aldrich*, 2026 ME 8, ¶ 40, ---A.3d--- (citing *State v. Williams*, 2024 ME 37, ¶ 28, 315 A.34d 714).

“A ‘clear error’ standard on evidentiary issues is similar to a sufficiency of the evidence standard in that it asks if the trial court’s ruling on relevance or foundation is supported by or not consistent with the facts that appear in the record.” Alexander, *Maine Appellate Practice* § 419(a) at 351 (5<sup>th</sup> ed. 2018).

Maine Rule of Evidence 404(b) provides that evidence 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 according with the character. The rule does not prevent the introduction of evidence relevant to specified facts and propositions. Field & Murray, *Maine Evidence*, §404.4 at 141 (6<sup>th</sup> ed. 2007). 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. M.R Evid. 404 advisory committee’s note to former rule 404 Feb. 1976. Furthermore, “[t]his list is not exhaustive, nor is it conclusive.” Field & Murray, *Maine Evidence*, §404.4 at 141 (6<sup>th</sup> ed. 2007).

This Court carefully considered the admission of evidence relating to a separate, pending burglary charge in *State v. Connors*, 679 A.2d 1072 (Me. 1996). In *Connors*, the trial court admitted testimony of a York County law enforcement officer as to his investigation into a similar burglary that had occurred one or two days after the initial one in another county. *Id.* at 1073. The

trial court admitted this evidence reasoning it was relevant in two ways. The first being that:

“[I]t showed a plan or signature common to the Fairfield burglary, and demonstrated that Connors was in Maine committing burglaries at business located on major highways. At both crime scene, wires were cut and alarms disengaged, safes manhandled, and bootprints left. Whether the two crimes were “sufficiently idiosyncratic,” to support a reasonable inference that Connors committed the Fairfield burglary was for the trial court’s determination. Nor did the evidence become inadmissible merely because the alleged Waterboro crime never resulted in Connors’s conviction.”

*Id.* at 1074.

The second reason the evidence was relevant was because it corroborated a witness’s testimony concerning Connors’s admission to the burglaries. *Id.* at 1075.

In a similar approach, in *State v. Brown*, 1998 ME 129, ¶ 9, 712 A.2d 513, this Court considered the trial court’s denial for a relief from prejudicial joinder in which Brown was charged in thirty-three offenses stemming from nineteen separate incidents. The Court commented, “[t]o the extent that the multiple charges suggested that Brown’s alleged crime spree constituted a ‘common scheme or plan’ to steal money and property, and to the extent that the evidence relating to those charges revealed a recurring modus operandi, evidence of

many or all of his offenses may have been admissible even at separate trials.”  
*Id.*

Here, the central issue at trial was the identity of the suspect. *See e.g.* MIL Tr. 23 (July 23, 2025). The suspect who committed the robbery of the Big Apple was unknown at the time to the two clerks and to responding officers. Descriptions of the suspect were obtained from statements from the witnesses, by video surveillance footage, and screenshots from those videos. (Tr. 61, 76, 83-85 (Jul. 24, 2025).) As the trial court noted, in the Big Apple surveillance video, the suspect is wearing “a red hoodie, black jacket, ripped jeans and very specific Nike shoes” (MIL Tr. 23 (July 23, 2025)) and wielding a red and black handle foldable box cutter. (Tr. 50 (Jul. 24, 2025).) In the 7 Eleven video, the suspect is wearing different clothing, but wearing “the same Nike shoes as described, or at least the same description, and also a red-handled box cutter.” (MIL Tr. 23 (July 23, 2025).)

When Officer Nixon encountered Mr. Footman on November 16th, just two days after the 7 Eleven robbery, he was wearing the same Nike shoes and was in possession of a red-handled box cutter. (Tr. 96 (Jul. 24, 2025); (MIL Tr. 23 (July 24, 2025).)

Finally, when Det. Cloutier interacted with Mr. Footman on December 18th, he was again wearing the Nike shoes. (Tr. 160 (Jul. 24, 2025).) As the trial

court noted, “All of that is highly relevant to the identity of the perpetrator as seen in the Big Apple surveillance video. Because those observations from the investigation are highly relevant, specifically to identity. I don’t find them to be excludable under rule 404(b).” (MIL Tr. 24 (July 24, 2025).)

The trial court’s decision to admit evidence of the robbery at 7 Eleven was not error. The evidence consisted of two, approximately 30-second videos, and screenshots originated from the videos, depicting a masked suspect, wearing black and white Nike shoes and armed with a red and black box cutter. (Tr. 15-17; 20 (Jul. 25, 2025).) The second robbery is sufficiently distinctive to prove that identity of the suspect in the Big Apple video is in fact Mr. Footman, given that he was in possession of both black and white Nike shoes and a red and black boxcutter on several occasions.<sup>1</sup>

Just as in *Connors*, the second burglary of the IGA did not necessarily demonstrate the identity of the perpetrator; but the characteristics of the event were relevant to prove his identity of the previous incident. This case is directly

---

<sup>1</sup> Appellate counsel’s brief includes multiple pages of a Google-search yield, including photographs, and their corresponding webpage sites. (Blue Br. 28-30.) This information was not part of the trial or the record in any form. The State objects to the introduction of this material. Maine Rules of Appellate Procedure 7A (2)(A) provides that a brief shall not include any documents or images that are not a part of the trial court file or the record on appeal. The State suggests, therefore, that this evidence should not be considered as part of this appeal.

analogous, and the trial court's analysis of *Connors* was well within the bounds of the admission of evidence pursuant to 404(b).

**B. The trial court's 403 analysis to admit the proposed evidence was not an abuse of discretion.**

"While a trial court's finding on relevance, sufficient foundation or other prerequisites for admissibility is reviewed for clear error, the ultimate ruling on admissibility is reviewed for an abuse of discretion." Alexander, *Maine Appellate Practice* § 419(b) at 351 (5<sup>th</sup> ed. 2018).

M.R. Evid. R. 403 provides that a court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice."

"Thus, the ultimate prejudice versus probative effect determination to admit or exclude relevant evidence under M.R. Evid. 403 is reviewed for abuse of discretion." Alexander, *Maine Appellate Practice* § 419(b) at 351-352 (5<sup>th</sup> ed. 2018).

"The mere harmfulness of the evidence to the defendant's case is not what is meant by unfair prejudice." *State v. Joubert*, 603 A.2d 861, 866 (Me. 1992). "It should be emphasized that prejudice, in this context, means more than simply damage to the opponent's case. A party's case is always damaged by evidence that the facts are contrary to his contentions; but that cannot be

ground for exclusion. What is meant here is an undue tendency to move the tribunal to decide on an improper basis, commonly, though not always, an emotional one." *State v. Ardolino*, 1997 ME 141, ¶ 10, 697 A.2d 73 (quoting *State v. Hurd*, 360 A.2d 525, 527 n.5 (Me. 1976)).

Here, the evidence in question consisted of two approximately 30-second-long videos and five still photos taken from the video. (Tr. 15-17; 20 (Jul. 25, 2025).) The video depicts a robbery that occurred at the 7 Eleven, also on Main Street in Lewiston, Maine, on November 14, 2024. (Tr. 15-17; 20 (Jul. 25, 2025).) The still shots show that the masked robber was armed with a red and black handled box cutter and wore black and white Nike shoes.

It is undisputed the central issue was one of identity. *See e.g.* MIL Tr. 6 (July 23, 2025). Therefore, the identity of the perpetrator is of the utmost relevance. As previously outlined, the purpose of the evidence was to show that Mr. Footman was in possession of several distinct items to support the inference that it was in fact Mr. Footman who committed the robbery at the Big Apple. This evidence is therefore significantly relevant and not unfairly prejudicial as it was concise evidence, devoid of improper bias. It was not an abuse of the trial court's discretion to admit the evidence.

In sum, the trial court did not abuse its direction when it admitted evidence of a second, charged robbery for the proper purpose of establishing the pivotal question of identity.

### **C. There is no obvious error**

Mr. Footman notes that no limiting instruction was given. (Blue Br. 21). However, no limiting instruction was requested. The trial court specifically directed counsel to consider whether the court should include such instruction:

“One thing I do want you to think about, Attorney Burden and Attorney Rohde, is whether you think it would be appropriate for any sort of instruction to be given. I didn’t—I was uncertain whether you would want anything. You know, discussing the fact that this is for identify purposes only or however you might want to—to put it together and propose it to me. The only reason why I didn’t give any further thought to this—as to whether language might be appropriate—is sometimes attorney do not want me to give an instruction because it just calls greater attention to bad facts. And I certainly don’t want to do that. That’s a strategic choice that you should be permitted to make, not me. But I do want to raise it to make sure that I give you the opportunity to think about it.”

(MIL Tr. 26-27 (July 23, 2025).)<sup>2</sup>

---

<sup>2</sup> Any claims of ineffective assistant of counsel, i.e. a failure to raise a jury instruction, are properly brought as a Post- Conviction Review. *See e.g., Pratt v. State*, 2023 ME 66, ¶9, 303 A.3d 2023, vacating trial court’s denial of a post-conviction review petition finding that the cumulative effect of trial counsel’s performance, including introducing certain defenses (and then expressly waiving a justification defense instruction) and opening the door to certain evidence, there was a reasonable probability the outcome had been affected.

Mr. Footman further comments that no specific unanimity instruction was given and this in turn could create double jeopardy concerns.<sup>3</sup> These concerns are unpreserved and unfounded.

An issue that is unpreserved is reviewed for obvious error. *See State v. Chase*, 2023 ME 32, ¶ 13, 294 A.3d 154, and *State v. Asante*, 2020 ME 90, ¶ 10, 236 A.3d 464.

Obvious error occurs “when jury instructions, viewed as a whole, are affected by ‘highly prejudicial error tending to produce manifest injustice.’” *Chase*, 2023 ME 32, ¶ 13, 294 A.3d 154 (citing *State v. Baker*, 2015 ME 39, ¶ 11, 114 A.3d 214 (quoting *State v. Ashley*, 666 A.2d 103, 106-107 (Me. 1995))). For obvious error to exist there must be “(1) an error, (2) that is plain, and (3) affects substantial rights.” *State v. Schooley*, 2025 ME 84, ¶ 19, 345 A.3d 78.

The jury was asked to consider one single count of an indictment premised on a single incident at the Big Apple.

The parties agreed on the proposed jury instructions for the court to deliver. (Tr. 52 (Jul. 25, 2025).) At no time did trial counsel object to the proposed jury instructions. (Tr. 40; 52 (Jul. 25, 2025).) At no time did Mr.

---

<sup>3</sup> As to any double jeopardy claim, the State would suggest the issue is now moot as Mr. Footman pleaded guilty to Count II of the indictment in docket number ANDCD-CR-25-52, the Attempted Robbery of the 7 Eleven.

Footman request a specific unanimity instruction. (Tr. 40; 52 (Jul. 25, 2025).)

The trial justice instructed the jury on the elements of robbery, including the following admonition:

Please note that the State does not have to prove all of the last four items: A, B,C and D. The State has only to prove beyond a reasonable doubt that the defendant committed one of those alternatives. You do not have to unanimously agree on which of those alternatives. However, you do have to unanimously agree that the State has proven one of those alternatives beyond a reasonable doubt.

(Tr. 63 (Jul. 25, 2025).)

It therefore cannot be said that an absence of a specific unanimity instruction was in error, much less an obvious one that affected Mr. Footman's substantial rights.

- II. The State concedes the sentencing court erred when it assigned a failure to take responsibility as an aggravating factor but did not err when it considered his substance abuse as an aggravating factor.**
  - A. It was error for the court to consider Mr. Footman's lack of responsibility an aggravating factor.**

As this Court recently noted in *State v. Ellis*, 2025 ME 56, ¶ 22, 339 A.3d 794, “[w]e review questions of law, including the legality of a sentence, de novo.” (Citing *State v. Brockelbank*, 2011 ME 118, ¶ 15, 33 A.3d 925).

Mr. Footman did not testify, and he did not allocate at sentencing. The only statement Mr. Footman made was a brief comment in response to the trial court’s question to counsel during the sentencing argument:

“Mr. Burden:...He was discharged from the program. That was not his doing. He did not want to be discharged, but he was essentially told, okay you’re done. And that’s what put him back on the streets. Based on that, Your Honor, . . .

The Court: Are you talking about ARKOM [sic] or his IOP? What do you mean he missed a class?

Mr. Footman: I missed two classes in IOP.

Mr. Burden: He missed two classes.

Mr. Footman: And I was discharged, and I was never aware of discharge. I went back to the stay the night, and they told me I had to speak with the manager in order to go back and stay at the house, was what happened. And I was picked up on the street because I didn’t call.”

(Sentencing Tr. 14.)<sup>4</sup>

---

<sup>4</sup> Failure to complete counseling and treatment as an outpatient, as direction by probation for substance abuse was a violation of Mr. Footman’s motion to revoke probation dated November 10, 2024, for which he admitted as part of the overall sentence. (Sentencing Tr. at 29.)

The State concedes that the sentencing court committed a substantially similar error to that in *Ellis*. Here, in its analysis of the aggravating circumstances, the sentencing court stated “[f]inally, nothing that the Court heard today or read in preparation for today, reflects that the defendant feels any remorse for his actions or has accepted any sort of responsibility.” (Sentencing Tr. 23.)

Given this error consistent with *Ellis*, 2025 ME 56, 339 A.3d 794, the remedy is to vacate the sentence in ANDCD-CR-2024-51 and remand for resentencing.

**B. It was proper for the sentencing court to weigh Mr. Footman’s struggle with addiction as a factor in its sentencing analysis.**

This Court has recognized that on the second step of a sentencing analysis, a sentencing court may appropriately consider such aggravating factors may include an individual’s addiction as well as their efforts to address and or control that addiction. *See State v. Plummer*, 2020 ME 143, ¶ 14, 243 A.3d 1184 (citing *State v. Lilley*, 624 A.2d 935, 936 (Me. 1993)).

In *State v. Aldrich*, 2026 ME 8, ¶ 82, --A.3d---, this Court declined to vacate a sentence in which the sentencing court concluded that Mr. Alrich’s rare gainful employment and the absence of his efforts to address his substance abuse did not constitute mitigating factors in his favor.

Mr. Footman himself acknowledged his struggles with addiction and asked the court to weigh that in his favor. (Sentencing Tr. at 12 (“He [Mr. Footman] ended up dropping out before high school, fell into drugs and addiction, and has been battling that his entire life.”).)

It was not, therefore, improper for the sentencing court to consider Mr. Footman’s struggle with addiction as an aggravating factor in its analysis of the maximum sentence:

“As identified earlier, the Court also considers the defendant’s substance use to be an aggravating factor, as permitted by *State versus Waterman*. Given that the substance use was a direct contributor to the commission of the crime at hand. Additionally, despite opportunities over the years, the defendant’s substance use has willfully gone untreated.”

(Sentencing Tr. at 22.)<sup>5</sup>

Even if this Court were to consider the sentencing court’s assignment error, the appropriate remedy is to vacate the sentence imposed and remand for re-sentencing. *See e.g., Ellis*, 2025 ME at ¶ 30, 339 A.3d 794.

---

<sup>5</sup> The sentencing court also noted *State v. Waterman*, 2010 ME 45, ¶ 49, 995 A.2d 243, in which the Law Court affirmed two concurrent life sentences and approved the trial court’s consideration that Mr. Waterman’s drug use led to the two deaths.

## CONCLUSION

In sum, the trial court's admission of the limited evidence of the second, charged burglary was not error, and its final determination pursuant to 403 was not an abuse of discretion.

The trial court did, however, err when it considered Mr. Footman's failure to take responsibility as an aggravating factor. The court did not err when it considered Mr. Footman's struggle with addiction as an aggravating factor.

Therefore, the judgment of conviction should be affirmed; the sentence should be vacated and remanded for re-sentence.

Respectfully submitted,

Dated: April 2, 2026

\_\_\_/s/ Alexandra Winter \_\_\_\_\_  
Alexandra W. Winter  
Maine Bar No.: 5245  
Assistant District Attorney  
184 Main St. Suite 400  
Lewiston, Maine 04210

**CERTIFICATE OF SERVICE**

I, Alexandra W. Winter, Assistant District Attorney for Androscoggin County, State of Maine, hereby certify that I have served appellate counsel as required by M.R. App. P. 1E.

Dated: April 2, 2026

\_\_\_\_\_/s/ Alexandra Winter\_\_\_\_\_  
Alexandra W. Winter  
Maine Bar No.: 5245  
Assistant District Attorney  
184 Main St. Suite 400  
Lewiston, Maine 04210