

**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

Reply Brief

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Argument

I. The trial judge sustained the State's objection to testimony about Patrece's statements to Erika.

The trial court excluded Erika's testimony about Patrece's statements, contrary to the State's position that the statements were arguably in evidence. During Erika's testimony about Patrece's phone call, the prosecutor objected on hearsay grounds, and the judge stated in open court that "I'm okay with the reaching out part, but I'm going to sustain the objection, unless you want to see me at sidebar." (Tr. II 127:7-23.) The prosecutor stated during the ensuing sidebar that the trial court had stricken Patrece's statements, and nobody disagreed. (Tr. II 131:2-10.) When questioning resumed in open court, defense counsel posed the question, "following that call you had that day, *without getting into what Patrece said*, how long did the call last?" (Tr. II 131:14-16 (emphasis added).)

The problems with the State's position are twofold. First, the State misunderstands the record. The judge sustained a hearsay objection in front of the jury. And after a short sidebar, defense counsel's question specifically instructed the witness not to get into what Patrece said. No reasonable juror would understand this to mean that Patrece's statements were in evidence—especially considering the trial judge's admonition at the start of the trial that "[i]f an objection is sustained, that means the witness may not answer the question, or if the witness has answered the

question, you must disregard it.” (Tr. I at 12:22-25.)

Second, the State’s position here presents judicial estoppel problems. “The doctrine [of judicial estoppel] rests on the principle that, after a party successfully asserts one position during a legal proceeding, that party is barred from asserting a contrary position at a later stage of the proceeding.” *In re Child of Nicholas P.*, 2019 ME 152, ¶ 16, 218 A.3d 247. The State objected based on hearsay and won the objection, leading defense counsel to abandon further inquiry about Patrece’s statements, and preventing the defense from using Patrece’s statements in closing argument. The State is estopped from now claiming on appeal that the proffered statements were in evidence.

II. The parties appear to agree that most of Patrece’s proffered statements qualify as statements of Patrece’s then-existing state of mind or emotion.

The opening brief contends that four of Patrece’s statements to Erika qualify for the then-existing state of mind or emotion exception: (i) “I miss you guys,” (ii) that she “cannot” come home, and (iii) that she is sorry for what she did to Mom and Dad, and (iv) that she thought people were listening to her. (Blue Br. 15-17.) The State responds that the part of the third statement reading, “for what I did to Mom and Dad,” is not a statement of then-existing state of mind or emotion. Otherwise, the State seems to agree that the statements qualify.

The State's point is fair, but ultimately academic. Getchell's prejudice arguments set forth in the opening brief turn on the fact of Patrece's remorse, not the reason for the remorse. (Blue Br. at 17–18 (describing the prejudice caused by excluding the proffered statements).) So even though the language reading, “for what I did to Mom and Dad” was not admissible under Rule 803(3), this caveat does not materially alter the prejudice analysis.

III. The statements were highly relevant and sufficient reliable.

The State contends that Patrece's statements were neither highly relevant nor reliable, as required by judicial gloss on M.R. Evid. 803(3). *See State v. Penley*, 2023 ME 7, ¶ 15, 288 A.3d 1183 (observing that the state of mind 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”). Patrece's statements meet both requirements.

Starting with relevance, this Court has observed that “a victim's state of mind may have significant probative value and be admissible under Rule 803(3).” *Id.* ¶ 18. That is especially true in a case like this, where the victim's credibility is central to the State's case. Patrece's expression of missing the family, remorse, inability to return, and fear of being listened to months after fleeing the Getchell home were highly relevant because they were at odds with the State's theory of the case.

Specifically, the State presented evidence that the Getchells mistreated Patrece, called her horrible and degrading names, subjected her to “constant bashing,” forced her into unpaid “chores,” and threatened her with institutionalization if she misbehaved. (TT1 at 89-90, 93, 99-100, 108, 120.) A reasonable juror could conclude that Patrece’s expressions of remorse and missing the Getchells after her departure was inconsistent with this theory. A reasonable juror could also view Patrece’s concern about others listening as corroborating the defense theory that others were influencing Patrece. The State posits that the statements are not relevant because they could have been about stealing \$20, and that her fear of being listened to could theoretically be about a nosy eavesdropper in a public setting. (Red Br. at 20–21.)¹ These ideas are speculative at best, unsupported by the record, and do not undermine the statements’ capacity to create reasonable doubt in view of the presumption of innocence, or enhance the defense theory.

Moving on to reliability, indicia of reliability may include that the declarant had no apparent reason to lie, *Philbrick*, 436 A.2d at 862, that the statements were

¹ The State cites *State v. Philbrick*, 436 A.2d 844 (Me. 1981) as an example of a case where the highly relevant element was not met. In that case, the State sought to admit evidence that a murder victim left a party after telling the witness that he intended to go directly home. The problem there, however, was that Rule 803(3) was invoked to show the actions of a third party (the defendant) who was encountered by chance. *Id.* at 862. The fundamental question was whether the victim offered to drive the defendant to Saco or whether the defendant compelled him to do so, following a chance encounter after the declarant’s statement was made. *Id.* Here, Patrece’s statements are not being used to prove the actions of persons encountered by chance, as in *Philbrook*.

made to family members, *State v. Atwood*, 2010 ME 12, ¶ 30, 988 A.2d 981, and other context-specific factors, *id.* Here, nothing in the record suggests that Patrece would have any reason to abruptly call Erika many months after fleeing the home and lie about her feelings about the Getchell family. Plus, there is nothing inherently unusual about placing a call after months of silence or estrangement to express missing one's family or remorse. If anything, the very fact that Patrece reached out after months of no contact to express her feelings supports, rather than undermines, the reliability of her statements.

In contrast, the State's theories that Patrece might have been dishonest to determine Erika's position, gain favor, or "angling for a Christmas gift" are again speculative and unsupported by the record. If anything, the State's theory that its chief witness might have been lying to Erika or angling to get something would be all the more reason why the statements should have been admitted.

IV. The statements were alternatively admissible as prior inconsistent statements.

The State argues that the prior inconsistent statement issue is unpreserved. "To preserve an issue for appellate review, there must be 'a sufficient basis in the record to alert the trial court and the opposing party to the existence of the issue.'"
Capelety v. Estes, 2023 ME 50, ¶ 16 n.3, 300 A.3d 817 (quoting *State v. Reeves*, 2022 ME 10, ¶ 35, 268 A.3d 281). At the sidebar conference, trial counsel stated that he

believed Patrece's statements to Erika were admissible as prior inconsistent statements. (TT1 at 128:2-14.) Even if the parties understood the inconsistency as a difference in recollection rather than a complete denial that the call occurred, that nuance does not affect preservation. Counsel alerted the trial court to the evidentiary theory of prior inconsistent statements, the prosecutor had a fair opportunity to respond, and the trial court had a fair opportunity to consider and rule on that issue.

Prior inconsistent statements are admissible not for their truth, but to attack the credibility of the maker, and are admissible provided they are inconsistent with the declarant's trial testimony and pertain to a relevant matter. *State v. Robinson*, 561 A.2d 492, 494 (Me. 1989). The State argues that the statements were not inconsistent because Patrece denied the phone call outright and did not testify about her state of mind. But in *State v. Thurlow*, this Court found that a declarant's prior statements about fabricating a rape charge were inconsistent with the declarant's outright denial at trial that she had made those statements. 1998 ME 139, ¶¶ 3-5, 712 A.2d 518. That is the same framework as here: Patrece denied making any such statements (because she denied having any conversation), and Getchell sought to impeach her with her statements to Erika.²

² The State asserts that footnote 2 of the blue brief argues that Patrece's statements might have also been admissible as admissions by a party opponent, which is of course not the case since Patrece is not a party to the action. (Red Br. at 29, n.3.) To correct any confusion, footnote 2 of the blue brief is an

The State also counters that other cases about prior inconsistent statements involve prior statements addressing “overwhelmingly” relevant issues. Apart from the fact that the standard does not require “overwhelming” relevance, the prior inconsistent statements were in fact relevant to the issues in the case. Presumably, anyone escaping the type of demeaning abuse and exploitation that Patrece described would have a strong recollection of any post-escape communications with the perpetrators—especially in an emotional context of announcing how she misses them, cannot return, and is sorry for what she did to Mom and Dad. These facts tie directly into the relationship between Patrece and the Getchells, which is what most of the trial was about.

In sum, the State’s objection to the proffered evidence and the trial court’s order were grounded in hearsay. The statements themselves were admissible to attack Patrece’s credibility, apart from the truth of the matter asserted. If the jury believed Erika’s testimony, it could have inferred that Patrece might have testified dishonestly because a person in Patrece’s situation would have remembered calling her estranged family for reasons discussed above. But without knowing the content of the statements themselves, the jury lacked any basis to evaluate whether Patrece’s

observation about the Law Court’s decision in *Latremore v. Latremore*, 584 A.2d 626 (Me. 1990), the citation to which footnote 2 was appended. (Blue Br. at 17, n.2.) It was not a comment about the trial proceedings here.

differing recollection was an intentional falsehood, a signal of a poor or unreliable memory, or just an unremarkable misrecollection.

V. The State’s multiple prosecutorial errors warrant vacatur.

The State appears to concede on appeal that the prosecutor improperly announced during Erika’s cross-examination, “[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?” (Red Br. at 31–33.) Although framed as a question, this served as an obvious message to the jury that Erika was a fraudster who should not be believed. As to prejudice, the State opts to not respond to any of the arguments in the blue brief about why the admittedly high standard of review is overcome, or to the prosecutor’s lack of even an arguable basis for the question under the Rules of Evidence. (Blue Br. at 21-23; Red Br. 31-33.) Instead, the State simply repeats quotations about the standard of review and announces that the curative instruction was enough. But as explained previously, the jury’s awareness that trustee brought an action against Erika for \$1.9 million is so prejudicial as to deny Getchell a fair trial, even when the jurors are instructed by the judge to pretend that they did not hear the prosecutor’s remark.

The State also writes that during closing arguments it made statements that “could be construed” as vouching by the State; it is unclear whether the State in fact

concedes that it vouched for Patrece and Roberta Winchell in closing. (Red Br. at 35.) At any rate, the record leaves little room for debate: the prosecutor announced “thank God” for Winchell, went on about Winchell’s altruism in helping someone as vulnerable as Patrece, and stated her opinion about Patrece. (TT3 at 55, 57.) An additional problem raised in the opening brief is that the prosecutor’s statements about Patrece were not just vouching but also disparaging to defense counsel. (*See* Blue Br. at 24 (raising that the prosecutor’s distortion of counsel’s argument, making it sound as if the defense was personally insulting Patrece, may have evoked anger).) To this, the State responds simply that the jury had enough evidence to convict Getchell regardless. (Red Br. at 35–36.) Sufficiency of the evidence aside, the State fails to grapple with the fact that the prosecutor’s office itself carries the weight of a uniquely postured and influential “minister of justice[.]” *State v. Hanscom*, 2016 ME 184, ¶ 18, 152 A.3d 632. Indeed, although vacating on other grounds, the Law Court in *Hanscom* went out of its way to address prosecutorial misconduct, such as what happened here, “because of its recurrence in cases presented on appeal and in an effort to prevent it from occurring again on retrial.” *Id.* ¶ 21. When the State chooses to walk too close to the line, as here where a prosecutor announced “thank God” for a witness, it assumes the risk that a judgment in the State’s favor will be vacated. Even more so after posing a question such as the one about the \$1.9 million

fraudulent transfer claim which, even if excluded, is likely to stick in the jurors' minds when evaluating witness credibility.

Finally, the State contends that its urging to “evaluate [the testimony] in light of somebody who has a disability” was appropriate. That argument fails to address the problem: the record did not reveal the scope or nature of Patrece’s disability, making it impossible for the jury to consider that issue in a reasoned manner without speculation, and appealed to sympathy. This is unlike *State v. Hassan*, 2013 ME 98, ¶ 34, 82 A.3d 86, because the prosecutor’s statements in that case that a victim’s inconsistencies were understandable “given what [the victim] had gone through that night” was based on specific record evidence. The prosecutor here, in contrast, invited the jury to speculate about Patrece’s disability and treat her testimony differently than that of other witnesses based on her status as a disabled person. Nor does the State’s argument address the fact that the prosecutor’s statements about Patrece’s disability were tethered to a larger theme to evoke sympathy for Patrece and gratitude for Winchell—all weighed against a defense lawyer that the prosecutor (incorrectly) portrayed as attacking a disabled person with name-calling.

Conclusion

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

Respectfully submitted,

Dated: June 22, 2026

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Certificate of Service

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