

STATE OF MAINE
YORK, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. YOR-26-12, SRP-26-11

**STATE OF MAINE,
Appellee**

v.

**PHILIP A. FRYMAN
Appellant**

ON APPEAL FROM THE YORK COUNTY UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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STATEMENT OF ISSUES

- I. The State properly alleged a violation of Maine law in Count 32 (Trial Count 7).**
- II. The verdict was supported by sufficient evidence in Count 3 (Trial Count 2). The trial court did not err when it denied a motion for judgment of acquittal on Count 3 (Trial Count 2) because the verdict was supported by legally sufficient evidence.**
- III. The trial court committed no obvious error when it did not merge Count 31 (Trial Count 6) with Count 20 (Trial Count 4), because both charges are supported by sufficient evidence of two separate and distinct acts of gross sexual assault.**
- IV. The trial court properly exercised its discretion by admitting relevant uncharged conduct under M.R. Evid. 404(b) and 403.**
- V. The seven-count indictment provided due process fair notice of the charges against Fryman and the record protects against double jeopardy.**
- VI. The sentencing court committed no obvious error in imposing Fryman's sentence.**

SUMMARY OF ARGUMENT

1. There was no jurisdictional defect in Count 32 (Trial Count 7) because the indictment properly alleged a violation of Maine law. The indictment expressly includes every necessary element of 17-A M.R.S.A. §255-A(1)(E-1), including that the minor was under twelve years old at the date of the offense. The end date of the charging period that is the same date of the child's twelfth

birthday is not the precise date on which date the offense necessarily occurred; in fact, the State expressly alleged that the conduct happened *between* the end date (which would mean before), the child's twelfth birthday.

2. The trial court did not err when it denied a motion for judgment of acquittal with respect to Count 3 (Trial Count 2). The verdict was supported by legally sufficient evidence to establish the victim's age at the time of the offense. Viewed in its entirety, the evidence and reasonable inferences drawn therefrom, permitted the jury to find Count 3 (Trial Count 2) proven beyond a reasonable doubt.

3. Merger is not appropriate for Count 31 (Trial Count 7) and Count 20 (Trial Count 4) because the evidence supports that two separate acts of genital-to-genital contact occurred. In addition, the jury was instructed on specific unanimity and otherwise heard sufficient evidence at trial to support the finding of guilt for these two separate acts.

4. The trial court properly exercised its discretion by admitting relevant uncharged conduct under M.R. Evid. 404(b) and M.R. Evid. 403, relying on decades of Maine jurisprudence that recognizes why "other acts" evidence is often highly probative, but otherwise not unfairly prejudicial in child sexual abuse cases that involve ongoing periods of abuse prior to disclosure. Further, the "other acts" admitted were quite limited in nature, and the trial court did

not “reverse its own ruling” mid-trial. Finally, even if the court made any evidentiary errors, they were harmless and did not deprive Fryman of a fair trial.

5. The seven-count indictment provided Fryman with due process and constitutionally adequate notice of the offenses brought against him. In child sexual abuse cases involving historical allegations, Maine law does not require the State to plead precise timelines and extremely detailed acts. In addition to the indictment, the State’s amended bill of particulars was sufficient, and the trial court properly instructed the jury on specific unanimity. The indictment, bill of particulars, and factual basis of the convictions on the record otherwise ensure protection against double jeopardy. Here, Fryman was provided with *extraordinary* notice.

6. The sentencing court committed no obvious error in imposing Fryman’s sentence when it determined that Fryman lacked remorse, as evidenced in his voluntary allocution to the court that he “disagreed” with the verdict. The court, in its discretion, properly considered this as an aggravating factor.

RELEVANT PROCEDURAL HISTORY

Philip Fryman was indicted by a York County Grand Jury on August 6, 2019 for thirty one counts of Gross Sexual Assault and one count of Unlawful Sexual Contact. (Appendix 37-46 [A. __]).

In August of 2020, Fryman moved for a bill of particulars. (A. 12). In March of 2022, he withdrew that motion. (A. 13). In April of 2022, Fryman filed a motion to sever counts of the indictment and the State filed a response. (A. 13). On May 16, 2022, the court denied his motion to sever counts. (*Moskowitz, J.*) (A. 14). On the same day, the court attempted to empanel a jury but was unable to do so because of an insufficient number of qualified jurors. (A. 14). On January 10, 2023, after a jury had been empaneled and day one of trial had commenced, the trial court granted a mistrial after taking an overnight recess.¹ (York County, *Mulhern, J.* presiding) (A. 16).

In November of 2023, the court was again unable to empanel a jury because of an insufficient number of jurors in the pool. (A. 16). In January of 2024, the court issued a scheduling notice for jury selection to commence on July 29, 2024. (A. 16).

¹ A mistrial was declared when a State's witness, the mother (T.C.) briefly testified on direct about why, upon learning of the disclosures, the family immediately reported the conduct to authorities in New Hampshire (as opposed to notifying law enforcement in Maine). (See A. 30; footnote 4; A. 55-56).

Six months after receiving the trial scheduling notice, Fryman moved to dismiss the indictment. (A. 16). The court heard the motion to dismiss on November 8, 2024. (A. 17). In March of 2025, the trial court denied Fryman's motion to dismiss. (*Moskowitz, J.*) (A.18). Fryman filed a notice of an interlocutory appeal in March of 2025. (A. 18). On April 29, 2025, the Law Court dismissed Fryman's interlocutory appeal. (*Horton, J.*). (A. 18).

On May 12, 2025, the State filed a M.R.U. Crim. P 48(a) dismissal for Counts 1, 4-18, and 22-30 of the indictment. (A. 19). As a result, the trial court (*Moskowitz, J.*) ordered that seven counts would be presented at trial as follows:

Count Two will now be Count One
Count Three will now be Count Two
Count Nineteen will now be Count Three
Count Twenty will now be Count Four
County Twenty-One will now be Count Five
Count Thirty-One will now be Count Six
County Thirty-Two will now be Count Seven

(A. 50 – 51). On that same day, the court also held a hearing on the State's motion in limine re: M.R. Evid. 404(b) and uncharged conduct that occurred in other jurisdictions outside of Maine. (*Moskowitz, J.*) (A. 19; 52-75; 126-131). The court denied the State's motion and expressly ordered the State not to elicit testimony about conduct in New Hampshire or Indiana. (A. 19; A. 63).

Finally, during the hearing, Fryman requested an in-camera chambers conference to discuss how the dismissal of twenty-five counts of the indictment

“affects everything.” (*Moskowitz, J.*) (A. 67). Fryman offered that the State could also separately meet with the court in-camera about “why” counts were dismissed, to which the court advised: “they have the right to do it.” (A. 68). The State did not have an in-camera conference. (A. 71). After an approximate twenty minute in-camera chambers conference with defense counsel, the record resumed and the court announced that Fryman explained: “their approach may be different now that there are seven counts that are alleged, as opposed to thirty-two counts. (A. 71). And they’ve sufficiently explained [...] why we need to delay the trial this week.” (A. 71). The court then advised that there was a request in chambers for a bill of particulars. (A. 72). The court found that it was a “reasonable request” since the remaining counts were reduced from thirty-one to six counts of gross sexual assault. The State was ordered to file a bill of particulars with respect to the alleged sexual act related to each of the counts of the six counts of gross sexual assault. (A. 72). Defense further requested that the State provide specific dates of alleged acts, but the court recognized that was likely impossible in a child sexual assault prosecution involving ongoing abuse. (A. 73).

In its written response to the order, the State maintained that discovery was adequate under M.R. Crim. P. 16(d)(1), but nevertheless included written transcript excerpts from the Child Advocacy Center (CAC) forensic interviews

of both victims.² (A. 133-140). These detailed disclosures, arranged under each category of charge and organized by victim, contained the factual basis for what the State anticipated the evidence to show at trial. (A. 133-140).

During a conference on May 21, 2025, the court clarified its order to the State and directed the State to file an amended bill of particulars that “identif[ies] the specific sexual act alleged in each of the six remaining gross sexual assault charges.” (A. 89). During this conference, the trial court also advised that a specific unanimity jury instruction would be delivered. (A. 82). With clarification on expectations for a bill of particulars, the State promptly filed an Amended Bill of Particulars by the next morning that set forth the specific sexual act alleged in each remaining count. (A. 171).

On May 27, 2025, the Fryman jury was empaneled. (York County, *Moskowitz, J., presiding*). (A. 20.) During the jury instructions phase, jurors learned that they were required to reach a unanimous verdict as to the specific act underlying each charged offense. (Trial Transcript IV 78 [__ Tr. __]). The trial lasted four days and on May 30, 2025, the jury returned a guilty verdict on all seven counts. (A. 21; 30-36).

² The full forensic interviews were provided in discovery at the onset of the case in 2019. (A. 89, 98).

On November 19, 2025, the trial court (*Moskowitz, J.*) sentenced Fryman after engaging in a thorough three-stage sentencing analysis. (Sentencing Transcript 6-41 [S. Tr. __]). On Count 2 (Trial Count 1), Fryman was sentenced to twenty-five years, all but eighteen years to the custody of the Department of Corrections, with six years' probation supervision upon release. (A. 30). On Count 20 (Trial Count 4), all but twenty-five years concurrent with Count 2 (Trial Count 1); ten years on Count 3 (Trial Count 2), concurrent with Counts 2 and 20; eight years on Counts 19, 21, 31, 32, (Trial Counts 3,5,6,7) all concurrent with Count 2 and Count 20. (A. 30-31; S. Tr. 31-41).

During sentencing, the court heard a brief allocution from Fryman and heard that he "disagreed" with the verdict. (S. Tr. 23, 35). During the court's sentencing analysis, the court considered Fryman's demonstrated lack of remorse as an aggravated factor. (S. Tr. 35). The sentencing court found that Fryman's lack of remorse caused concern because the court looks to remorse as a factor in determining whether someone has good prospects for rehabilitation. (S. Tr. 37).

On December 23, 2025, Fryman filed a timely notice of direct appeal pursuant to M.R. App. P. 2(a)(1) and 15 M.R.S. § 2115. *State of Maine v. Philip A. Fryman*, YOR-26-12; (A. 28). Fryman also filed a separate application for leave to appeal his sentence pursuant to M.R. App. 20 and 15 M.R.S. § 2151. *State of*

Maine v. Philip A. Fryman, SRP-26-11. The Sentence Review Panel issued an order granting the application for leave to appeal sentence. *State v. Fryman*, No. SRP-26-11 (Me. Sent. Rev. Panel March 30, 2026).

STATEMENT OF FACTS

In August 2005, Philip Fryman married a single mother of three children. (I Tr. 83). The two female children were T.N.³ and T.S.⁴. (I Tr. 83). During the marriage, a fourth child expanded the family. (I Tr. 83). By 2010, the family was living in Sanford, Maine. (I Tr. 84-86). In July of 2010, the family moved to North Berwick, Maine after living in Sanford, Maine for over a year. (I Tr. 86). The family left North Berwick in July 2011 to move back to Indiana. (I Tr. 153, 160). In 2010, the mother was working as a certified nursing assistant. (I Tr. 86). She worked significant hours, often working night shifts while also completing coursework to enter a nursing program. (I Tr. 87, 89). The family was heavily involved in the Baptist denomination church, including attendance at multiple church events per week. (I Tr. 91). Religious teachings included a tenet that

³ “T.N.” is the oldest female child and the subject of Trial Count 1 (Indictment Count 2), Count 2 (Indictment Count 3), Count 3 (Indictment Count 19). (A. 38, 42). The indictment refers to her as T.S. (dob [REDACTED]/1997), she had a name change post-indictment, so she was referred to in the trial transcript by her new last name. (A. 38, 42).

⁴ “T.S.” (dob [REDACTED]/1999) is the youngest female child and the subject of Trial Count 4 (Indictment Count 20), Trial Count 5 (Indictment Count 21), Trial Count 6 (Indictment Count 31) and Trial Count 7 (Indictment Count 32). (A. 38, 42-43, 45).

children are to be obedient and if they were told to do something, that meant that the parents expected it to be done. (I Tr. 87-94).

A. The Day of Disclosures

On August 16, 2018, the summer day started out like any other. (I Tr. 94). Fryman and the mother went to run errands for a home renovation project. (I Tr. 94). The youngest daughter, then age nineteen, ultimately disclosed the abuse to her mother during a heightened and emotional conversation about why she had bought a bus ticket to move away and no longer wanted to live at home. (I Tr. 96-105). The mother started to gather up all the children to go ask her oldest daughter if she had also been abused. (I Tr. 130 -133). Before they all left the house, the mother observed the youngest daughter frantically packing up her things in an upstairs bedroom. (I Tr. 130). Philip Fryman, having just learned about the disclosure, then went upstairs behind his wife. (I Tr. 131). Through the open bedroom door, she observed him grabbing a pair of shoes, their “money bag”, and a firearm from the marital bedroom. (I Tr. 131). When she asked him where he was going, he stated: “I’m not arguing about this with you, [...]” (I Tr. 131). She then brought all three of her children to the oldest daughter’s bakery workplace. (I Tr. 131). After arriving, the mother sat with her oldest daughter in a separate private room in the cafe, with just the two of them present. (1 Tr. 132-133). During that private conversation, the mother learned

for the first time that her oldest daughter had also been sexually assaulted by Philip Fryman. (I Tr. 133). As a response to hearing this life-altering news, the mother became quite inconsolable; she “cried for a long time” and “Sister Crystal,” a local pastor’s wife, responded to comfort her. (I Tr. 136-137).

B. The Youngest Victim (dob [REDACTED]/1999)

The youngest victim was eleven years old when the family moved to North Berwick, Maine in 2010 and turned twelve a little over a month before they moved in 2011. (I Tr. 83; 86). The first time that Philip Fryman ever touched her “inappropriately” was when she started puberty. (II Tr. 128). She had just started her first menstrual cycle and felt tender. (II Tr. 128). On that day, he called her into his bedroom and while sitting on his bed, told her to come sit on his lap. (II Tr. 128). While on his lap, he told her that he could help ease her pain. (II Tr. 128). He then began running his hands up her shirt and touching her breasts. (II Tr. 128). He also touched her body on her shoulders and stomach and touched her breasts under her clothing. (II Tr. 155).⁵

On another occasion, she was called in from the kitchen into his bedroom. He shut the door and told her to lay down on the bed. He took her pants and underwear off and she was just lying there. He took his clothes off and climbed

⁵ This specific conduct was outlined in the State’s first written response to the order for a bill of particulars. (A. 150–152).

onto the bed, touching her with his fingers, up and down on her leg. He then touched her with his penis and put it into her vagina (II Tr. 156). ⁶

During another event, Philip Fryman inserted his penis into her anus. (II Tr. 157). She recalled being brought into the room and he laid her down on her stomach. (II Tr. 158). Their clothes were off. He used clear lubrication and “fingered” her. (II Tr. 158). At one point during this, he was touching his penis with his hand with lubrication on it. He then started touching her with his penis and entered her anus. (II Tr. 159). This “hurt a lot” so he could not continue; she said “ow” due to the pain. (II Tr. 159). He then “backed out”, “wiped himself off”, and “he backed off.” (II Tr. 159). ⁷

Another time, she was brought into his bedroom and only undressed from the waist down. (II Tr. 160). His pants were pulled down and he put his penis inside her vagina. (II Tr. 160). She then observed him “finish” in an article of clothing, or a sock, that was near the bed. (II Tr. 160). ⁸

Finally, she remembered a time where she observed Philip Fryman sexually assaulting her older sister. (II Tr. 161). In the North Berwick apartment,

⁶ *Id.* (A. 166-170).

⁷ *Id.* (A.158-160).

⁸ *Id.* (A. 168-169).

both children were laying in their bed. (II Tr. 162). She recalled that they had no window coverings, so she could see that it was nighttime, and it was dark outside. (II Tr. 162). Their door didn't have a lock, and Philip Fryman placed a suitcase in front of the door. (II Tr. 162). She then observed her older sister sleeping and she then observed Philip Fryman pulling her sister's pants down, next touching her buttocks and vagina with his hands. (II Tr. 163). She then observed Philip Fryman putting his penis in the other child's vagina. (II Tr. 163). She didn't observe her sister moving, so she assumed she was asleep. (II Tr. 163). During this, she pretended to sleep and he eventually left the room. (II Tr. 163).⁹

In North Berwick, there were multiple occasions where she would just be on a couch or in chairs, sitting side by side with Philip Fryman, and he would put his hands down her pants and start touching her vagina. (II Tr. 171).¹⁰

During her childhood, she and her siblings were taught not to question adults and that it was a very strict upbringing. (II Tr. 157). She never told anyone about the abuse because she didn't want to "make her mom mad, or sad, or disrupt the household." (II Tr. 160). Further, Philip Fryman had told her not to say anything. (II Tr. 161). Her belief was that if she had told, it would have

⁹ *Id.* (A. 153-155).

¹⁰ *Id.* (A. 164-166).

stressed her entire family; that there would have been a “lot of just discontention [sic].” (II Tr. 161). She would have felt it was her fault at making other people uncomfortable and because it also happened to her sister, she would have had to bring her into it, “which wasn’t great.” (II Tr. 161). She also observed that her mother was happy with her step-father, and it would have made her mother “unhappy” not to be with him, because obviously she would have done what she did [after the report] and left [divorced] him. (II Tr. 162).

As a child, she tried to avoid the abuse happening by “hanging out” with her siblings more, because he wouldn’t do anything in front of her brothers, so she started playing with them a lot more. (II Tr. 166-167).

C. The Oldest Victim ██████/1997

On the day of the disclosure in August of 2018, the oldest daughter was working at a bakery. (III Tr. 22). While her mother was on the way to her workplace to talk to her, Philip Fryman called her on the phone. (III Tr. 22). During the call, he told her that her sister reported that “he had sexually assaulted us,” and she was running away because she couldn’t deal with it anymore. (III Tr. 22). Philip Fryman then asked the oldest victim what she was going to tell everyone. (III Tr. 22). She told her stepfather that “she was going to tell them the truth.” (III Tr. 22). Prior to this day, she did not know that her sister was going to disclose the secret that both young women had lived with for many

years. (III Tr. 22-23). When she told her mother what happened when they were sitting in a private room at her work, she observed her mother cry and hyperventilate. (III Tr. 25). She then reached out to her former pastor and current pastor to help her mother. (III Tr. 26).

With respect to Sanford, Maine, the first time that Philip Fryman touched her “inappropriately” was when she was sleeping. (III Tr. 27-28). He came into the room she shared with her sister, woke her up, and told her to come downstairs to his room. (III Tr. 27-28). He instructed her to take off her clothes and laid her on the bed. (III Tr. 27-28). He used a condom, stated that it would hurt, and inserted his penis into her vagina. (III Tr. 27-28). Prior to this, she did not know what sex was and had never talked to her stepfather or mother about “the birds and the bees.” (III Tr. 30) . She didn’t tell anyone because he told her that “bad things would happen” if she told anyone. (III Tr. 30).¹¹

Another time in Sanford, he taught her how to kiss. (III Tr. 31). He brought her into his room, gave her a kiss, and told her to kiss him back. (III Tr. 31). She first kissed him on the cheek, but he instructed her to kiss him on the lips. (III Tr. 31). This was in the late afternoon in her parents’ bedroom with the door closed. (III Tr. 32). On this day, he then took her clothes off and they “had sex.”

¹¹ *Id.* (A. 133-134).

(III Tr. 33). Specifically, she was face up, and he got on top of her. (III Tr. 34). While wearing a condom, he inserted himself into her until he “finished”. (III Tr. 34).¹²

Another time in Sanford, Philip Fryman asked her to go into the bathroom with him. He sat on the toilet, “pulled out” his penis and asked her to “suck” on it. (III Tr. 44.) During this act, she recalled being age “13 or 14, maybe.” (III Tr. 45). The lights were not on, but he had a light on his phone on. (III Tr. 46). She moved her head up and down, and he would either thrust into her mouth or put his hand on her head and push her head. (III Tr. 46). He climaxed into her mouth, and she “almost threw up.” (III Tr. 46). She spit into the sink, rinsed her mouth out, and Philip Fryman said to her: “do you not like my cum?” (III Tr. 46). She replied, “no.” (III Tr. 46).¹³

In North Berwick, Maine, she recounted being in the living room with her sister. (III Tr. 47-48). They were watching TV, and he brought them both into the room and got them undressed. (III Tr. 48). She then laid on the bed and he inserted his penis into her vagina. (III Tr. 50). He then told the youngest victim to get up on the bed and had her sit or kneel beside him while he was thrusting

¹² *Id.* (A. 135).

¹³ *Id.* (A. 136-139).

inside of her. (III Tr. 50). At one point, he turned to the youngest child and gave her kisses. (III Tr. 51). He again climaxed in a condom. (III Tr. 51).¹⁴

ARGUMENT

I. The State properly alleged a violation of Maine law in Count 32 (Trial Count 7).

Fryman first contends that Count 32¹⁵ (Trial Count 7) is jurisdictionally defective because the victim would have been twelve years old on May 29, 2011, on the last day of the alleged date range. (Blue Brief, 20-21 [Bl. Br. _]).

Count 32 (Trial Count 7) language:

On or **between** May 29, 2010 and May 29, 2011, in North Berwick, YORK County, Maine, PHILIP A. FRYMAN, being at least three years older than T.S., dob [REDACTED]/1999, not his spouse, did intentionally subject T.S., dob [REDACTED]/1999, who was in fact less than 12 years of age to sexual contact.

(A. 45); emphasis added. Pursuant to 17-A M.R.S. section (7)(1)(A), a Maine court has subject matter jurisdiction when conduct that is an element of the crime occurred in Maine. Therefore, an indictment must state an offense on its face that makes out an offense against the State. *State v. Strong*, 2013 ME 21, ¶ 12, 60 A.3d 1286 (see also *State v. Storer*, 583 A.2d 1016, 1020-21 (Me. 1990)). Further, a victim's age is an essential

¹⁴ *Id.* (A. 143-144).

¹⁵ 17-A M.R.S.A. §255-A(1)(E-1)

element of §255-A(1)(E-1). *State v. Westgate*, 2016 ME 145, ¶ 24, 148 A.3d 716.

A jurisdictional defect in an indictment may be raised for the first time on appeal. *State v. Levasseur*, 538 A.2d 764, 766 (Me. 1988). In *Levasseur*, however, the State *omitted* a necessary element of the crime of “gross sexual misconduct.” Here, there is no jurisdictional defect because the indictment expressly alleges every necessary element of Sect 255-A(1)(E-1), including that the victim was under twelve years old at the date of the offense. The end date of the charging period is not the precise date on which the offense necessarily occurred; in fact, the State expressly alleged that the conduct happened *between* the start and end date. Accordingly, Count 32 (Trial Count 7) of the indictment is not jurisdictionally defective and the trial court otherwise had jurisdiction to enter a conviction.¹⁶

II. The trial court did not err when it denied a motion for judgment of acquittal on Count 3 (Trial Count 2) because the verdict was supported by legally sufficient evidence.

¹⁶ While Fryman is not challenging the sufficiency of jury instructions, the trial court here did expressly charge the jury that they must unanimously find that the victim was under the age of 12. (IV Tr. 74-76). This is in contrast to *Westgate*, which involved an indictment alleging a time range of “summer of 2009” and a child victim whose birthday was in mid-July and would have been over 12 by the end of the summer of 2009; in *Westgate*, the case was remanded because the trial court gave incongruent instructions about proof and age requirements. *Westgate*, 2016 ME 145, ¶ 30, 148 A.3d 716.

Fryman next contends that proof of the oldest child’s age was insufficient to prove Count 3 (Trial Count 2)¹⁷ beyond a reasonable doubt and bafflingly states: “nothing else in the record elucidates” her age. (Bl. Br. 22-23).

When reviewing the trial court’s denial of a motion for judgment of acquittal, the evidence is viewed in the light most favorable to the State to determine whether a jury could rationally have found each element of the crime proven beyond a reasonable doubt. *State v. Reynolds*, 2018 ME 124, ¶ 14, 193 A.3d 168. In child sexual assault cases, the Law Court has consistently held that with respect to location, “place is not an essential element of a crime and serves only to fix the venue of the prosecution and provide evidence upon which jurors may evaluate credibility.” *State v. Miller*, 2018 ME 112, ¶ 14, 191 A.3d 356 (*citing State v. Brown*, 2000 ME 25, ¶ 10, 757 A.2d 768). With respect to age in child sexual assault cases, age is not an element except to determine the age of the alleged victim, or to apply the statute of limitations. *Miller*, at ¶ 14. Further, a jury may draw all reasonable inferences from the evidence; jurors must otherwise decide the weight to be given to evidence and the credibility of witnesses. *State v. McBreaity*, 2016 ME 61, ¶ 14, 137 A.3d 1012. Finally, the “exclusive province” of the jury is to decide the weight of evidence and

¹⁷ (A. 38) ; 17-A M.R.S.A. Sect 253(1)(B)

determine the credibility of witnesses. *State v. Marden*, 673 A.2d 1304, 1312 (Me. 1996).

Fryman fails to cite to other areas of the trial record that absolutely do “elucidate” the State’s proof in this count. For example, the jurors heard the oldest child’s detailed description of the mouth to genital contact directly after the State asked her if she remembered a time in Sanford where Fryman took her into the bathroom. (III Tr. 44.) While she did testify that she was “13, 14, maybe,” at the time Fryman made her perform oral sex on him in Sanford; the jury also heard the testimony of her mother, who specifically testified that the family moved out of the Sanford apartment in July 2010. (I Tr. 86). Both the older daughter and her mother testified that her date of birth was [REDACTED] 1997. (I Tr. 83); (III Tr. 19). She would have turned fourteen on [REDACTED] 2011. In [REDACTED] of 2011, the family was living in North Berwick and getting ready to move back to Indiana in [REDACTED] of 2011. (I Tr. 153, 160). Therefore, the jurors had sufficient evidence to convict Philip Fryman of this count.¹⁸

III. The trial court committed no obvious error when it did not merge Count 31 (Trial Count 6) with Count 20 (Trial Count 4), because both charges are supported by sufficient evidence of two separate and distinct acts of gross sexual assault.

¹⁸ While Fryman is not challenging instructions, jurors in this case were also properly instructed that with respect to Count 3 (Trial Count 2), that they must unanimously find that she was under the age of fourteen as an element of the offense. (IV Tr. 67).

Fryman next contends that the court erred¹⁹ when it did not merge Count 31 (Trial Count 6) with Count 20 (Trial Count 4).²⁰ (Bl. Br. 24-25). With respect to merger, “the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *State v. Fleury*, 2025 ME 18, ¶ 13, 331 A.3d 414 (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)).

There is no merger required here, however. Fryman’s argument improperly assumes that both convictions arose from a single act. The evidence at trial clearly established a factual basis of two separate acts²¹ of genital-to-genital contact, as further set forth in the bill of particulars. (A. 171). Each count constituted a separate completed offense of gross sexual assault and merger is not appropriate.

¹⁹ Failure to merge counts at trial is reviewed for obvious error. *State v. Fleury*, 2025 ME 18, ¶ 14, 331 A.3d 414.

²⁰ Count 31 (Trial Count 5), 17-A M.R.S.A. Sect. 253(2)(H) required the State to prove that Fryman was a “parent, step-parent, foster parent, guardian, or other similar person responsible for the long-term care” of a minor under 18”; in contrast, Count 20 (Trial Count 4), 17-A M.R.S.A. Sect. 253(1)(B) does not require the element of a caregiver relationship and the child must be under age 14. (A. 42, 45)

²¹ The court gave jurors instruction on specific unanimity. (IV Tr. 78.). *See generally Reynolds*, 2018 ME 124, ¶ 15, 193 A.3d 168 (discussing specific unanimity requirements as applied to indictments involving multiple child sexual abuse offenses.)

In Fryman's trial, the youngest victim clearly described two separate occasions in North Berwick where Fryman subjected her to genital-to-genital contact. During one event, after being called into his bedroom, he touched her leg with his fingers and then touched her with his penis and put it into her vagina. (II Tr. 156). Another time, she was brought into his bedroom, and he placed his penis inside her vagina. During this event, she recalled observing him "finish" in an article of clothing, or a sock, that was near the bed. (II Tr. 160).

Because the State charged both counts as two separate acts and not alternative charges²², merger is inappropriate. Finally, the properly instructed jury heard sufficient evidence at trial to support the finding of guilt on these two separate acts.

IV. The trial court properly exercised its discretion by admitting relevant uncharged conduct under M.R. Evid. 404(b) and M.R. Evid. 403.

Fryman contends that the trial court abused its discretion by admitting evidence of other uncharged sexual acts in Sanford, Maine or North Berwick, Maine. (Bl. Br. 47). He argues that this evidence was "not needed" by the State and the evidence was "unduly prejudicial" because the other acts were criminal and created due process and double jeopardy issues; further, Fryman argues

²² Pursuant to M.R. Crim. P Rule 7(c), the State is permitted to bring alternative charges for the same criminal act.

that the trial court “reversed” its own ruling mid-trial, which was “manifestly unfair.” (Bl. Br. 47-51.) Fryman’s contentions on appeal, if accepted by this Court, would upend this Court’s established precedent and severely compromise the State’s ability to prosecute child sexual abuse cases.

A. Standard of Review

A trial court’s decision to allow other acts into evidence, pursuant to M.R. Evid. 404(b) is reviewed for clear error. *State v. Flynn*, 2026 ME 54, ¶ 29, __A.3d__. For the court to find obvious error, there must be (1) an error, (2) that is plain, and (3) that affects substantial rights. *State v. Aldrich*, 2026 ME 8, ¶ 46, 353 A.3d 987. A trial court’s balancing of probative value against potential prejudice under M.R. Evid. 403 is reviewed under an abuse of discretion standard. *State v. Osborn*, 2023 ME 19, ¶ 19, 290 A.3d 558.

B. The evidence met the requirements of M.R. Evid. 404(b)

M.R. Evid. 404(b) does not render inadmissible evidence of other crimes, wrongs, or acts if the evidence is offered to demonstrate motive, intent, identity, absence of mistake, or the relationship of the parties.” *State v. Pratt*, 2015 ME 167, ¶ 24, 130 A.3d 381.

In child sexual assault cases, the Law Court routinely upholds the admission of “other acts” conduct. Specifically, “evidence of prior similar

uncharged conduct has been admitted to show the relationship²³ between the parties that highlights the defendant's motive (i.e., attraction to the victim), intent (i.e., absence of mistake), and opportunity (i.e., domination or access to the victim) to commit the crime with which he was charged." *State v. Krieger*, 2002 ME 139, ¶ 8, 803 A.2d 1026 (quotation marks and alteration omitted). In another case, a victim's young friend was allowed to testify that she once saw the defendant pinning the child's arms down and, on another occasion, she observed the Defendant stroking the victim's thigh. *State v. Boone*, 563 A.2d 374, 376 (Me. 1989). In *DeLong*, the victim testified that between age twelve and eighteen, her father subjected her to sexual intercourse, which occurred almost twice weekly. *State v. DeLong*, 505 A.2d 803, 805 (Me. 1986). In *Hunt*, the victim testified in a Maine sexual assault trial about other sexual acts that the Defendant also committed against her outside of Maine, both in Georgia and Massachusetts. *State v. Hunt*, 2023 ME 26, ¶ 51, 293 A.3d 423.

In admitting several "other acts" during Fryman's trial, the court placed its thorough rationale on the record, noting: "the jury is entitled to know about the quality and character of what has happened over the course of the years so they can evaluate the behavior and the acts of the victim[s]." (III Tr. T. 40). The

²³ The trial court's admission of evidence of Reynolds's ongoing abuse under 404(b) was properly admissible to show the relationship between him and the victim. *See Reynolds*, 2018 ME 124, ¶ 28, 193 A.3d 168.

court recognized that Fryman had already utilized cross-examination to call into question the behavior and acts of one of the victims. (III Tr. T. 40). Further, the trial court found that jurors should be allowed to consider the circumstances that the State alleges over the course of time. (III Tr. T. 41). The court correctly observed that 404(b) “allows the State to present evidence of other uncharged conduct so that the jury can understand motive, relationship, intent, opportunity, and the behavior of the victim with respect to disclosures being made and when that happens, how that happens, how they behave during the course of that time. “ (III Tr. T. 41). Later on in the trial, the court noted that the State’s uncharged conduct admitted into evidence was “actually fairly limited. “ (III Tr. T. 95).²⁴

The trial court committed no error when it admitted limited evidence of uncharged, in-state sexual acts under M. R. Evid. 404(b).

C. The trial court properly balanced the evidence under Rule 403

Under M.R. Evid. 403, the inquiry is whether the evidence must be so prejudicial that it creates a danger that the fact finder will “decide on an improper basis.” *State v. Ardolino*, 1997 ME 141 at ¶ 10, 697 A.2d 73. Further,

²⁴ The trial court further reasoned that the court was allowing uncharged conduct for the same reasoning multiple cases have reviewed, including *Reynolds*, *Hanscom*, *DeLong*; because these cases provide “that when alleged conduct of a sexual abusive nature is taking place over a protracted period of time, with numerous alleged events, the State is entitled to produce evidence of uncharged conduct.” (III Tr. T. 95).

“the danger of unfair prejudice must *substantially* outweigh the probative value of the evidence” for exclusion. *State v. Boobar*, 637 A.2d 1162, 1168 (Me. 1994) (emphasis added).

The trial court otherwise did not abuse its discretion when it determined that the admissibility of this evidence was not unfairly prejudicial under M.R. Evid. 403. The evidence was highly probative in order to assist the factfinders in understanding the ongoing abusive relationship and dynamics between the caregiver and the two victims.²⁵ For example, admitting evidence of the first time that Fryman “inappropriately” touched the youngest victim, provides context about how Fryman began grooming her. (II Tr. 128). The youngest victim also explained how frequently unlawful sexual contact acts occurred. (II Tr. 171). Allowing each victim to testify about witnessing the other being present in the same room during a sexual assault, provided jurors with critical information to fully evaluate their credibility and claims. (III Tr. 50; II Tr. 163). None of this admitted evidence, while highly probative, otherwise resulted in

²⁵ While the State did not designate an expert here, delayed disclosure dynamics in child abuse cases can be confusing for jurors without appropriate context. Research consistently demonstrates that delayed disclosure of childhood sexual abuse, especially after the victim reaches adulthood, is a common phenomenon.

See: R. Alaggia et al., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016), 20 *Trauma, Violence & Abuse* 260 (2019).
<https://journals.sagepub.com/doi/pdf/10.1177/1524838017697312> (accessed June 12, 2026).

unfair prejudice to Fryman. Finally, Fryman did not request a limiting instruction for the “other acts” conduct.²⁶

D. The admitted “other acts” were quite limited in nature and they did not cause any unfair surprise because they had been disclosed in discovery.

In the case at hand, the trial record shows that the specific acts were quite limited. For example, the oldest victim was the subject of three counts on the indictment. The State’s thorough review of the trial record finds that she only testified to four specific acts.²⁷ Further, these acts were fully disclosed in discovery. (A.133-170).²⁸ Two acts involved testimony about genital-to-genital contact in Sanford, including the first time that Fryman assaulted her, and another time when he was teaching her to kiss, which then progressed to genital-to-genital contact. (III Tr. 27-28; 31).²⁹ With respect to Count 3 (Trial

²⁶ In *Boone*, Defense objected to the 404(b) evidence and requested a jury limiting instruction; here, in Fryman, there was no limiting instruction requested. In the absence of a request to the court to provide a limiting instruction, the Law Court has stated: “we can assume that counsel concluded that a limiting instruction would have overemphasized the importance of the evidence and decided to forego the request for strategic reasons.” See: *State v. Roman*, 622 A.2d 96, 99 (Me. 1993) (quoting *State v. Rogers*, 389 A.2d 36, 38 (Me. 1978)).

²⁷ See generally (III Tr. 27-51).

²⁸ The State’s first response to Defendant’s oral motion for a bill of particulars included excerpts from CAC transcripts that were provided to defense at the onset of the case. (A. 133-170).

²⁹ While both events would be sufficient to convict on either Count 2 (Trial Count 1) or Count 3 (Trial Count 2), the specific unanimity instruction was provided here. (IV Tr. 78).

Count 2), she testified about genital-to-mouth contact while in the bathroom in Sanford. (III Tr. 44-46).

Finally, the oldest victim testified that once in North Berwick, Fryman subjected her to genital-to-genital contact and during that event, the younger sister was present and Fryman made her kneel beside them and kiss him. (III Tr. 50-51).

The youngest victim was the subject of four counts on the indictment. The State's thorough review of the trial record finds that the court only permitted testimony regarding four gross sexual assault acts committed against her, one act that she witnessed occurring to her sister, and with respect to unlawful sexual contact, she advised that he would touch her vagina "on multiple occasions." *See generally*: (II Tr. 128-155). Further, these acts were disclosed in discovery. *See* (A.133-170).³⁰

The youngest child first testified to uncharged conduct in North Berwick, specifically, the first time that he ever touched her "inappropriately" was when she started puberty and it involved touching her breasts under clothing. (II Tr. 127-128).

³⁰ The State's first response to Defendant's oral motion for a bill of particulars included excerpts from CAC transcript excerpts that were provided to defense at the onset of the case. (A. 133-170).

On another occasion, she testified that she was called in from the kitchen into his bedroom. After he began touching her body with his hands, he engaged in genital-to-genital contact. (II Tr. 156).

During another event in North Berwick, Philip Fryman inserted his penis into her anus. (II Tr. 157-159). She recalled another time where she was brought into his bedroom, and he engaged in genital-to-genital contact. (II Tr. 160).

She also testified about directly witnessing a sexual assault of her sister in North Berwick; she pretended to sleep as she saw Fryman enter the room and sexually assault her older sister in the bed. (II Tr. 162-165).

In North Berwick, she recalled that there were multiple occasions where she would just be on a couch or in chairs, sitting side by side with Philip Fryman and he would put his hands down her pants and start touching her vagina. (II Tr. 171).

E. The trial court did not “reverse its own ruling” mid-trial.

Fryman contends that because the court denied the State’s motion in limine, which disallowed the State to present evidence of other acts from outside Maine jurisdictions, that this somehow barred the prosecution from introducing evidence of several other acts that occurred within the State of Maine. (Bl. Br. 32). When the trial court made rulings in trial that in-state uncharged acts were admissible under M. R. Evid. 404(b), these individualized

rulings was addressing different evidence. There were zero “shenanigans” from the State; the court simply evaluated the admissibility of evidence as testimony naturally developed at trial. There were no evidentiary errors here.³¹

V. The seven-count indictment provided due process fair notice of the charges against Fryman and the record protects against double jeopardy.

A. The indictment provided constitutionally adequate notice of the offenses charged and therefore, did not violate Due Process.

Fryman next contends that Count 2 (Trial Count 1), Count 19 (Trial Count 3), Count 20 (Trial Count 4), and Count 31 (Trial Count 7), violate the Due Process Clause’s fair notice guarantee because the indictment is defective. He further argues that *despite* requesting a bill of particulars, that the amended bill of particulars accepted by the court on May 22, 2025, ³² “only made matters worse.” (B. Br. 26-40). ³³

a. Standard of Review

³¹ In the alternative, *even if* the court made evidentiary errors under 404(b) and/or 403, allowing the several limited “other acts” outside of the indictment and bill of particulars, this caused no harm and otherwise didn’t deprive Fryman of a fair trial. As stated earlier, he had notice of this conduct through detailed discovery, a sufficient indictment, and bill of particulars. Further, he was able to thoroughly cross examine witnesses.

³² (A. 171).

³³ The State cannot locate any part in the record where Defendant affirmatively preserved any objection to the final bill of particulars that Fryman himself requested; all objections made during trial were evidentiary objections.

A challenge to the legal sufficiency of an indictment is a question of law reviewed de novo. *State v. Pelletier*, 2023 ME 74, ¶ 28, 306 A.3d 614. A trial court's action on a motion for a bill of particulars is reviewed for an abuse of discretion. *State v. Peters*, 2024 ME 33, ¶ 26, 314 A.3d 290.

The due process clauses of the United States³⁴ and Maine Constitution³⁵ "require that criminal defendants be given fair notice of the standard of conduct to which they can be held accountable." *State v. Witham*, 2005 ME 79, ¶ 7, 876 A.2d 40 (alteration omitted) (quotation marks omitted). Pursuant to Me. R. Crim. P. 7(c), an indictment must be a plain, concise, and definite written statement of the essential facts constituting the crime charged. Finally, in determining the sufficiency of an indictment, the test to be applied is "whether a respondent of reasonable and normal intelligence, would, by the language of the indictment, be adequately informed of the crime charged and the nature thereof in order to be able to defend and, if convicted, make use of the conviction as a basis of a plea of former jeopardy, should the occasion arise." *State v. Pelletier*, 2023 ME 74, ¶ 28, 306 A.3d 614; *see also State v. Pierce*, 438 A.2d 247, 249 (Me. 1981).

³⁴ U.S. Const. amend. V.

³⁵ Me. Const. Art. I., Sect 6-A

b. The State's amended bill of particulars provided Fryman extraordinary notice.

The purpose of a bill of particulars is to enable the defendant to prepare an adequate defense, to avoid prejudicial surprise at trial, and to establish a record upon which to plead double jeopardy. *Peters*, 2024 ME 33, ¶ 26, 314 A.3d 290. In evaluating whether a defendant was prejudiced, the record should be reviewed to determine what facts were known to the defendant prior to the trial. *Id at* ¶ 26.

After years of court delays and in an effort to streamline a concise presentation of counts to the jury, the State elected to present seven counts.³⁶ Each count of the indictment expressly identifies all essential elements of the offenses, provides identifying information about minor victims, and includes geographical jurisdictions for venue. The trial record establishes that full discovery with a full description of all sexual acts was provided. Further, a reasonable person would understand that a sexual act is illegal with a minor child, and the law gives fair notice on the definition of how a sexual act is

³⁶ The Law Court has recognized that it is an exercise of “prosecutorial discretion” when the State elects to charge a defendant with only one act of abuse, for example, rather than hundreds of counts in a scenario where abuse is ongoing for a period of years. *State v. Reynolds*, 2018 ME 124, ¶ 28, 193 A.3d 168.

defined.³⁷ The indictment was sufficient to place Fryman on notice of the charges against him.

The bill of particulars, requested by defense in-camera and ordered by the court without objection from the State, provided notice to Fryman that detailed the specific type of sexual acts associated with each of the seven counts. (A. 171) In the context of a child sexual abuse case involving two victims and ongoing abuse for a broad range of time, Fryman received the benefit of a *uniquely narrow* set of charges to defend himself against at trial.

To evaluate prejudice, and applying *Peters*, this Court should consider what information Fryman possessed prior to trial. *Id.* Here, he received the Child Advocacy Center (CAC) disclosure interviews in discovery in 2019. (A. 133-170). Furthermore, the State's initial written response to the court's bill of particulars ruling embedded exact transcripts of those interviews, explicitly directing Fryman's attention to the precise conduct anticipated at trial. (A. 133-170). As thoroughly reviewed in Issue IV of this brief, the trial testimony consistently reflected disclosures made in discovery that Fryman was noticed on from the onset of the case. The State virtually could not have provided any additional further information or notice in this case.

³⁷ See 17-A M.R.S. §251 (1)(C) (defining "sexual act").

- c. **“Generic” testimony in child sex abuse cases has been addressed in *Reynolds* and jurors in this case were properly instructed in specific unanimity.**

The Law Court has consistently held that with respect to child sex abuse cases, “the State is not required to present specific evidence of separate and discrete incidents of abuse for the jury to convict a defendant of every charged offense, so long as the jury is properly instructed on specific unanimity.” *Reynolds*, 2018 ME 124, ¶ 23, 193 A.3d 168; *see also State v. Hanscom*, 2016 ME 184, ¶ 12, 152 A.3d 632. Here, the State produced evidence at trial of specific, separate, and distinct acts. Further, in consideration of the jurors hearing this evidence, the trial court properly instructed the Fryman jury on the requirements of specific unanimity. (IV Tr. 78).

- d. **Fryman’s seven count indictment was not “cryptic,” and he had ample notice of victim witness statements provided in discovery.**

Fryman heavily relies on *Valentine v. Konteh*, 395 F.3d 626,631 (6th Cir. 2005), which is completely distinguishable and non-binding to this Court. The Fryman indictment is by no means “cryptic,” even without a bill of particulars. (Bl. Br. 35). Valentine’s indictment consisted of twenty “carbon copy” counts of “child rape” and twenty “carbon copy” counts of felonious sexual penetration.³⁸

³⁸ Quoting directly from *Valentine*: “The problem in this case is not the fact that the prosecution did not provide the defendant with exact times and places. If there had been singular counts of each offense, the lack of particularity would not have presented the same problem. Instead, the problem is that within each set of 20 counts, there are absolutely no distinctions made. Valentine was

This is dissimilar to Fryman; he was on notice of the victim's statements as set forth in discovery, and the indictment and corresponding bill of particulars otherwise provided notice of the crimes against him.

B. The convictions do not violate due process and double jeopardy.³⁹

Fryman next argues that Count 2 (Trial Count 1), Count 19 (Trial Count 3), Count 20 (Trial Count 4), Count 31 (Trial Count 6) and 32 (Trial Count 7) violate the Due Process clause and Double Jeopardy clause because they include "generic violations" and "do not descend to particulars." Further, he contends that the five counts track statutory language, but "fail to descend to particulars," that the State never specified a "factual basis" for each count and the "factual basis for the jury's verdict is unknown on the record". (Bl. Br. 41-46).

Double jeopardy prevents a defendant from standing trial a second time for the same offense following conviction. *State v. Hodgdon*, 2017 ME 122, ¶ 18, 164 A.3d 959; *State v. Labbe*, 2009 ME 94, ¶ 4, 979 A.2d 693 (and is also intended to prevent "multiple punishments for the same offense.") Therefore, an indictment should be sufficiently specific that it enables a defendant to

prosecuted for two criminal acts that occurred twenty times each, rather than for forty separate criminal acts. In its charges and in its evidence before the jury, the prosecution did not attempt to lay out the factual bases of forty separate incidents that took place." *Valentine v. Konteh*, 395 F.3d 626, 632 (6th Cir. 2005).

³⁹ A challenge to a conviction based on the double jeopardy clause is a question of law reviewed de novo. *State v. Paquin*, 2020 ME 53, ¶ 15, 230 A.3d 17.

prepare his defense and protects him against further jeopardy for the same offense. *Strong*, 2013 ME 21, ¶ 13, 60 A.3d 1286; *see also State v. Peters*, 2024 ME 33, ¶ 26, 314 A.3d 290. The "same-elements" test, sometimes referred to as the "*Blockburger* test"—"inquires whether each offense contains an element not contained in the other; if not, they are the same offen[s]e and double jeopardy bars additional punishment and successive prosecution." *See: State v. Hoover*, 2015 ME 109, ¶ 11, 121 A.3d 1281 (*citing United States v. Dixon*, 509 U.S. 688, 696, 113 S. Ct. 2849, 125 L. Ed. 2d 556 (1993); *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)).

In Maine, "an indictment will protect a defendant against further jeopardy if, *read together with the evidence presented at trial* [...], it makes clear the offense for which the defendant has been placed on trial." *State v. Lyon*, 2016 ME 22, ¶ 10, 131 A.3d 918 (*quoting State v. Gifford*, 595 A.2d 1049, 1052 (Me. 1991) (emphasis added)).⁴⁰ Trial colloquy can also serve as the "equivalent of a bill of particulars specifically identifying the acts giving rise to

⁴⁰ In *Lyon*, a child sexual assault case, the court found that a one-year time frame with "on or about language" avoided double jeopardy concerns because the evidence encompassed the time period that continued up to the victim's twelfth birthday and any variance of the time frame was not fatal. *Id.* at 11. The court reasoned that any variance between the time frame alleged and the actual evidence of defendant's criminal conduct was not fatal because the indictment served as fair warning of the crime charged. *Id.*

each count” to remove future danger of double jeopardy. *State v. Shea*, 588 A.2d 1195, 1196 (Me. 1991) (*citing State v. Terrio*, 442 A.2d 537, 540 (Me. 1982)).

Double jeopardy is not an issue here. Under Maine law, the indictment and the bill of particulars, when read alongside the trial evidence, more than protect Fryman from any future prosecution for this conduct. As elaborated on throughout this brief, the factual basis for each specific act is clearly distinct in the trial record. There is simply no risk of multiple punishments or repeat prosecution for conduct he was convicted of at trial.

VI. The sentencing court committed no obvious error in imposing Fryman’s sentence when it considered remorse as an aggravating factor.

Lastly, Fryman challenges the propriety of his sentence, arguing that the sentencing court erred in considering his lack of remorse during allocution as an aggravating factor, which he claims violated his First and Sixth Amendment rights. (Bl. Br. 52-56).

A. Standard of Review

Fryman advances this argument for the first time on appeal. The court therefore reviews for obvious error. *State v. Watson*, 2024 ME 24, ¶ 18, 319 A.3d 430. Obvious error requires "(1) an error, (2) that is plain, . . . (3) that affects

substantial rights. . . [and] (4) . . . seriously affects the fairness and integrity or public reputation of judicial proceedings.” *State v. Nichols*, 2013 ME 71, ¶ 23, 72 A.3d 503.

In Maine, the sentencing court's application of aggravating and mitigating factors in determining the maximum sentence is otherwise reviewed for abuse of discretion. *State v. Woodard*, 2025 ME 32, ¶ 21, 334 A.3d 667.

B. Remorse is a Permissible Sentencing Consideration

When a defendant chooses to allocute, they subject themselves to “a limited Fifth Amendment waiver.” *State v. Coleman*, 2024 ME 35, ¶ 26, 315 A.3d 698. This allows the defendant to speak freely while standing “unsworn and uncrossed.” *Id.* This Court has already decided that “the lack of remorse expressed in an allocution may be considered as a factor in sentencing.” *Id.* ¶ 23; *see also Woodard*, 2025 ME 32, 334 A.3d 667 (finding that trial court did not abuse its discretion in applying the aggravating factor of remorse, when the defendant allocated and called the whole situation a “misunderstanding”).

When considering lack of remorse as a sentencing factor, the analysis “must be based on affirmative evidence in the record to support that finding.” *State v. Ellis*, 2025 ME 56, ¶ 26, 339 A.3d 794. Here, Fryman chose to speak and stated: “I just want you to know that I disagree with it,” confirming with the

court that “it” referred to the verdict. (A: 119; S. Tr. 23). This statement provided the court with affirmative evidence of his lack of remorse.

Accordingly, the sentencing court neither abused its discretion, nor committed obvious error in imposing sentence.

CONCLUSION

For the foregoing reasons, Fryman’s convictions and sentence should be affirmed in all respects.

Respectfully submitted,

Dated: July 1, 2026

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CERTIFICATE OF SERVICE

I, Kristen R. Dorion, certify that a copy of the foregoing “BRIEF OF THE APPELLEE” has been sent via electronic mail to the Appellant’s attorney of record, Jamesa J. Drake, Esq.

Dated: July 1, 2026

/s/ Kristen R. Dorion
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