

**Maine Supreme Judicial Court
Sitting as the Law Court**

Docket No. Pen-25-549

State of Maine,

Appellee,

v.

Rena Getchell,

Appellant.

On Appeal from the Maine
Superior Court, Penobscot County

Appellant's Brief

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Table of Contents

Table of Authorities	3
Statement of the Case	6
Issues Presented for Review	11
Summary of the Argument.....	12
Argument.....	14
I. Patrece’s statements to Erika should have been admitted at trial.....	14
A. The statements were substantively admissible under the then-existing states of mind or emotion exception under Rule 803(3).	14
B. The statements were admissible as prior inconsistent statements to impeach Patrece’s credibility.	18
II. The prosecutor improperly referenced an unproven \$1.9 million fraudulent transfer claim during her cross-examination of Erika and made improper statements during closing argument.	20
Conclusion.....	25
Certificate of Service.....	26

Table of Authorities

Cases

<i>Esposito v. State</i> , 328 A.3d 830 (Md. App. 2024)	16
<i>Guardianship of David P.</i> , 2018 ME 151, 196 A.3d 896	14
<i>Latremore v. Latremore</i> , 584 A.2d 626 (Me. 1990)	17
<i>People v. Gregory</i> , 177 N.E.2d 120 (Ill. 1961)	22
<i>State v. Allen</i> , 462 A.2d 49 (Me. 1983)	18, 19
<i>State v. Burgoyne</i> , 452 A.2d 393 (Me. 1982)	23
<i>State v. Dolloff</i> , 2012 ME 130, 58 A.3d 1032	20, 23
<i>State v. Fahnley</i> , 2015 ME 82, 119 A.3d 727	23
<i>State v. Guyette</i> , 2012 ME 9, 36 A.3d 916	14
<i>State v. Jackson</i> , 1997 ME 174, 697 A.2d 1328	19
<i>State v. John L.</i> , 856 A.2d 1032 (Conn. App. 2004)	16
<i>State v. Mahaney</i> , 437 A.2d 613 (Me. 1981)	15
<i>State v. Mangos</i> , 2008 ME 150, 957 A.2d 89	14

<i>State v. Nielson</i> , 552 A.2d 543 (Me. 1989).....	19
<i>State v. Nye</i> , 551 A.2d 844 (Me. 1988).....	17
<i>State v. Robbins</i> , 2019 ME 138, 215 A.3d 788.....	20, 24
<i>State v. Robinson</i> , 561 A.2d 492 (Me. 1989).....	18
<i>State v. Stanton</i> , 1998 ME 85, 710 A.2d 240.....	20
<i>State v. Thurlow</i> , 1998 ME 139, 712 A.2d 518	19
<i>State v. Tieman</i> , 2019 ME 60, 207 A.3d 618.....	14, 15
<i>State v. Watson</i> , 2016 ME 176, 152 A.3d 152	16
<i>United States v. Duran Samaniego</i> , 345 F.3d 1280 (11th Cir. 2003).....	16
<i>United States v. Johnson</i> , 231 F.3d 43 (D.C. Cir. 2000)	23
<i>United States v. Mooney</i> , 315 F.3d 54 (1st Cir. 2002).....	20
<i>United States v. Nosley</i> , 62 F.4th 1120 (8th Cir. 2023)	22
<i>United States v. Slatten</i> , 395 F. Supp. 3d 45 (D.D.C. 2019)	16
Statutes	
17-A M.R.S. § 353(1)(B)(1)	6

17-A M.R.S. § 354(1)(B)(1)	6
----------------------------------	---

17-A M.R.S. § 358(1)(B)(1)	6
----------------------------------	---

Rules

M.R. Evid. 401–404	21
--------------------------	----

M.R. Evid. 801(c)	18
-------------------------	----

M.R. Evid. 803(3)	14, 15
-------------------------	--------

Other Authorities

Field & Murray, <i>Maine Evidence</i> § 607.4 (1976)	18
--	----

Field, <i>The Maine Rules of Evidence: What they Are and How They Got That Way</i> , 27 Me. L. Rev. 203, 220 (1975)	18
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Statement of the Case

The trial court held a three-day trial from September 16 to 18, 2024 on a four-count indictment¹ charging Getchell with a series of theft offenses. (Jury Trial Transcript, Vol I-III (“TT_”).) The State’s theory on Counts 1, 2, and 3 was that Getchell deposited an inheritance check in August 2017 intended for the alleged victim, Patrece, in the amount of \$43,993. (Jury Trial Transcript, Vol I (“TT1”) at 14-15, State’s Exs. 4-6.) The funds were depleted (TT2 at 53-63, State’s Ex. 32), and Patrece was later repaid in Getchell’s bankruptcy in 2022. (TT1 at 66-67, 71.) The theory on Count 4 focused on an alleged attempt to deposit a second inheritance check in March 2019, in the amount of \$11,234.46. (TT1 at 15-16, 51-57; State’s Exs. 4-6.)

Patrece is Getchell’s now-adult foster daughter. (TT1 at 77.) She was placed with Rena and Wayne Getchell when she was between four and six years old and lived with them into her early 30s. (TT1 at 30, 77-78, 92-94, 144.) The State offered evidence that the family went to a hotel for St. Patrick’s Day weekend in 2019 and invited Patrece’s boyfriend, Joel. (TT1 at 28-29.) Patrece had met Joel, who was then

¹ The indictment alleges theft by deception, 17-A M.R.S. § 354(1)(B)(1) (Class B) (Count 1), theft by misapplication of property, 17-A M.R.S. § 358(1)(B)(1) (Class B) (Count 2), theft by unauthorized taking, 17-A M.R.S. § 353(1)(B)(1) (Class B), and attempted theft by unauthorized taking, 17-A M.R.S. § 353(1)(B)(1) (Class C). (A. 17-18.)

age 47, when she was about 32 in late 2018 or early 2019. (TT1 at 44-45.) Patrece testified that Getchell brought her to the bank that day to cash an inheritance check but was only able to take \$100 from the ATM. (TT1 at 96-98.) She claimed that Getchell became angry and began calling her names. (TT1 at 99-100.) Later that evening, Patrece and Joel fled the hotel and went to Joel's home. (TT1 at 100-101.) Joel testified that he was drinking "for sure" that evening. (TT1 at 46.) Members of the Getchell family arrived at Joel's house in Bangor that evening and, according to Patrece, knocked on the door, honked, and tried to reach her on the phone and on Snapchat. (TT1 at 101-103.) Patrece did not want to return home, consulted an attorney, and met with the police on March 22, 2019, and June 18, 2019. (TT1 at 103-04, 184-85.)

According to Patrece's sister, Alisha Getchell, the family found that Patrece's hotel room was vacated on St. Patrick's Day with what looked like an empty beer box in the trash, and went looking for Patrece. (TT2 at 151-52, 171-74.) Alisha was very concerned for Patrece and did not know if she was safe. (TT2 at 172.)

Patrece also testified about how she was allegedly mistreated in the Getchell home. She claimed that she was called horrible names, subjected to "constant bashing," and made to feel unloved. (TT1 at 99-100, 108.) She also testified that she was required to do chores and bathe clients—adults living in the Getchell foster

home—without pay, and that the Getchells threatened to put her in an institution if she did not behave. (TT1 at 89-90, 93, 120.)

Getchell offered evidence disputing this, including testimony from her daughter, Erika. (TT2 at 110-111.) Erika testified about how she viewed Patrece as “my sister,” that they were “very close,” and that the Getchells treated Patrece the same as the other siblings. (TT2 at 111-12.) She explained Patrece had chores just like all the siblings, and that they all went to the same schools, celebrated holidays together, went on family vacations, and received gifts. (TT2 at 112-14.) She denied that people were abusive to Patrece, called her names, or criticized her deficits—either as a child or as an adult. (TT2 at 113-17.) She also discussed the close relationship that she and Patrece shared into adulthood, speaking daily until Patrece’s abrupt departure with Joel on St. Patrick’s Day in 2019. (TT2 at 117-126.)

Defense counsel asked Erika about a phone call she received from Patrece around Christmas 2019, which is after she left the home and reported Getchell to the police. (TT2 at 127.) Patrece said, “I miss you guys,” and that she cannot come home “because I think Mom and Dad will be upset with what I did.” (TT2 at 127.) The State objected on hearsay grounds. (TT2 at 129-130.) At sidebar, defense counsel argued the then-existing state of mind and emotional condition exception to the hearsay rule, and that the statements were inconsistent with Patrece’s earlier

testimony. (TT2 at 129-131.) By way of an offer of proof, counsel elaborated “I think that the testimony is going to go something like, she’s sorry about what she did to Mom and Dad, and then she asked her, like, what she was talking about, and she said, I can’t talk about it right now, because I think people are listening to me or something.” (TT2 at 130.) The trial court sustained the objection, permitting only testimony that a call occurred. (TT2 at 131.)

Later, in Erika’s cross-examination, the following exchange occurred:

Q: Can you tell me how much money you were given between 2017 and 2019?

A: No.

Q: No, because you don’t know, or -- I’m talking about yourself.

A: I know what you’re talking about. No, I don’t know.

Q: You don’t know? Do you recall a proceeding in the bankruptcy court where the trustee brought an action against you for over 1.9 million for fraudulent transfers?

(TT2 at 146.) The defense objected and, at sidebar, it was further elaborated that this allegation resulted in a compromise agreement in which Erika paid \$125,000, as a compromise without findings in relation to Getchell Agency’s bankruptcy. (TT2 at 147-148.) The trial court sustained the objection and told the jury to disregard the question. (TT2 at 148.)

Later, in closing arguments, the prosecutor urged the jury urged to “evaluate [Patrece’s testimony] in light of somebody who has a disability.” TT3 at 55. She added, “Thank God for Roberta Winchell” —the attorney “who was working pro bono to help this vulnerable person[,]” after again highlighting that Winchell was “not being paid” for her work. (TT3 at 55, 57.) The prosecutor also announced, “I don’t think Patrece . . . is sour milk” and “you get to determine whether or not you think that throws all of your credibility out and makes her sour milk”—a distortion of the defense’s metaphor about treating Patrece’s *testimony* like sour milk: “if you have sour milk, you don’t take one drink and spit it out and then keep drinking more of it. If you have one drink and it’s sour, it’s gone. And that’s how we suggest you should evaluate the testimony of Patrece . . .” (TT3 at 21, 55.)

The jury found Getchell guilty on Count 1, Count 3, and Count 4. (A. 13-16. *See also* A. 12.). Count 2 was dismissed. (A. 12-16.) On Count 1, the trial court sentenced Getchell to five years with all but 2 years suspended, and 3 years of probation. (A. 13.) On Count 4, the trial court sentenced Getchell to nine months and one day, concurrent with Count 1. (A. 13.) Count 3 was merged into Count 1. (A. 13.) Final judgment was entered on November 21, 2025, and Getchell filed a notice of appeal that same day. (A. 11-12.)

Issues Presented for Review

1. Where the trial court abused its discretion in excluding Patrece's statements to Erica as hearsay, and if so, whether the error was harmless.
2. Whether prosecutorial error occurred during the prosecutor's cross-examination of Erika and during the closing arguments, and if so, whether those errors meet the obvious error standard.

Summary of the Argument

Getchell was prosecuted for theft concerning two inheritance checks intended for her then-adult, disabled foster daughter, Patrece. The evidence told two stories. The State's version: an emotionally abusive and exploitative home, corroborating its view that Getchell acted with an intent to deprive when depositing the first check and attempting to cash the second with Patrece in the car. The defense's version: a home where Patrece was treated as an equal and loved, weakening the theory that Getchell acted with a culpable state of mind.

After the State rested, the defense offered evidence that, months after Patrece fled the family and accused Getchell of theft, she called her sister Erika (Getchell's daughter) and said that she missed them, that she "cannot" return home, and that she was sorry. When asked what she was talking about, Patrece said she cannot talk because she thinks people are listening to her. The trial court excluded Patrece's statements as hearsay. Contrary to that determination, the statements were admissible under Rule 803(3) as statements of then-existing state of mind or emotional condition. Alternatively, the statements were admissible for impeachment purposes as prior inconsistent statements, based on Patrece's earlier denial of communicating with Erika after leaving the Getchell home. The trial court erred in

excluding these statements which, if admitted, could have contributed to a reasonable doubt.

The conviction is also tainted by prosecutorial error. During Erika's cross-examination, the prosecutor improperly asked her about a proceeding in the bankruptcy court where the trustee brought an action against her for \$1.9 million. Although a curative instruction was given, this remark was so damaging that the curative instruction was insufficient. Later, in the rebuttal closing argument the prosecutor appealed to sympathy, mischaracterized the defense's closing argument as a personal attack on the disabled alleged victim, and expressed a personal opinion. For example, the prosecutor urged the jury to "evaluate [Patrece's] testimony in light of somebody who has a disability" (TT3 at 55), exclaimed "Thank God for Roberta Winchell"—the pro bono attorney working with "this vulnerable person[,] " and stated "I don't think Patrece . . . is sour milk"—as if defense counsel had name-called the alleged victim (which he did not). The defense contends that these issues amount to obvious error.

Argument

I. Patrece's statements to Erika should have been admitted at trial.

This Court “‘review[s] a trial court’s ruling to admit or exclude alleged hearsay evidence for an abuse of discretion’ and ‘will find an abuse of discretion if a party can demonstrate that the trial court exceeded the bounds of the reasonable choices available to it.’” *State v. Tieman*, 2019 ME 60, ¶ 12, 207 A.3d 618 (quoting *Guardianship of David P.*, 2018 ME 151, ¶ 6, 196 A.3d 896). Where an evidentiary issue is preserved, as here, vacatur is warranted unless the error is harmless. *State v. Guyette*, 2012 ME 9, ¶¶ 18-21, 36 A.3d 916. An error is harmless “if it is highly probable that the error did not affect the judgment.” *Id.* ¶ 19 (quoting *State v. Mangos*, 2008 ME 150, ¶ 15, 957 A.2d 89).

A. The statements were substantively admissible under the then-existing states of mind or emotion exception under Rule 803(3).

M.R. Evid. 803(3) provides that “[a] statement of the declarant’s then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant’s will.” Under this rule, “statements of a declarant’s then-existing state of mind or emotion are admissible as an exception

to the rule against hearsay, whereas statements of memory—pointing backwards to the past—are not admissible under that Rule.” *Tieman*, 2019 ME 60, ¶ 17. “[T]he state of mind hearsay exception [is] limited to evidence that is highly relevant and uttered in circumstances indicating its truthfulness above and beyond the reliability presumed of all statements of present mental state.” *Id.* ¶ 17 (quoting *State v. Mahaney*, 437 A.2d 613, 617 (Me. 1981)).

Several aspects of this testimony should have been admitted under Rule 803(3). First, the statement “I miss you guys” is a direct statement of Patrece’s emotions when placing the call. It was also highly relevant to Patrece’s credibility. The fact that she called Erika months after leaving the home and expressed how she missed everyone is contrary to her testimony about the extensive level of maltreatment she received, and how she fled due to the “constant bashing.”

Second, the statement that complainant “cannot” come home is a statement of intent: her intent to not return. M.R. Evid. 803(3) (specifically referencing a statement of “intent” as being within the exception). To be sure, her statement of *why* she cannot return home is concededly a statement of memory outside the scope of the rule. But in context, the fact that the complainant called Erika, expressed how she missed the family but “cannot” return home, undermined her testimony about the exploitive relationship and was also corroborative to the defense theory that

reasonable doubt existed concerning Joel's influence over her. (*See, e.g.*, TT3 at 33-34 (closing argument discussing how the circumstances surrounding Joel creates reasonable doubt).)

Third, trial counsel's offer of proof stated that Erika would have testified that the complainant said she was sorry for what she did to Mom and Dad. (TT2 at 130.) Expressing guilt is a statement of then-existing state of mind under Rule 803(3). *State v. Watson*, 2016 ME 176, ¶ 12, 152 A.3d 152 (holding that a victim's statement that she felt "guilty . . . clearly describe the victim's emotional or mental feeling"). This holding adheres to how other courts treat such statements of remorse. *See, e.g., United States v. Duran Samaniego*, 345 F.3d 1280, 1282 (11th Cir. 2003) ("An apology is evidence of a then-existing state of mind or emotion: remorse. Iglesias's apology is admissible to prove the truth of the matter asserted - that Iglesias felt remorse at the time he made the apologetic statement."); *Esposito v. State*, 328 A.3d 830, 854 (Md. App. 2024) (holding that a message reading, "I am sorry I called you. Love [heart emoji,]" was admissible to show the declarant was remorseful for having troubled the recipient); *State v. John L.*, 856 A.2d 1032, 1040 (Conn. App. 2004) (holding that letters expressing regret and remorse were admissible as then-existing mental or emotional condition at the time of authorship); *United States v. Slatten*, 395 F. Supp. 3d 45, 87 (D.D.C. 2019) (holding that a declarant's statement

of remorse may have been admissible, but not the reason for that remorse). Similarly, in *Latremore v. Latremore*, the Law Court admitted statements by a defendant made over the telephone to a testifying witness under Rule 803. 584 A.2d 626, 631 (Me. 1990).²

Fourth, Patrece's statements about thinking people were listening to her were likewise admissible, because that statement pertained to her *then existing* mental feeling—concern of someone watching her. *Cf. State v. Nye*, 551 A.2d 844, 846 (Me. 1988) (excluding a victim's statement that she "heard voices" not error because the statements were described as a "past sensation" rather than a contemporaneous statement).

The fact that complainant was expressing remorse in a phone call to Erika undermines the testimony about the exploitive relationship, especially considering that it was made after she had left the Getchell home, engaged an attorney, and sat for two police interviews. And the feeling that she was being listened to supported the defense theory that the circumstances surrounding Joel created reasonable doubt, particularly considering the abruptness of Patrece's departure. Had this information been admitted, the jury might have found that Patrece's post-accusation

² The court presumably could have, but ultimately did not, analyze the statements as admissions of a party opponent.

expression of guilt created reasonable doubt about the accuracy of her accusations and testimony.

B. The statements were admissible as prior inconsistent statements to impeach Patrece's credibility.

This Court has “consistently held that a witness may be impeached by evidence that [they] made an earlier, out-of-court statement inconsistent with [their] trial testimony.” *State v. Robinson*, 561 A.2d 492, 494 (Me. 1989). “Because the out-of-court statement is introduced not to prove its truth but for the limited purpose of attacking the credibility of the maker, it is not hearsay and is properly admissible.” *Id.* See also *State v. Allen*, 462 A.2d 49, 51-52 (Me. 1983) (“Evidence of a prior inconsistent statement is proper impeachment under Rule 607; the out-of-court statement is not hearsay under Rule 801(c) because it is offered not for the truth of the matter asserted but merely to demonstrate that the witness has told a different story in the past and therefore that his trial testimony may not be as reliable as it appears.” (Field & Murray, *Maine Evidence* § 607.4 (1976); Field, *The Maine Rules of Evidence: What they Are and How They Got That Way*, 27 Me. L. Rev. 203, 220 (1975)). To qualify, a statement must be truly inconsistent and pertain to a relevant (as opposed to collateral) matter. *Robinson*, 561 A.2d at 494.

Patrece's statements to Erika meet this standard. The statements are inconsistent because Patrece outright denied speaking to Erika since the St. Patrick's

Day incident, and was at odds with her trial testimony. (TT1 at 178.) And the statements are relevant because they pertain to Patrece's relationship with her family—a topic on which much of the trial testimony centered. The statements meet the requirements of the rule, and should have been admitted. *See, e.g., State v. Thurlow*, 1998 ME 139, ¶ 4, 712 A.2d 518 (error to exclude testimony from a witness that the victim had claimed to falsify a rape charge, after the victim denied making that statement); *State v. Jackson*, 1997 ME 174, ¶ 13, 697 A.2d 1328 (error to exclude a witness's prior statement that they thought the defendant was innocent, which was at odds with the witness's trial testimony); *State v. Nielson*, 552 A.2d 543, 545 (Me. 1989) (evidence that a defendant's alibi told police she had been asleep during the assault properly admitted because it was inconsistent with her testimony that she was awake and could offer an alibi); *Allen*, 462 A.2d at 52 (error to exclude testimony from a witness who claimed the declarant said the incident occurred in Iowa, when the declarant denied having ever told anyone that the incident occurred in Iowa).

To be sure, the trial court permitted evidence showing only that Patrece made a call lasting three or four minutes. (TT2 at 127, 131.) But details matter in trial. When Erika's testimony conflicted with Patrece's, the jury needed to decide “whether the discrepancy results from innocent error or intentional falsehood.” (TT3 at 70 (jury instructions on witness credibility).) Lacking context, jurors could

only guess about whether the conversation was memorable enough for Patrece to recall years later. Had the jury been informed of the details—such as Patrece apologizing to her sister after fleeing home and accusing her mother of a crime, saying she couldn’t return, and expressing concern that “I think people are listening to me”—the likelihood that Patrece would remember the call increases. At a minimum, these additional facts could have cast reasonable doubt on Patrece’s credibility and potentially influenced the verdict, such that this court cannot say it is “highly probable” that the error had no effect on the judgment.

II. The prosecutor improperly referenced an unproven \$1.9 million fraudulent transfer claim during her cross-examination of Erika and made improper statements during closing argument.

The defense did not object to the prosecutor’s closing argument, nor to the curative instruction during Erika’s cross-examination. Accordingly, this Court reviews for obvious error. *State v. Robbins*, 2019 ME 138, ¶ 8, 215 A.3d 788; *State v. Stanton*, 1998 ME 85, ¶ 10, 710 A.2d 240. On obvious error review, the Court will set aside a verdict only if there is an error that is plain, affects substantial rights, and which “seriously affects the fairness and integrity or public reputation of judicial proceedings.” *Id.* (quoting *State v. Dolloff*, 2012 ME 130, ¶ 35, 58 A.3d 1032). Where there are multiple errors, as here, courts may determine that the errors’ cumulative effect justifies a new trial. *See United States v. Mooney*, 315 F.3d 54, 61 (1st Cir. 2002).

The trial court found the prosecutor’s reference to the bankruptcy trustee’s \$1.9 million claim for fraudulent transfer against Erika was inadmissible. But what is more, even putting the question to the witness in the first place was problematic because the question lacked an arguable basis under the rules. The question sought information that was irrelevant, unfairly prejudicial, and character evidence. M.R. Evid. 401–404. It also risked misleading the jury, considering the prosecutor’s admission at sidebar that the result was a compromise agreement—so not a finding of wrongdoing by the bankruptcy court. (TT2 at 147.) In short, the question served as a message to the jury that a third person—the bankruptcy trustee appointed by the bankruptcy court—believed Erica was involved in fraudulent conduct. Doing double duty, the prosecutor’s improper comment also tarred Getchell, because it appeared in a line of questioning implying that Getchell was likely the person who fraudulently gave Erika the eye-popping seven-figure sum. (TT2 at 145-146 (questioning how much money the Getchell children were given and how the siblings were treated to set the stage for the question about the \$1.9 million fraudulent transfer question).)

Although jurors are presumed to follow instructions, “[o]nce a jury is permitted to hear evidence strongly calculated to impress the minds of the jurors and create prejudice against an accused, the damage is done. Jurors are not robots but are

humans with qualities common to all persons.” *People v. Gregory*, 177 N.E.2d 120, 123 (Ill. 1961). *See also United States v. Nosley*, 62 F.4th 1120, 1127 (8th Cir. 2023) (“Jurors are not robots. They are not required to suppress all emotional or visceral reactions to troubling facts.”). The statement here was extreme: in a theft case allegedly committed against a vulnerable individual, the prosecutor announced before the jury that a witness was subjected to a \$1.9 million fraudulent transfer claim. One might question or think, for example,

- Who did that money come from?
- How many people must the Getchells have stolen from to get that much money?
- This is probably all taxpayer money from MaineCare.
- If the bankruptcy trustee filed a \$1.9 million fraudulent claim, there must be some evidence of fraudulent transfers.

These are all questions and thoughts that any normal person would entertain upon hearing the prosecutor’s inappropriate remark, especially with the extensive evidence introduced about the bankruptcy proceeding and the State’s overall theory of the case. Expecting the jury to just forget the bankruptcy trustee’s \$1.9 million fraudulent transfer allegation is not realistic and not fair to the defendant. Nor is it

fair to the jurors themselves, who are ordered not to think of the pink elephant the prosecutor just described.

As for the closing argument, the prosecutor's comments imposed her personal opinion about Patrece, distorted defense counsel's closing argument to make it appear as if he was personally attacking Patrece by calling her "sour milk," and appealed to the jury's sympathy by urging them to view Patrece's testimony through the lens of a person with a disability, and expressed admiration for Patrece's attorney: "Thank God for Roberta Winchell[,] who was "working pro bono to help this vulnerable person" and "not being paid" for her work. (TT3 at 55, 57.) These statements were plainly erroneous, in that they conveyed the prosecutor's personal opinion, implicitly denigrated defense counsel as if he had personally attacked Patrece and appealed to sympathy. *See State v. Fahnley*, 2015 ME 82, ¶ 34, 119 A.3d 727 (improper to pander to "sympathy, bias, or prejudice" (citing *United States v. Johnson*, 231 F.3d 43, 47 (D.C. Cir. 2000))); *Dolloff*, 2012 ME 130, ¶ 42 (a prosecutor should not vouch for witnesses, express personal opinions about credibility, or pander to sympathy); *State v. Burgoyne*, 452 A.2d 393 (Me. 1982) (observing that it is "clearly improper to appeal to the jury's sympathy with emotionally-charged and inflammatory remarks").

These statements were prejudicial and may have affected the trial's outcome. The jury may well have been influenced by the State's affinity for both Patrece and Roberta Winchell, especially considering the appeals to sympathy for Patrece during the closing argument. Indeed, the State urged the jury to "evaluate [the testimony] in light of somebody who has a disability[,]" implying that a different standard might apply. (TT3 at 55.) After all, "we don't know exactly what [the disability] is," so it's difficult to conceive how the jury would take that into account in a reasoned manner true to the beyond a reasonable doubt standard. (TT3 at 55.) The State's comments may have also evoked anger at defense counsel, to the extent that jurors may have accepted the State's inaccurate presentation that defense counsel called Patrece "sour milk." Improper conduct during closing argument from a prosecutor is especially damaging to a defendant, because "prosecutors are cloaked with the authority of the State, and [are] duty-bound to see that justice is done." *State v. Pratt*, 2015 ME 167, ¶ 15, 130 A.3d 381 (quoting *State v. Schmidt*, 2008 ME 151, P 16, 957 A.2d 80). Thus when a prosecutor makes an improper statement that is uncorrected by counsel or the court, there is heightened danger that the jury will accept it. *Robbins*, 2019 ME 138, ¶ 14 ("It is possible that the jury decided that because the prosecutor, 'cloaked with the authority of the State,' told them that Robbins was

guilty, and no one other than Robbins objected to or corrected that statement, then the jury should reach the same conclusion” (internal citation omitted)).

Conclusion

For the above reasons, Getchell respectfully requests that the Court vacate her conviction and remand for a new trial.

Respectfully submitted,

Dated: April 10, 2026

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Certificate of Service

I hereby certify that on the date stated below I caused an electronic copy of this document to be served on the following counsel via email. In addition, upon acceptance of this brief by the Court, two paper copies of this brief will be served on the following counsel.

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