

**STATE OF MAINE
PENOBSCOT, ss.**

**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 UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

**AARON M. FREY
Attorney General**

**PATRICIA K. POULIN
Assistant Attorney General
State's Attorney Below**

**ELIZABETH T. WEYL
Assistant Attorney General
State's Attorney on Appeal
6 State House Station
Augusta, Maine 04333
(207) 626 - 8836**

**KATIE SIBLEY
Assistant Attorney General
Of Counsel**

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
TABLE OF AUTHORITIES.....	4
FACTUAL BACKGROUND.....	7
PROCEDURAL HISTORY.....	14
STATEMENT OF THE ISSUES.....	15
SUMMARY OF THE ARGUMENT.....	15
ARGUMENT	16
 I. The trial court did not err in excluding Patrece’s statements to Erika as hearsay, and even if the trial court did err, such error was harmless.	 16
 A. As a preliminary issue, the testimony that Erika gave was arguably in evidence.	 17
 B. The testimony was not admissible under M.R. Evid. 803(3).	 17
 1. The reasons that Patrece could not come home and that she was sorry were not statements of then-existing state of mind.	 18
 2. The testimony was neither highly relevant nor uttered in circumstances indicating truthfulness.	 20
 C. The testimony was not admissible as a prior inconsistent statement.	 24
 1. As a preliminary issue, prior inconsistent statement as grounds for the admission of the testimony was not properly preserved... 	 25

2. The testimony was not truly inconsistent with Patrece's testimony.	26
3. The testimony was not relevant.	27
4. The testimony was not admissible simply because "at a minimum" it "could have cast reasonable doubt on Patrece's credibility."	28
D. Even if the trial court erred in excluding the testimony, such error was harmless.....	29
II. There was no prosecutorial error warranting vacatur during the State's cross-examination of Erika and its rebuttal argument.....	30
A. The trial court's curative instruction striking the State's question to Erika regarding the trustee action was sufficient.	31
B. The alleged errors in the State's rebuttal argument do not constitute obvious error.....	33
C. The cumulative effect of the alleged prosecutorial errors did not result in an unfair trial.....	37
CONCLUSION.....	37
CERTIFICATE OF SERVICE	38

TABLE OF AUTHORITIES

Cases

<i>Esposito v. State</i> , 264 Md. App. 54, 328 A.3d 830.....	20
<i>State v. Allen</i> , 462 A.2d 49 (Me. 1983).....	27-28
<i>State v. Ardolino</i> , 1997 ME 141, 697 A.2d 73.....	32
<i>State v. Atwood</i> , 2010 ME 12, 988 A.2d 981.....	23
<i>State v. Brine</i> , 1998 ME 191, 716 A.2d 208.....	24, 28
<i>State v. Cugliata</i> , 372 A.2d 1019 (Me. 1977).....	18, 23
<i>State v. Desjardins</i> , 401 A.2d 165 (Me. 1979).....	25
<i>State v. Dolloff</i> , 2012 ME 130, 58 A.3d 1032.....	30-32, 34, 37
<i>State v. Fahnley</i> , 2015 ME 82, 119 A.3d 727.....	35
<i>State v. Hassan</i> , 2013 ME 98, 82 A.3d 86.....	36
<i>State v. Herbest</i> , 551 A.2d 442 (Me. 1988).....	33
<i>State v. Jackson</i> , 1997 ME 174, 697 A.2d 1328.....	27
<i>State v. Jaime</i> , 2015 ME 22, 111 A.3d 1050.....	29
<i>State v. Marr</i> , 551 A.2d 456 (Me. 1988).....	24
<i>State v. Moulton</i> , 2026 ME 6, 353 A.3d 919.....	37
<i>State v. Nielson</i> , 552 A.2d 543 (Me. 1989).....	27
<i>State v. Philbrick</i> , 436 A.2d 844 (Me. 1981).....	22-23
<i>State v. Robinson</i> , 561 A.2d 492 (Me. 1989).....	24

<i>State v. Sholes</i> , 2020 ME 130, 58 A.3d 1032.....	34
<i>State v. Snow</i> , 2007 ME 26, 916 A.2d 957.....	25
<i>State v. Tarbox</i> , 2017 ME 71, 158 A.3d 957, as corrected (Apr. 20, 2017).....	32
<i>State v. Tieman</i> , 2019 ME 60, 207 A.3d 618.....	16, 18-19, 23
<i>State v. Thurlow</i> , 1998 ME 139, 712 A.2d 518.....	24, 27, 29
<i>State v. Tripp</i> , 2024 ME 12, 314 A.3d 101.....	32
<i>State v. Watson</i> , 2016 ME 176, 152 A.3d 152.....	19, 21-22
<i>U.S. v. Samaniego</i> , 345 F.3d 1280 (11 th Cir. 2003).....	19
<i>U.S. v. Slatten</i> , 395 F.Supp.3d 45 (D.D.C. 2019).....	18-19

Statutes

17-A M.R.S. § 152(1)(C).....	14
17-A M.R.S. § 353(1)(B)(1).....	14
17-A M.R.S. § 354(1)(B)(1).....	14
17-A M.R.S. § 358(1)(B)(1).....	14

Rules

Fed. R. Evid. 803(3).....	19
M.R. Evid 801(d)(2).....	29
M.R. Evid. 803(3).....	17-23
M.R.U. Crim. P. 52(a).....	29

References

Field & Murray, *Maine Evidence* (2000 ed. 1999).....25

FACTUAL BACKGROUND

The Bankruptcies

In March 2016, Rena Getchell filed for personal bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. (State's Exhibit 12 [St. Ex. __]; Trial Transcript Volume II at 74 [T. Tr. __].) In her petition, she estimated that she had assets worth between \$100,001 and \$500,000, and that she owed between one and ten million dollars. (St. Ex. 12.) On the same date, she also filed a petition for Chapter 11 bankruptcy protection on behalf of her business, the Getchell Agency (TGA). (St. Ex. 14; T. Tr. II 73-74.) In that petition, she estimated that TGA had up to \$50,000 in assets and owed between one and ten million dollars. (St. Ex. 14.)

The two bankruptcy cases eventually came to be jointly administered. (T. Tr. II at 74; *see* St. Ex. 18.) In November 2017, on motion of the United States, the Bankruptcy Court appointed a Chapter 11 trustee to take control of TGA. (St. Exs. 18-19; T. Tr. II 77-78.) A few days before the trustee was appointed, Getchell filed with the Bankruptcy Court a letter in which, *inter alia*, she expounded on TGA's recent financial woes, stating that (i) "[s]ince this case was filed, my bankruptcy legal team has been paid around a million dollars and have billed for a substantial amount beyond that," (ii) TGA "is currently owed more than \$100,000" from the designated payees of six clients, (iii) TGA had received

a letter from the Maine Department of Health and Human Services “denying back reimbursements of approximately \$498,000,” and (iv) TGA “was recently refused funding for 30 clients.” (St. Ex. 22; T. Tr. II 82-83.)

The bankruptcy cases were pending during the entirety of the criminal conduct underlying the case at bar; the TGA bankruptcy case was terminated in March 2021 and Getchell’s personal bankruptcy case closed in September 2023. (T. Tr. II 75-76.)

Patrece

Patrece Severance (now Patrece Cotton) was a client of The Wayne Getchell Foster Home (TWGFH), which Getchell co-owned with her husband, Wayne Getchell. (T. Tr. I 77, 90; T. Tr. II 91-92.) TWGFH was located at the Getchell family home in Clifton, Maine. (T. Tr. I 26, 79-82; T. Tr. II 91-92.) Patrece had been placed in the Getchell household/TWGFH as a young girl and remained there until March 2019, when she was in her early 30s. (T. Tr. I 29-34, 77-78, 92-93, 103, 144.) Patrece considered Rena and Wayne Getchell to be her parents, and she considered the Getchells’ three biological children, Travis, Erika and Alisha, who grew up alongside her, to be her siblings. (T. Tr. I 78, 145-146.)

Unlike the biological Getchell children, Patrece was unquestionably a *client*. She was “staffed” “[a]round the clock” by Wayne, Travis, and Alisha. (T.

Tr. II 142.) Alisha, who was six years Patrece's junior, had begun "staffing" Patrece when she (Alisha) was just 18 years old. (T. Tr. II 142, 151-52.) Patrece never had a job, never learned to drive a car, never pursued post-secondary education, and was never allowed to be alone outside the house. (T. Tr. I 46, 89, 96, 110, 149.) As of the summer of 2017, she also did not have her own bank account. (T. Tr. I 106.)

Patrece received Social Security Disability Income (SSDI), but it is not clear precisely why she qualified. (T. Tr. I 59, 78-79, 88-89, 107, 120-122, 132-133, 140-141; T. Tr. II 186-187; St. Ex. 9 (wherein Getchell states that Patrece received SSDI due to "mental retardation and mental health").) She was her own legal guardian. (T. Tr. I 134.)

The First Disbursement Check

In July 2017, just a few months before Getchell wrote the November 2017 letter to the Bankruptcy Court, she arranged for Patrece to sign two documents before a notary: a Refunding Bond and Release and an Acceptance and Approval of Accounting, both with regard to a distribution of \$43,993.22 to Patrece from Patrece's biological grandfather's estate. (St. Ex. 5; T. Tr. I 56, 104-105, 135.)

Later that month, Getchell arrived at 304 Stillwater Avenue Furniture in Bangor near closing time. (T. Tr. II 97-99.) A store employee recalled that Getchell, ostensibly unshod, "broadly select[ed] furniture, as in, for example, I'll

take the whole corner bedroom set, or the whole living room set.” (T. Tr. II 98-99.) Getchell ultimately ran up a bill of over \$13,000 for items including “some sofas, chairs, coffee and end tables . . . a dining set, [and] a couple of stools.” (St. Ex. 35; T. Tr. II 104.) She paid a deposit of \$3,000. (St. Ex. 35; T. Tr. II 100-101.) The furniture was delivered to an address in Otis, Maine. (St. Ex. 35; T. Tr. II 103-104.) Notably, Otis, Maine, was the location of Getchell’s primary residence, which she maintained separately from that of her family (both foster and immediate) in Clifton, Maine. (T. Tr. I 79-82; T. Tr. II 26-27, 91-92, 117-118.)

On August 17, 2017, Getchell drove Patrece to the bank and deposited Patrece’s \$43,993.22 disbursement check into Getchell’s own personal checking account, withdrawing \$5,000 of it in cash. (St. Ex. 1 at Bates 296, 302; T. Tr. I 105-109; T. Tr. II 56.) Getchell put some of the \$5,000 in her own wallet and gave the rest to her daughter Alisha to buy a new computer. (T. Tr. I 109.)

Getchell said that Patrece could not have the disbursement money because she would lose her SSDI benefits. (T. Tr. I 107.) Patrece would not have felt much of a blow from that because she did not actually receive her SSDI checks – Getchell did; the Getchells would dole out a stipend to Patrece after applying the balance to “room and board.” (St. Ex. 9; T. Tr. I 107, 140.) This income to the Getchells was in addition to MaineCare payments to TWGFH for

Patrece's care and "staffing" by Getchell family members. (St. Exs. 29, 30; T. Tr. II 47-50.)

Before Getchell deposited Patrece's \$43,993.22 disbursement check, her account held just \$9,935. (St. Exs. 1, 32; T. Tr. II 55-56.) After withdrawing \$5,000 in cash from the check directly, Getchell withdrew \$2,500 in cash on August 18, 2017, then \$18,000 in cash on August 28, 2017, and \$13,616.49 in cash on September 15, 2017. (St. Exs. 1, 32; T. Tr. II 55.) (She also deposited \$3,991.03 in cash on September 1, 2017. (St. Exs. 1, 32).) In addition to the cash withdrawals, from August 17 to September 18, 2017, Getchell spent over \$1,000 at an Old Orchard Beach, Maine, hotel and went on a shopping spree in Massachusetts, spending over \$1,100 at Saks Fifth Avenue, nearly \$1,000 at Lord & Taylor, and over \$3,700 at Guess. (St. Exs. 1, 32; T. Tr. II 58.) Between this and other spending, including over \$2,600 towards her remaining balance at 304 Stillwater Avenue Furniture (St. Ex. 35), Getchell zeroed out the account in just one month. (St. Exs. 1, 32; T. Tr. II 59.)

A few weeks later, in October 2017, Getchell opened a new checking account. (St. Exs. 1, 32; T. Tr. II 59.) Over the remainder of the calendar year, she deposited over \$45,000 in cash from unknown sources. (*Id.*) She spent as freely from this account as she had from the other one, including over \$17,000 at various Maine retailers, \$8,000 on shopping and hotels around Boston,

Massachusetts, and over \$12,000 on shopping and hotels in Palm Beach, Florida. (St. Exs. 1, 32.) On November 27, 2017, the date that Getchell's letter to the Bankruptcy Court chronicling TGA's financial troubles was filed, her bank posted charges of \$1,273.75 at Saks Fifth Avenue and \$2,077.15 at Janie and Jack, both in Boston, Massachusetts, and \$1,591.22 at Macy's in South Portland, Maine. (*Id.*) By January 10, 2018, this account had a balance of just over \$1,400. (St. Exs. 1, 32; T. Tr. II 60.)

Patrece never gave Getchell permission to spend any of her disbursement. (T. Tr. I 110-111, 116-117.)

The Second Disbursement Check

At some point, Getchell announced that Patrece needed her own bank account to help Getchell shield money from the Bankruptcy Court. (T. Tr. I 88.) In July 2018, Wayne gave Patrece \$200 and Alisha accompanied her to the bank, where she opened an account. (St. Exs. 2 (at Bates 358), 34; T. Tr. I 86-88; T. Tr. II 51-53, 64.)

In March 2019, Getchell brought Patrece to Patrece's bank for the purpose of cashing a second disbursement check from her grandfather's estate. (T. Tr. I 94-95.) The check, which Getchell had brought with her, was made out to Patrece in the amount of \$11,234.46. (St. Ex. 2 at Bates P00357; T. Tr. I 95, 122.) Getchell told Patrece that she (Getchell) needed the money "to stay out of jail."

(T. Tr. I 95.) Patrece expected that Getchell “was going to take it all,” though Patrece never gave permission for her to do so. (T. Tr. I 97-98.) To Getchell’s apparent surprise and chagrin, they were only able to withdraw \$100 in cash immediately following the deposit. (T. Tr. I 98-99.) A plan was set for them to return the following day so that Getchell “could take the rest of that inheritance money.” (T. Tr. I 98.) That evening, Patrece and her boyfriend Joel surreptitiously took an Uber to Joel’s home to stay.¹ (T. Tr. I 31-32, 100, 166-167.)

The Aftermath

The day after Joel and Patrece left, they contacted and met with Attorney Roberta Winchell. (T. Tr. I 37, 51-52, 103-104.) Attorney Winchell took Patrece on as a client and began to research what had happened to her two inheritance checks. (T. Tr. I 52-59.) She then contacted Patrece’s bank and had her account “locked down” to prevent anyone from accessing it. (T. Tr. I 58-59, 103-104.) She also contacted the Healthcare Crimes Unit of the Office of the Maine Attorney General. (T. Tr. I 184.)

Patrece voluntarily stopped receiving any MaineCare and SSDI benefits and she never returned to the Getchell home. (T. Tr. I 61-62, 103.) She and Joel were married less than two months later. (*Id.* at 77.) Attorney Winchell

¹ Patrece and Joel had met when Patrece walked into his place of employment at the mall while somebody waited for her in the hallway, “[j]ust kind of walking back and forth.” (T. Tr. I 26, 42-44.)

continued to represent Patrece, pro bono. (*Id.* at 59-60.) In conjunction with the State of Maine, she entered a claim with the Bankruptcy Court on Patrece's behalf for the first distribution. (*Id.* at 66-67.) The claim was approved and Patrece was finally made whole in mid-2023, six years after Getchell, the woman she had thought of as her mother, had stolen from her. (St. Exs. 25 (at 17-18, 21), 26 (at 8, 17), 27.)

PROCEDURAL HISTORY

On March 23, 2022, a Penobscot County Grand Jury returned a four-count indictment charging Getchell with one count of Class B theft by deception (17-A M.R.S. § 354(1)(B)(1)), one count of Class B theft by misapplication of property (17-A M.R.S. § 358(1)(B)(1)), and one count of Class B theft by unauthorized taking (17-A M.R.S. § 353(1)(B)(1)) with regard to the first disbursement check, and one count of Class C attempted theft by unauthorized taking (17-A M.R.S. § 152(1)(C), 353(1)(B)(1)) with regard to the second disbursement check. (Appendix 3, 17-18 [A. __].) On June 9, 2022, Getchell entered pleas of not guilty. (A. 4.)

A jury trial was held from September 16 through 18, 2024. (A. 8.) On September 18, 2024, Counts 1 (theft by deception), 3 (theft by unauthorized

taking), and 4 (attempted theft by unauthorized taking) were submitted to the jury and the jury returned a guilty verdict on each. (A. 8; T. Tr. III 73-87, 94-96.)

On November 21, 2025, following a hearing, Getchell was sentenced and released on bail pending appeal. (A. 10-12; T. Tr. IV 110-139.) This appeal timely followed. (A. 12.)

STATEMENT OF THE ISSUES

- I. Whether the trial court committed error warranting vacatur by excluding Patrece's statements to Erika as hearsay.**
- II. Whether the prosecutorial error warranting vacatur occurred during the State's cross-examination of Erika and during its rebuttal argument.**

SUMMARY OF THE ARGUMENT

1. The trial court did not err in excluding Patrece's statements to Erika in a phone call between them as hearsay. First, Erika's testimony about the content of the phone call was arguably in evidence because it was not struck from the record following the State's objection. Second, the content of the phone call was not admissible as either a statement of then-existing state of mind or as a prior inconsistent statement. Patrece's statements were of past memory, not highly relevant, and not uttered in circumstances indicating truthfulness. Furthermore, even if properly preserved, the content of the phone call was

neither inconsistent with Patrece's testimony nor relevant. Finally, due to the very lack of relevance of the phone call, any error in excluding it was harmless.

2. There was no prosecutorial error during the State's cross-examination of Erika sufficient to warrant vacatur based on the trial court's prompt action by striking the State's question. Similarly, there was no error sufficient to warrant vacatur in the State's rebuttal argument. When viewed in the context of the entire trial, including jury instructions, Getchell's closing argument, and the fact that the statements at issue were made on rebuttal, the statements do not rise to the level of "clear error," if they even did constitute error at all.

ARGUMENT

I. The trial court did not err in excluding Patrece's statements to Erika as hearsay, and even if the trial court did err, such error was harmless.

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 (internal quotation marks omitted). In its review, this Court "afford[s] broad discretion to the trial court in its determination on the admissibility of evidence." *Id.* Contrary to Getchell's contentions, the trial court did not abuse its

discretion by excluding Erika's testimony regarding statements allegedly made to her by Patrece during a phone call. (Bl. Br. 15-16.)

A. As a preliminary issue, the testimony that Erika gave was arguably in evidence.

Erika's testimony that during a phone call with Patrece around Christmas 2019 Patrece said, "I miss you guys," and that she could not come home because "I think Mom and Dad will be upset with what I did," was arguably in evidence. (T. Tr. II 127.) All the jurors knew was that the trial court had sustained the State's objection *unless* there was a sidebar conference, which there then was. (T. Tr. II 127-131.) After the sidebar conference, the trial court made no pronouncement to the jury regarding either the State's objection or Erika's prior testimony. (*Id.* at 131.) Thus, from the jury's perspective, Erika's testimony was in evidence. Getchell's argument that Erika's testimony was improperly excluded is therefore moot.

In the case that this Court disagrees, the remaining argument regarding this issue will assume, *arguendo*, that Erika's testimony was excluded.

B. The testimony was not admissible under M.R. Evid. 803(3).

Getchell first argues that Erika's testimony was admissible as a statement of then-existing state of mind. *See* M.R. Evid. 803(3). "Hearsay statements of a declarant's then-existing state of mind are admissible in a criminal prosecution

if they are ‘highly relevant and uttered in circumstances indicating [their] truthfulness above and beyond the reliability presumed of all statements of present mental state.’ ” *Tieman*, 2019 ME at ¶ 15, 207 A.3d 618 (quoting *State v. Cugliata*, 372 A.2d 1019, 1027 (Me. 1977)). Two of Patrece’s statements, as related by Erika, were not statements of then-existing state of mind at all, and none of the statements were either “highly relevant” or “uttered in circumstances indicating [their] truthfulness,” and thus they were not admissible under M.R. Evid. 803(3).

1. The reasons that Patrece could not come home and that she was sorry were not statements of then-existing state of mind.

Getchell concedes that, with regard to Erika’s testimony that Patrece told her that she (Patrece) could not come home, the clause, “because I think Mom and Dad will be upset with what I did” is not admissible under M.R. Evid. 803(3) because it is “a statement of memory outside the scope of the rule.” (Blue Br. 15.) However, Getchell fails to recognize that, with regard to the proffered testimony that Patrece said she was sorry, the clause, “for what I did to Mom and Dad” is inadmissible for precisely the same reason. (*See id.* at 16-17.)

In support of her argument that “I’m sorry for what I did to Mom and Dad” is admissible under M.R. Evid. 803(3), Getchell relies in part on *United States v.*

Slatten, 395 F.Supp.3d 45, 87 (D.D.C. 2019). (Blue Br. 16-17.) This reliance is inapt. The *Slatten* court held that because Rule 803(3) of the Federal Rules of Evidence “does not permit the declarant to relate what caused the state of mind,” the defendant’s compatriot’s general expression of remorse may have been admissible, but whether he apologized “*for what happened that day*” was not. *Slatten*, 395 F.Supp.3d at 87 (D.D.C. 2019).

Getchell also relies in part on *United States v. Samaniego*, 345 F.3d 1280, 1282-83 (11th Cir. 2003). (Blue Br. 16.) The *Slatten* court points out, however, that *Slatten*, like Getchell, relies on *Samaniego* at his own peril because the *Samaniego* court held that “the purpose of [Federal] Rule 803(3) is to narrowly limit those admissible statements to declarations of condition—‘I’m scared’—and not belief—‘I’m scared because someone threatened me.’” *Id.* at note 114 (quoting *Samaniego*, 345 F.3d 1280, 1282-83 (11th Cir. 2003) (internal alterations and quotation marks omitted)). *See also State v. Tieman*, 2019 ME 60, ¶ 17, 207 A.3d 618 (“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.”); *State v. Watson*, 2016 ME 176, ¶ 14, 152 A.3d 152 (testimony was admissible under M.R. Evid. 803(3) where witnesses recounted only that victim said she felt guilty and did not otherwise testify to the content of those

conversations); *cf. Esposito v. State*, 264 Md. App. 54, 96-98, 328 A.3d 830, 854-55 (if offered for the truth, victim's texts, "I'm sorry I called you. Love [heart emoji]" and "I am sorry I bothered you," would have been admissible as statements of then-existing mental or emotional condition.).

2. The testimony was neither highly relevant nor uttered in circumstances indicating truthfulness.

a) Relevance

Evidence that Patrece said she missed her estranged family but could not come home, that she expressed remorse for "what she did to Mom and Dad" and that she told Erika that she thought people were "listening or something" was not highly relevant, as required for admissibility under M.R. Evid. 803(3). The conversation that Erika described having with Patrece occurred about nine months after Patrece had reported Getchell's crimes to the authorities. (T. Tr. II 127.) There is no indication on the record that Patrece ever specified to Erika precisely what she did to "Mom and Dad" to make her think they would be upset or what she was sorry for, and any guess would be purely speculative. As the State noted at sidebar, "we don't even know what she's talking about. She could be sorry about just stealing \$20." (*Id.* at 127-130.) Even more likely perhaps, is that "what she did" and what she felt sorry for was abruptly cutting ties with

the only family that she had known. It is the very “squishiness” of the phrase, “what she did” that renders it too vague to be highly relevant.

Likewise, while the phrase “I can’t talk about it right now, because I think people are listening or something,” (*id.* at 130), could imply that Patrece was being controlled or monitored against her will, it could just as easily imply that Patrece was sitting in a public space and nosy strangers were eavesdropping.

None of this is relevant to the fact that Getchell went on a spending spree with Patrece’s first disbursement, or the fact that she attempted to take Patrece’s second disbursement.

Contrast this with evidence of the victim’s guilty feeling that *was* sufficiently relevant under M.R. Evid. 803(3) in *State v. Watson*, 2016 ME 176, ¶¶ 10-15, 152 A.3d 152. In *Watson*, the victim testified that she felt guilty after being sexually assaulted by her father at ten years old because she had “said yes.” *Id.* ¶ 3. She further testified that she had told her aunt what happened and how she felt. *Id.* The victim’s aunt then testified the victim had eventually disclosed the abuse to her and that the victim said that at the time of the disclosure she felt guilty. *Id.* ¶ 4. The victim’s grandmother, while not permitted to testify about the details of the victim’s disclosure to her, also testified that at the time of disclosure the victim “said she was feeling guilty.” *Id.* ¶ 5. The aunt’s and grandmother’s testimony was relevant because (i) it was clear from the

victim's testimony why she felt guilty, (ii) it explained the timing of her disclosures, which the defendant had made an issue, and (iii) it corroborated the victim's testimony. *Id.* ¶ 13.

Meanwhile, in the case at bar, it is wholly unclear why Patrece felt sorry for what she may have meant about people listening to her. The conversation with Erika had no apparent temporal connection to any relevant action on Patrece's or Getchell's part, unlike in *Watson*, where the victim had reported feeling guilty at the time that she disclosed her abuse.

Even if Patrece missed her family, even if she felt sorry for seeking help, and even if she thought that people were listening to her, it does not mean that she was not Getchell's victim. *See also State v. Philbrick*, 436 A.2d 844, 862 (Me. 1981) (abrogated on other grounds) (victim's declaration of his intent to drive directly home did not meet the "high relevance" requirement of Rule 803(3) because it was at least as likely that the victim had offered to drive the hitchhiking defendant to a different location as it was that the defendant had compelled the victim to do so).

b) Reliability

The statements at issue also fail to meet the standard for reliability necessary for admissibility under M.R. Evid. 803(3). "The premise for admitting hearsay statements evidencing state-of-mind is that such statements are

reliable because of their spontaneity and the resulting probable sincerity.” *Tieman*, 2019 ME at ¶ 15, 207 A.3d 618 (quotation marks omitted). This Court weighs this factor based on “indicia of reliability additional to those inherent in assertions of present mental condition.” *Cugliata*, 372 A.2d at 1027 (Me. 1977). In *Cugliata*, for example, such “indicia of reliability” included that the victim had shared his plans with “a lifelong friend, making it unlikely that [victim] would lie to him,” that a note the victim had written was apparently intended to “inform his family of his whereabouts,” and that his statement concerned future travel plans. *Id.* at 1028. *See also State v. Atwood*, 2010 ME 12, ¶¶ 27-30, 988 A.2d 981 (victim’s statements were highly reliable for the purpose of M.R. Evid. 803(3) because they “only related to her future intentions, and did not concern past events or beliefs[,] . . . were made several times to both family members and close friends, . . . were specific and consistent[,]” and were further corroborated by her disappearance on the very day the she had stated she planned to leave); *Philbrick* 436 A.2d at 862 (Me. 1981) (the victim had no reason to lie when he told a friend before leaving a party that he intended to go directly home).

The hearsay evidence at issue here, on the other hand, lacks any indicia of reliability. There was no corroborating evidence, and Patrece had every reason to prevaricate when speaking with Erika; she could have been trying to

ascertain Erika's stance on the situation, attempting to gain favor, or even angling for a Christmas gift.

C. The testimony was not admissible as a prior inconsistent statement.

Getchell next argues that Erika's testimony was admissible as a prior inconsistent statement. This Court has "consistently held that a witness may be impeached by evidence that he made an earlier, out-of-court statement inconsistent with his trial testimony." *State v. Brine*, 1998 ME 191, ¶ 9, 716 A.2d 208 (quoting *State v. Robinson*, 561 A.2d 492, 494 (Me. 1989)). A prior inconsistent statement is "a statement 'offered not for the truth of the matter asserted but to demonstrate that the witness has in the past told a different story and therefore his [or her] trial testimony may not be reliable....'" *State v. Thurlow*, 1998 ME 139, ¶ 4, 712 A.2d 518 (quoting *State v. Marr*, 551 A.2d 456, 458 (Me. 1988)). "There are two preconditions before such statements may be admitted: the out-of-court statement must be truly inconsistent with the witness's trial testimony, and the impeachment must be based on a 'relevant' and not a 'collateral' matter." *Id.* (internal quotation marks and alteration omitted).

1. As a preliminary issue, prior inconsistent statement as grounds for the admission of the testimony was not properly preserved.

At trial, Getchell did not specify the same grounds on which the given testimony was admissible that she now does on appeal. (T. Tr. II 128-131.) “It is a well established principle of appellate procedure in criminal proceedings that a foundation must be laid in the trial court for review of the claim of error by the appellate court.” *State v. Desjardins*, 401 A.2d 165, 168 (Me. 1979).

In order to preserve an issue for appeal, the proponent must make an offer of proof unless the substance is apparent from context. *State v. Snow*, 2007 ME 26, ¶ 5, 916 A.2d 957. “An offer of proof should contain not only the facts that are sought to be elicited, but also . . . the legal grounds on which the testimony is admissible.” *Id.* (quoting Field & Murray, *Maine Evidence* § 103.4 at 15 (2000 ed. 1999)). In *Snow*, where the defendant had not specified the grounds on which given testimony was admissible, and such grounds were not apparent from context, the defendant failed to preserve the issue for appeal on those grounds. *Snow*, 2007 ME at ¶ 10, 916 A.2d 957.²

Getchell did not argue at trial, as she does now (Blue Br. 18-19), that Patrece’s testimony stating that she had not spoken to Erika was inconsistent

² Furthermore, the *Snow* trial court did not commit obvious error in excluding the testimony. *Snow*, 2007 ME at ¶ 13, 916 A.2d 957. The trial court instead “acted appropriately” in considering what was put before it to consider. *Id.*

with Erika's recollection of the contents of their conversation. Rather, Getchell argued at trial that Erika's characterization of the conversation was inconsistent with Patrece's *characterization* of the conversation. (T. Tr. II 128.) This argument was apparently based on an inaccurate recollection of Patrece's testimony. Getchell also did not disagree with or clarify the State's apparent understanding that she intended to introduce evidence of an inconsistency between Patrece's and Erika's respective "characterizations" of a conversation between them, as opposed to an inconsistency as to whether such a conversation ever even took place. (*Id.*)

Getchell's prior inconsistent statement argument was based on a fallacy. The argument that she makes on appeal, based on the actual testimony, was not properly preserved.

In case this Court disagrees, the remaining argument will assume, *arguendo*, that Getchell's prior inconsistent statement argument was properly preserved as grounds for admission of the testimony at issue.

2. The testimony was not truly inconsistent with Patrece's testimony.

The content of the phone call (as recalled by Erika) was not truly inconsistent with Patrece's testimony. There is no indication in the record that Patrece ever made a prior statement to the effect that she had never said she

missed her family or that she was sorry, and as the State noted at sidebar, she did not make any statement to that effect at trial. (T. Tr. II 129.) The only true counterpoint to Patrece's testimony is Erika's testimony that the call occurred at all, which the trial court affirmatively allowed in evidence. (T. Tr. II 128, 131.)

3. The testimony was not relevant.

Getchell provides multiple examples of cases in which the Law Court held that prior inconsistent statement evidence was sufficiently relevant. (Blue Br. 19.) However, those very examples belie her argument in that the admissible prior inconsistent statements in those cases pertained to *overwhelmingly* relevant issues, to wit: (i) *Thurlow*, in which the complainant denied at trial that she had previously threatened to falsify a rape charge against the defendant, and defendant sought to introduce evidence that she had done so (1998 ME at ¶ 5, 712 A.2d 518); (ii) *State v. Jackson*, in which a witness testified that the defendant had announced the crime to him soon after committing it, and the defendant sought to introduce evidence that the witness had previously told police that he thought the defendant was innocent (1997 ME 174, ¶¶ 12-13, 697 A.2d 1328); (iii) *State v. Nielson*, in which the State introduced evidence that the defendant's sole alibi witness had initially told police that she had been asleep during the incident (552 A.2d 543, 545 (Me. 1989)); and (iv) *State v. Allen*, in which a detective testified that the defendant had described "his side

of the event” as occurring in Maine, and the defendant sought to introduce evidence that the detective had previously stated that the defendant described the event as occurring in Iowa. (462 A.2d 49, 51–52 (Me. 1983)).

Compare the above issues, which tend to cut to the heart of their respective cases, to the issue here—Patrece’s failure to recall a brief phone call that supposedly took place nine months after she left home and nearly five years before the trial, and in which she said nothing about the underlying incidents. This issue is entirely collateral to the case at bar.

4. The testimony was not admissible simply because “at a minimum” it “could have cast reasonable doubt on Patrece’s credibility.”

Finally, Getchell argues that the statements at issue are admissible as prior inconsistent statements because “at a minimum,” they “could have cast reasonable doubt on Patrece’s credibility.” (Blue Br. 20.) That is not the test; the evidence must still be both truly inconsistent and reliable. *Brine*, 1998 ME at ¶ 9, 716 A.2d 208. Furthermore, the questions of whether Patrece really thought that “Mom and Dad” would be upset, whether she was really “sorry for what she did to Mom and Dad” and whether she really did “think people were listening to her something,” would not properly be before the jury because those statements, if admitted as prior inconsistent statements, would not be

admissible for the truth of the matter asserted.³ *Thurlow*, 1998 ME at ¶ 4, 712 A.2d 518.

D. Even if the trial court erred in excluding the testimony, such error was harmless.

Even if Erika's testimony was admissible, the trial court did not commit reversible error in excluding it. Pursuant to Rule 52 of the Maine Rules of Unified Criminal Procedure, "[a]ny error, defect, irregularity, or variance that does not affect substantial rights shall be disregarded." M.R.U. Crim. P. 52(a). "An error is harmless when it is highly probable that it did not affect the jury's verdict." *State v. Jaime*, 2015 ME 22, ¶ 38, 111 A.3d 1050.

Here, the jury had ample evidence before it proving beyond a reasonable doubt that Getchell was experiencing money troubles, discovered that Patrece was coming into money, deposited and quickly spent Patrece's first disbursement check, and attempted to purloin Patrece's second disbursement check. It is not probable that Erika's testimony about a brief, vague conversation with Patrece months after Patrece had moved out would have affected the jury's verdict.

³ Getchell also asserts in a footnote that the "[t]he court presumably could have . . . analyze[d] the statements as admissions of a party opponent." (Blue Br. 17, note 2.) Patrece was not a party to this case and her statements would not otherwise qualify as admissions of a party opponent. *See* M.R. Evid. 801(d)(2).

II. There was no prosecutorial error warranting vacatur during the State's cross-examination of Erika and its rebuttal argument.

Getchell argues that four prosecutorial errors cumulatively warrant a new trial, to wit:

1. The State's question to Erika on cross-examination about an action by the bankruptcy trustee;
2. The State's assertion in its rebuttal argument that Patrece is not "sour milk";
3. The State's allusion in its rebuttal argument to Patrece having a disability; and
4. The State's declaration in its rebuttal argument, "thank God for Roberta Winchell."

(Blue Br. 20-25.) Even if these were all prosecutorial errors, they do not individually or cumulatively warrant vacatur.

Because Getchell did not object to the trial court's curative instruction during Erika's cross-examination or the prosecutor's statements in rebuttal, this Court will review for obvious error. *State v. Dolloff*, 2012 ME 130, ¶¶ 35, 39, 58 A.3d 1032. To demonstrate obvious error Getchell must show that there was (1) error, (2) that was plain, and (3) that affected substantial rights. *Id.*, at ¶ 35 (internal quotation marks omitted). Even if these three conditions are met, this

Court will set aside the jury's verdict only if it concludes that (4) the error seriously affected the fairness and integrity or public reputation of judicial proceedings. *Id.* “Once a jury has been given a case and has done its work in deliberating and deciding on guilt or innocence, serious and manifest injustice must be present before [this Court] will set such a verdict aside; [it] will not do so lightly.” *Id.* ¶ 39.

This Court views allegations of prosecutorial error in light of the overall context of the trial, including “the statements, comments, and strategy of the defense, especially when the prosecutor’s statements are made in response to the theory, argument, or provocation of the defendant or defense counsel.” *Id.* ¶ 44. “The mere existence of a misstatement by a prosecutor at trial, or the occasional verbal misstep, will not necessarily constitute misconduct when viewed in the context of the proceedings.” *Id.*

A. The trial court’s curative instruction striking the State’s question to Erika regarding the trustee action was sufficient.

During the State’s cross-examination of Erika, it asked, “[d]o you recall a proceeding in the bankruptcy court where the trustee brought an action against you for over 1.9 million for fraudulent transfers?” (T. Tr. II 146.) Getchell objected and a bench conference at sidebar commenced. (*Id.*)

At sidebar, the State explained that the action to which the State had alluded had resulted in “a compromise agreement where [Erika] paid back \$125,000.” (*Id.* at 147.) The trial court sustained the objection and instructed the jury, “you are to completely disregard the last question and to the extent it was answered, you must disregard that as well, if it was answered.” (*Id.* at 148)

In its final jury instructions, the trial court advised the jury, “[w]hen I directed that you disregard a question or an answer, you must disregard that question or answer, and you must not speculate about what, if anything, the answer might have added to the case. You must consider only the evidence in reaching your verdict.” (T. Tr. III at 67.)

This Court “presume[s] that juries follow jury instructions, including curative instructions.” *State v. Tarbox*, 2017 ME 71, ¶ 18, 158 A.3d 957, *as corrected* (Apr. 20, 2017). Because “[a]ny concern created by improper statements made by a prosecutor is likely to be cured by a prompt and appropriate curative instruction[,] [. . .] a curative instruction will only be deemed inadequate to eliminate prejudice where there are exceptionally prejudicial circumstances or prosecutorial bad faith.” *State v. Tripp*, 2024 ME 12, ¶ 27, 314 A.3d 101) (quotation marks and citations omitted). *See also State v. Ardolino*, 1997 ME 141, ¶ 18, 697 A.2d 73 (“the trial court’s determination of whether exposure to potentially prejudicial extraneous evidence would

incurably taint the jury verdict or whether a curative instruction would adequately protect against consideration of the matter stands unless clearly erroneous.”) (internal quotation marks and citations omitted); *State v. Herbest*, 551 A.2d 442, 445 (Me. 1988) (“the trial justice gave a cautionary instruction to the jury, and we assume that the jury heeded that instruction.”).

Here, Getchell promptly objected to the State’s question – so promptly that Erika did not have an opportunity to answer and no actual evidence was put before the jury – and the trial court promptly struck it. The trial court reinforced the striking of the question with its final instructions to the jury. These curative instructions were sufficient and did not constitute error.

B. The alleged errors in the State’s rebuttal argument do not constitute obvious error.

As the trial commenced, the trial court instructed the jury that closing arguments are not evidence. (T. Tr. I 12.) The trial court reminded the jury of this fact directly before closing arguments. (T. Tr. III 4.)

During her closing argument, Getchell compared Patrece’s testimony to sour milk, stating, “if you have sour milk, you don’t take one drink and spit it out and keep drinking more of it.” (*Id.* at 21.) Getchell also stated, “we believe Patrece’s testimony should not be found credible” and “from our perspective, [Erika is] entirely credible.” (*Id.* at 38, 48.)

In its rebuttal, the State stated, “I don’t think Patrece Cotton is sour milk. You will determine [. . .] on your own, whether or not you find her testimony credible. But I’d ask you to evaluate it in light of somebody who has a disability.” (*Id.* at 55.) The State also told the jury, “you get to determine whether or not” Patrece’s failure to recall “one snippet of an interview in 2019 [. . .] throws all of your [sic] credibility out and makes her sour milk.” (*Id.*) The State further stated, “[t]hank God for Roberta Winchell.” (*Id.* at 57.) Getchell did not object to any aspect of the State’s rebuttal closing argument. (*Id.* at 54-63.) Following closing arguments, the trial court again informed the jury that closing arguments are not evidence. (*Id.* at 65.)

A prosecutor may not use “the authority or prestige of the prosecutor’s office to shore up the credibility of a witness, sometimes called ‘vouching.’” *Dolloff*, 2012 ME at ¶ 42, 58 A.3d 1032. However, the State is “given somewhat greater leeway in rebuttal to rehabilitate [its] witnesses in response to defense counsel’s inflammatory statements.” *State v. Sholes*, 2020 ME 35, ¶ 21, 227 A.3d 1129 (quoting *Dolloff*, 2012 ME at ¶ 64, 58 A.3d 1032). “When the prosecutor’s comment was ‘invited’ by the defendant, the comment will not ‘warrant reversing a conviction’ if the prosecutor ‘did no more than respond substantially in order to right the scale.’” *Id.*

While the statements “I don’t think Patrece is sour milk” and “[t]hank God for Roberta Wenchell” could be construed as “vouching” by the State and thus be erroneous, they do not constitute plain error, i.e., error “so clear under existing law that the court and prosecutor were required to address the matter even in the absence of a timely objection.” *State v. Fahnley*, 2015 ME 82, ¶ 40, 119 A.3d 727. Saying that someone “is not sour milk” or declaring “thank God for” a witness is not clearly vouching, unlike Getchell’s statements that “we believe Patrece’s testimony should not be found credible” and “from our perspective, [Erika] is entirely credible.” (T. Tr. III 38, 48.) Furthermore, the State qualified its statements by saying, “You will determine your own – on your own, whether or not you find her testimony credible” and “you get to determine whether or not that throws all of your [sic] credibility out and makes her sour milk.” (T. Tr. III 55.)

Getchell further argues that the State’s assertion that *Patrece* “is not sour milk” in response to Getchell’s assertion that Patrece’s *testimony* was sour milk was, in itself, a type of sour milk – sufficiently sour to turn the jury against Getchell and base their guilty verdict on a misconception that defense counsel had called Patrece herself “sour milk.” The jury had more than sufficient evidence before it to find Getchell guilty regardless of a misunderstood metaphor. The State’s evidence included bank statements, Bankruptcy Court

documents, Patrece's testimony, furniture receipts, surveillance video stills of Getchell at Patrece's bank, and a lengthy recorded interview in which Getchell herself admitted to putting Patrece's money in her account and spending it. The State's confusion about Getchell's cloudy metaphor was anything but clear error.

The State's invitation to the jury to "evaluate [Patrece's testimony] in light of somebody who has a disability," meanwhile, was not error. In *State v. Hassan*, the prosecutor stated during closing argument, "I would suggest to you that [the victim's] testimony was entirely credible given what she had gone through that night and that you should believe her." 2013 ME 98, ¶ 32, 82 A.3d 86. In doing so, the prosecutor committed *no error* but merely "explained that although the defense identified inconsistencies in the victim's story, these inconsistencies did not bear on the victim's credibility because misstatements by the victim . . . were understandable 'given what [she] had gone through that night.'" *Id.* ¶ 34. Like the prosecutor in *Hassan*, the State here was simply reminding the jury of a possible explanation for inconsistencies in Patrece's story. While the State's statement was not couched in the familiar "suggestion" framework, it was immediately preceded by the ameliorating statement, "You will determine . . . on your own whether or not you find [Patrece's] testimony credible." (T. Tr. III 55.)

Furthermore, Getchell's own witnesses, Erika and Alisha, testified that Getchell's biological family members were employed by Getchell and her husband to "staff" Patrece, and TWGFH, co-owned by Getchell, was billing MaineCare for Patrece's care. (St. Exs. 29, 30; T. Tr. II 47-49, 142, 152.) The Getchells even took Patrece's SSDI money for "room and board." (St. Ex. 9; T. Tr. I 107, 140, 192.) It was anything but prejudicial to Getchell for the State to suggest that Patrece had some sort of disability.

C. The cumulative effect of the alleged prosecutorial errors did not result in an unfair trial.

The cumulative effect of the errors alleged by Getchell were nowhere near enough to deprive her of a fair trial. *See Dolloff*, 2012 ME at ¶ 74, 58 A.3d 1032. There was substantial testimonial and documentary evidence, the court properly instructed the jury to not view closing arguments as evidence, Getchell had the assertive assistance of counsel, and she was able to confront witnesses and present witnesses on her own behalf. *See State v. Moulton* 2026 ME 6, ¶ 32, 353 A.3d 919.

CONCLUSION

By reason of the foregoing, the judgments of conviction should be affirmed.

Respectfully submitted,

AARON M. FREY

Attorney General

DATED: May 29, 2026

Katie Sibley
Assistant Attorney General
Of Counsel

/s/ Elizabeth T. Weyl
ELIZABETH T. WEYL
Assistant Attorney General
Maine Bar No. 005783
6 State House Station
Augusta, Maine 04333
(207) 626 – 8836
elizabeth.weyl@maine.gov

CERTIFICATE OF SERVICE

I, Elizabeth T. Weyl, Assistant Attorney General, certify that I have emailed a copy of the foregoing “BRIEF OF THE APPELLEE” to Appellant’s attorney of record, Tyler J. Smith, Esq.

DATED: May 29, 2026

/s/ Elizabeth T. Weyl
ELIZABETH T. WEYL
Assistant Attorney General
Maine Bar No. 005783
6 State House Station
Augusta, Maine 04333
(207) 626 – 8836
elizabeth.weyl@maine.gov