

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2026 ME 101
Docket: Aro-25-417
Argued: May 7, 2026
Decided: September 22, 2026

Panel: STANFILL, C.J., and MEAD, CONNORS, LAWRENCE, DOUGLAS, LIPEZ, and TAUB, JJ.

STATE OF MAINE

v.

TIMOTHY J. BURNS

STANFILL, C.J.

[¶1] Timothy J. Burns appeals from a judgment of conviction of unlawful sexual contact with a person who is fourteen or fifteen years old (Class D), 17-A M.R.S. § 255-A(1)(F-2) (2026), entered by the trial court (Aroostook County, *Nelson, J.*) after a jury trial. Burns argues that the court erred by (1) denying his motion to compel discovery of an electronic “change log” associated with the police report in this case; (2) permitting the State to recall one of its witnesses after she had finished her testimony and spoken to the prosecutor in the hallway of the courthouse; and (3) not declaring a mistrial based on prosecutorial error in the State’s closing argument.¹ We affirm the judgment.

¹ Burns also argues that the cumulative effect of these purported errors deprived him of his right to a fair trial. However, because we conclude that the court adequately remedied any prosecutorial

I. BACKGROUND

A. Historical Facts and Initiation of Prosecution

[¶2] Viewing the evidence in the light most favorable to the verdict, the jury rationally could have found the following facts beyond a reasonable doubt. *See, e.g., State v. Kilgore*, 2025 ME 81, ¶ 3, 345 A.3d 48.

[¶3] Burns is in his mid-fifties. In late 2021, Burns was living with the victim's mother (his then-girlfriend) and the victim. One day in late 2021 or early 2022,² Burns approached the victim in their home, put his hand inside her pants, moved her underwear to the side, and touched her genitals with his fingers; he did so intentionally and for sexual gratification.

[¶4] On January 25, 2023, the State filed a criminal complaint that, as later amended, charged Burns with a single count of unlawful sexual contact “[o]n or between November 18, 2021 and January 31, 2022.” Burns pleaded not guilty at his arraignment in July 2023.

B. Burns's Motion to Compel Discovery

[¶5] In April 2025, Burns moved to compel production of the electronic “change log” associated with the police report in this case. *See* M.R.U. Crim. P.

error and that the court itself did not err at all, we need not address Burns's cumulative-error argument. *See, e.g., State v. Coleman*, 2024 ME 35, ¶ 22 n.7, 315 A.3d 698.

² The victim was fourteen years old at this time.

16. At the motion hearing in May 2025, the court heard testimony from the administrator of the record management system used by law enforcement in Aroostook County and admitted in evidence a copy of the police report that had been provided to Burns in discovery. The administrator testified that he had generated and reviewed the change log for the police report ahead of the hearing.

[¶6] In a written order denying Burns’s motion to compel, the court found the following facts, which were supported by the record developed at the hearing. *See, e.g., State v. Thomas*, 2025 ME 34, ¶ 14, 334 A.3d 686.

[¶7] All local law enforcement agencies in Aroostook County use an electronic record management system called Spillman to store and manage their police reports. Typically, an officer creates a report with the entry of an “original narrative”; as the investigation continues, officers may make new entries below the original narrative or edit the information that is already there. The system collects various data about any change to a report, including what the change was, when it was made, and which user made it.

[¶8] Although the Spillman system records information about changes, that information is accessible only to those with “administrator” status. An administrator can compile and produce a log of the changes for any given report

in thirty to sixty minutes. Administrators generate change logs only when requested, not as a matter of course.

[¶9] The police report provided to Burns in discovery consisted of an original narrative and two supplemental narratives. The original narrative had three paragraphs; the first paragraph described the initial report and investigation, while the second and third reflected “updates” about forensic interviews and a warrant request. There were two changes made to the original narrative over the course of the investigation: the additions of the second and third “update” paragraphs. There was “no evidence that there ha[d] been any deletion of the information from a prior entry or any substantive changes to any prior entry” and “nothing to suggest that the actual report information ha[d] not been fully provided in discovery.”

[¶10] Based on those findings, the court concluded that Burns had failed to establish that production of the change log was required, and it thus denied his motion to compel. *See* M.R.U. Crim. P. 16(a), (c)(1), (d)(2).

C. Trial and Sentencing

[¶11] The case proceeded to a jury trial on August 21 and 22, 2025. At the outset of the trial, the court instructed the jury that “[w]hile what the attorneys have to say is helpful to understand the case, their words are not

evidence” and that “[e]vidence comes generally from the words of the witnesses and exhibits that are introduced during the trial.”

[¶12] The first witness for the State was the victim’s mother. The mother testified that she and Burns had previously been in a relationship and that Burns had lived in her house for part of the relationship. However, her testimony was inconsistent with respect to *when* Burns had lived in the house. She initially stated that Burns had been living there in November 2021, but she later stated that her relationship with Burns had ended in 2019 and that “in 2021, it was just me and the two children.” These inconsistencies were not addressed during the remainder of the mother’s testimony. After the parties stated that there were no further questions, the mother stepped down from the stand and the State requested a ten-minute recess, which the court granted.

[¶13] After the recess, the prosecutor made the following request to recall the mother as a witness:

There’s a bit of . . . an issue that came up. So [the mother] testified about the time frame that Mr. Burns is living . . . in the house . . . and she said 2019. So during the break, I asked her . . . how sure she was about that, and if there was some marker that helped her recall when that was, and she said that [Burns] lived there until she filed a protective order against him. So we went to get that protective order, and it shows January of 2022 is when she filed that protective order. So I want to be able to recall her to clarify the time frame that [Burns] was living at the home.

Burns objected to the State recalling the mother, and the court heard arguments from the parties. Ultimately, the court decided to allow the State to recall the mother and ask about when Burns had lived in her house, but it instructed the State and the mother to avoid any mention of the protection from abuse order. The State then recalled the mother, who testified that her initial testimony had not been accurate; that, during the recess, the prosecutor had shown her a document that helped refresh her memory; and that Burns had in fact left the home in January of 2022.

[¶14] After the mother testified, the State presented testimony from the investigating police officer, the victim, and the victim's case manager. At the start of the second day of the trial, the court and the parties discussed jury instructions. The court closed that discussion by admonishing the attorneys not to use the phrase "we know" in their closing arguments:

And . . . this isn't . . . part of the record in this particular case. The Court has expressed more than discomfort with phrasing, "we know this," "we know that," in terms of closing. And I had mentioned that, in terms of the Court's concern that that's vouching as it relates to comments on the evidence. Whereas a party can clearly argue the evidence shows or simply argue this occurred, in arguing what the evidence shows[,] I just want to make sure that—and I know it's—in terms of style, that might be difficult. But I want to make sure to flag that to try to avoid those issues. And I understand there's disagreement with the Court's ruling in that regard. But nonetheless, that's the Court's view.

[¶15] The parties then rested. In its jury instructions, the court reiterated that the arguments of counsel are not evidence, and it defined “evidence” as “the testimony of the witnesses and any exhibits that were admitted during the trial.”

[¶16] Despite the court’s clear admonition, the prosecutor opened his closing argument by repeatedly stating that “we know” certain facts. Burns objected on the third occasion, and the court sustained his objection.³ Almost immediately, the prosecutor used “we know” three more times; the first time, the court sustained Burns’s objection; the second time, the prosecutor corrected himself without objection; and the third time, Burns objected, but the prosecutor corrected himself before the court ruled on the objection.⁴ Each time the court sustained an objection or the prosecutor corrected himself, the

³ After a brief introduction and a recitation of the elements of the crime, the prosecutor opened his discussion of the evidence by stating, “Now we know the date range beyond a reasonable doubt, because [the victim] told the interviewer that . . . she was only fourteen when this happened.” Shortly after that, he stated, “And we know that the defendant moved out of the house in January of 2022.” Finally, a sentence or two later, the prosecutor began to say, “We know that,” but the court sustained Burns’s objection before the prosecutor could finish.

⁴ The first time, the prosecutor stated, “We know part of the evidence showed that,” but the court sustained Burns’s objection before the prosecutor could finish. The second time, the prosecutor said, “And in the manner in which that conduct occurred, in the nature of how he was touching her, we know—or the evidence shows, that that was done for the purposes of sexual gratification.” Finally, a sentence or two later, the prosecutor began to say, “And we know,” but it was cut off by Burns’s objection; the prosecutor then continued, “The evidence shows that—from [the mother] that the defendant, Timothy Burns, was 50 or 60 years old”

prosecutor rephrased whatever statement he had made by replacing “we know” with “the evidence shows.”

[¶17] At the end of his argument, the prosecutor asked the jury to find Burns guilty “[f]rom the testimony, from the evidence, from the description of [the victim] about what the defendant did to her.” In his rebuttal argument, the prosecutor did not use the phrase “we know.” Burns did not request a curative instruction or any other relief related to the prosecutor’s use of “we know.”⁵

[¶18] The jury returned a guilty verdict. The court sentenced Burns to 364 days of incarceration, with all but 200 days suspended, and one year of probation. The court entered judgment and Burns timely appealed. *See* M.R. App. P. 2B(b)(1).

II. DISCUSSION

A. Production of the Change Log

[¶19] Burns argues that the court erred and abused its discretion by denying his motion to compel production of the police-report change log.

[¶20] There are two basic avenues for a criminal defendant to obtain materials possessed by the State: automatic discovery under M.R.U. Crim. P. 16(a)-(b) and discovery upon request under M.R.U. Crim. P. 16(c), (d)(2).

⁵ After the prosecutor’s rebuttal argument, the court asked the parties whether they were “[a]ll set for final instructions,” and Burns responded, “Yes, Your Honor.”

[¶21] With respect to automatic discovery, Rule 16(a)(2) contains a list of materials that the State must provide to a defendant in any criminal case, and Rule 16(b) sets out deadlines by which the State must provide those materials. To obtain any material that “should have but has not yet been provided as automatic discovery,” a defendant must make a written request to the State, and the State must respond in writing within fourteen days. M.R.U. Crim. P. 16(b)(7).

[¶22] With respect to discovery upon request, Rule 16(c) allows a defendant to obtain materials that are not automatically discoverable but that are “material and relevant to the preparation of the defense.” M.R.U. Crim. P. 16(c)(1). To do so, a defendant must make a written request to the State, and the State must respond in writing “within a reasonable time.” M.R.U. Crim. P. 16(c)(1)-(2). In its response, the State must do one of the following: (A) provide the material; (B) notify the defendant that the material will be provided as soon as possible; (C) inform the defendant that the State does not possess or control the material; or (D) object to the request. M.R.U. Crim. P. 16(c)(2). If the State objects to the request, the defendant may move the court to compel production, and the State “shall respond to any such motion within 7 days.” M.R.U. Crim. P. 16(d)(2).

[¶23] In this case, Burns’s motion to compel asserted that he had requested the change log from the State and that the State had objected, characterizing his request as “overly broad” and “onerous.” However, Burns’s motion did not include a copy of his communication with the State, and the State did not file a written response to the motion.⁶ Thus, the record does not reflect whether the parties complied with their obligations to communicate in writing and, if so, what was said. To ensure that a trial court has all the information it needs to evaluate the substance of a discovery dispute and the parties’ compliance with the discovery rules, motions to compel generally should include copies of any relevant correspondence between the parties. *Cf.* M.R. Civ. P. 26(g)(1) (providing that in civil litigation, a party seeking to compel discovery must file a letter with the court, “attach[ing] to the letter copies of . . . the specific objections in question and the specific interrogatories or requests to which objection has been made”).

⁶ At the hearing on Burns’s motion to compel, the State asserted that it had made an “oral objection” to the motion at a prior status conference. However, it appears from the docket record that the court did not hold any hearings or conferences between the filing of Burns’s motion on April 28, 2025, and the hearing on that motion on May 30, 2025. Although Rule 16(d)(2) may not expressly require that the State’s response to a motion to compel be in writing, that seems to be the intent of the rule, and this case demonstrates why written responses are the best practice. To the extent that it is unclear whether the State has responded to a motion to compel, a trial court may be justified in imposing sanctions under Rule 16(e), including treating the motion as unopposed and requiring the State to produce the requested material.

[¶24] Turning to the merits of Burns’s appeal, we are not persuaded that the trial court erred or abused its discretion by denying Burns’s motion to compel. We first address Burns’s claim that the change log was automatically discoverable and then address his assertion that the change log was “material and relevant” to his defense and thus should have been provided upon request.

1. Automatic Discovery

[¶25] Burns argues that the change log was automatically discoverable under three subdivisions of Rule 16(a)(2). We disagree. Those subdivisions define the following materials as automatically discoverable:

(A) The police report(s) and any other documents used by the prosecutor in deciding to charge the defendant.

....

(F) Any books, papers, documents, electronically stored information, photographs (including motion pictures and video tapes), tangible objects, buildings or places, or copies or portions thereof, that the attorney for the State intends to use as evidence in any proceeding or that were obtained [from⁷] or belong to the defendant.

....

⁷ It appears to us that the word “from” was inadvertently omitted from subdivision (F). Before 1989, Maine Rule of Criminal Procedure 16(b)(2)(A) provided for the discovery of materials that “were obtained from or belong to the defendant.” The 1989 order that merged the Rules of Criminal Procedure and the District Court Criminal Rules omitted the word “from” from Rule 16(b)(2)(A), but there is no indication in the order or the advisory committee notes that the omission was intentional. *See* Order No. SJC-89-21 (effective June 1, 1989), Me. Rptr., 551-562 A.2d XXXVII, LVI-LVII, CXIV-CXV. Maine Rule of Unified Criminal Procedure 16(a)(2)(F) was then “carried over” from Maine Rule of Criminal Procedure 16. M.R.U. Crim. P. 16 committee advisory note, Dec. 2014.

(I) Written or recorded statements of witnesses and summaries of statements of witnesses contained in police reports or similar matter.

M.R.U. Crim. P. 16(a)(2)(A), (F), (I). We discuss each subdivision in turn.

[¶26] Burns argues that the change log fell within subdivision (A) because it was part of the “police report” in this case. However, subdivision (A)’s reference to “police report(s)” does not extend to external data or metadata about those reports, such as change logs. *See, e.g., United States v. Hobbs*, 612 F. App’x 94, 97 (3d Cir. 2015) (concluding that a defendant was not entitled, as a matter of course, to obtain the metadata associated with an electronic transcript he had received in discovery). Moreover, the State has consistently asserted that it did not review the change log before charging Burns, and Burns has not pointed to any evidence to the contrary. Thus, the change log was neither a police report nor used by the State in deciding to charge Burns, and subdivision (A) does not apply.

[¶27] Burns’s argument under subdivision (F) is likewise unpersuasive. Subdivision (F) applies only to electronically stored information that “the State intends to use as evidence” or that was “obtained [from] or belong[s] to the defendant.” Here, although the change log constitutes electronically stored information, there was no indication that the state intended to use it as

evidence and it was neither obtained from nor belonged to Burns. Accordingly, subdivision (F) does not apply.

[¶28] Finally, subdivision (I) requires the State to provide copies or summaries of witness statements, but like subdivision (A), it says nothing about external data or metadata related to those statements. Thus, subdivision (I) does not require the State to produce any external data or metadata associated with witness statements, *see, e.g., Hobbs*, 612 F. App'x at 97, and it does not apply to the change log here.

2. Discovery Upon Request

[¶29] Burns also argues that the change log was “material and relevant” to the preparation of his defense and that the trial court thus erred by not requiring the State to produce it under Rule 16(c). Reviewing the court’s decision for an abuse of discretion, *see, e.g., State v. Lepenn*, 2023 ME 22, ¶ 23, 295 A.3d 139, we disagree.

[¶30] Rule 16(c)’s “material and relevant” standard is “liberally interpreted and applied, but that does not mean that every specific discovery request made by the defendant must or should be granted.” *Id.* ¶ 22. Instead, a defendant must “show that the items sought may be material to the preparation of his defense and that the request is reasonable.” *Id.* (emphases and quotation

marks omitted). “This requirement precludes a fishing expedition by the defense into the prosecution file, and requires the defendant to show necessity for the inspection. Something more than a bare allegation by the defendant or his counsel that the items are material and the request is reasonable will be required.” *Id.* (emphases and quotation marks omitted).

[¶31] Here, the trial court concluded that the change log was neither material nor relevant to Burns’s defense, and it viewed Burns’s request as an attempt to “fish around in what is akin to the metadata on the Spillman system.” In the circumstances of this case, we agree. The court found, based on the testimony of the system administrator, that there was no evidence that “the actual [police] report information ha[d] not been fully provided in discovery” or that “there ha[d] been any deletion of the information from a prior entry or any substantive changes to any prior entry, after the information was added to Spillman.” In other words, the court found that the change log would not have revealed anything beyond what was already in the police report and thus would not have been helpful to Burns’s defense.

[¶32] In short, the change log was not automatically discoverable under Rule 16(a)(2), and the evidence supports the court’s conclusion that the change log was neither material nor relevant to Burns’s defense. Accordingly, the trial

court neither erred nor abused its discretion by denying Burns’s motion to compel. *See, e.g., Lepenn*, 2023 ME 22, ¶¶ 21-23, 295 A.3d 139.

B. Recall of the Mother as a Witness

[¶33] Burns next argues that the court erred by permitting the State to recall the mother as a witness after she was excused and then spoke to the prosecutor in the courthouse hallway. Burns’s claim is preserved, so we review the court’s decision to permit the recall for an abuse of discretion. *See, e.g., Capelety v. Estes*, 2023 ME 50, ¶ 17, 300 A.3d 817; *State v. Rubino*, 564 A.2d 59, 61 (Me. 1989).

[¶34] Maine Rule of Evidence 611(a) provides that trial courts “must exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) Make those procedures effective for determining the truth; (2) Avoid wasting time; and (3) Protect witnesses from harassment or undue embarrassment.” Under that rule, trial courts have “broad discretion to control the order and timing of presentation of evidence.” *Capelety*, 2023 ME 50, ¶ 20, 300 A.3d 817 (quotation marks omitted).

[¶35] Burns argues that the court abused its discretion in this case because the procedure used by the State—requesting a recess so that it could speak to one of its witnesses in private before recalling her and eliciting

testimony that conformed to the dates alleged in the complaint—was improper and unfair.⁸ Although we agree with Burns that the State’s conduct in this case was not ideal, we are not persuaded that the court abused its discretion by permitting the recall.

[¶36] We begin by acknowledging that the State’s actions in this case created an unnecessary appearance of impropriety. A private conversation between an attorney and a witness that results in the witness recanting or altering previous testimony is inherently suspect; as the U.S. Supreme Court recently put it, “a truth-undermining consultation [between an attorney and a witness] is exactly the kind of communication likely to happen during a brief daytime recess.” *Villarreal v. Texas*, 607 U.S. 465, 472 (2026); *see also People v. Pendleton*, 394 N.E.2d 496, 507 (Ill. App. Ct. 1979) (noting that “discussions [after a witness has taken the stand and is still subject to examination] pose a tantalizing potential for misconduct”).

⁸ Burns also argues that the court erred with respect to M.R. Evid. 612 by allowing the State to refresh the mother’s memory using the protection order without “first lay[ing] a foundation by demonstrating [her] lack of memory as to certain previous events.” *State v. MacLean*, 2025 ME 71, ¶ 21, 340 A.3d 653. *But see id.* ¶¶ 23-24 (suggesting that a witness need not testify directly to a lack of memory and that a foundation can be laid upon “ambiguous testimony”). However, the requirement of a foundation does not apply when, as here, the witness’s memory is refreshed off the stand. *Cf.* M.R. Evid. 612(a)-(b) (distinguishing between cases in which a witness’s memory is refreshed “while testifying” and “before testifying”).

[¶37] Here, there were at least two different measures that the State could have taken to correct or clarify the mother's testimony without speaking with her privately and off the record. The State could have addressed the inconsistencies in the mother's initial testimony during the remainder of its examination, including by refreshing the mother's memory while she was on the stand. *See* M.R. Evid. 612(a). Moreover, even if it was not until after the mother testified that the State noticed the inconsistencies and decided to speak with her further, it could have informed Burns and the court about that intention and sought direction from the court about how to proceed. *See, e.g., People v. Branch*, 634 N.E.2d 966, 967-68 (N.Y. 1994). The State's decision to request a recess so that it could speak to the mother in private, without notifying Burns or the court, "cast[] an unnecessary cloud over the fairness of the government's trial behavior." *United States v. Malik*, 800 F.2d 143, 149 (7th Cir. 1986); *see also id.* ("There are well known and appropriate ways on the record to give a witness on direct examination adequate opportunity to correct testimony without a private corrective conversation during a trial break.").

[¶38] Nonetheless, for four related reasons, we are satisfied that the court did not abuse its discretion by permitting the State to recall the mother.

[¶39] First, when the mother was recalled to the stand, she was asked to clarify a point of genuine ambiguity in her initial testimony. When the State originally asked the mother with whom she had been living “in the end of November of 2021,” she responded, “My two children and Mr. Burns.” Shortly after that, the State again asked, “[A]t the end of 2021 or end of November of 2021, was Mr. Burns living with you,” and the mother responded, “Yes.” Later, the mother testified, inconsistently, that Burns had moved out as early as January 2019. Thus, contrary to Burns’s assertion that the mother had “testified confidently regarding dates which did not match the dates in the complaint” and was “allowed to then modify her story to match the allegations in the complaint,” the mother’s initial testimony was neither clear nor consistent, and her testimony on recall was limited to addressing those inconsistencies. *See, e.g., Rubino*, 564 A.2d at 61 (concluding that a trial court did not abuse its discretion by allowing the State to recall a victim to clarify how old she had been when the offense occurred, emphasizing that “[c]ontrary to [the defendant’s] assertion, the witness did not testify as to any new facts when recalled”); *People v. Hernandez*, No. G064398, 2026 WL 1145880, at *13 (Cal. Ct. App. Apr. 28, 2026) (“A trial court may permit a witness to be recalled when recall would clarify inconsistencies in the witness’s testimony.”).

[¶40] Second, there apparently was no sequestration order preventing the attorneys from speaking to witnesses during breaks in the trial, and thus the prosecutor did not violate any formal rules by approaching the mother during the recess. *Cf., e.g., State v. Henness*, 679 N.E.2d 686, 693 (Ohio 1997) (“No general rule absolutely forbids attorney-witness contact between direct and cross-examination. Trial courts may forbid such contact, and often do so, but here, the court did not.” (citations omitted)); *United States v. Calderin-Rodriguez*, 244 F.3d 977, 984-85 (8th Cir. 2001) (“[T]he district court, in exercise of its discretion in regulating the conduct of the trial, may impose restrictions on an attorney’s contact with witnesses during trial, not only to prevent unethical coaching, but also simply to preserve the status quo during breaks in testimony.”).

[¶41] Third, given that the court credited the prosecutor’s recounting of the conversation in the hallway, including the mother’s statement that she could figure out when Burns had moved out of her house based on the date of the protection order, there was legitimate truth-seeking value in permitting the mother to testify after she had reviewed the order. *See, e.g., M.R. Evid.* 611(a)(1) (directing trial courts to control the mode and presentation of evidence so as to “[m]ake those procedures effective for determining the

truth”); *State v. Couch*, 567 S.W.2d 360, 362 (Mo. Ct. App. 1978) (“Since the law encourages the correction of erroneous statements, we hold the court did not err in permitting the recall of the witness to correct her testimony after her memory was refreshed.” (citation omitted)); *Humes v. United States*, 186 F.2d 875, 878 (10th Cir. 1951) (holding that a trial court had discretion to permit the prosecution to recall a witness, even after the defendant had rested, to correct previous false testimony).

[¶42] Finally, Burns cross-examined the mother when she was recalled, and the mother testified that the prosecutor had spoken to her during the recess and offered to show her a document to refresh her memory. Thus, the inconsistency of the mother’s testimony and the fact that the prosecutor intervened were highlighted to the jury, which could assess the credibility of the mother’s testimony accordingly. *See, e.g., Colony Cadillac & Oldsmobile, Inc. v. Yerdon*, 505 A.2d 98, 100 (Me. 1986) (“One of the main functions of cross-examination is to afford an opportunity to elicit answers which will impeach the veracity and consistency of the witness.” (alteration and quotation marks omitted)); *State v. Green*, 646 N.W.2d 298, 311-12 (Wis. 2002) (concluding that even if a prosecutor acted improperly by speaking with a witness outside of the court before recalling the witness to the stand, the

impropriety was harmless because “defense counsel showed the inconsistency in [the witness’s] statements on cross-examination”), *overruled on other grounds by*, *State v. Johnson*, 990 N.W.2d 174, 176 n.3 (Wis. 2023).

[¶43] For those reasons, although the State’s conduct in this case fell short of best practices, we conclude that the court did not abuse its discretion by permitting the State to recall the mother and elicit clarifying testimony about when Burns had lived in her house. *See, e.g., Rubino*, 564 A.2d at 61; *Calderin-Rodriguez*, 244 F.3d at 984-85; *United States v. Coleman*, 805 F.2d 474, 482 (3d Cir. 1986); *Malik*, 800 F.2d at 148-49.

C. Prosecutorial Error in the State’s Closing Argument

[¶44] Finally, Burns argues that the court erred by not declaring a mistrial based on the prosecutor’s use of “we know” in his closing argument. The State does not dispute that the prosecutor’s comments were erroneous,⁹ but it argues that Burns’s claim is not preserved and that the errors affected neither the outcome nor the integrity of the proceedings.

[¶45] When Burns objected at trial to the prosecutor’s use of “we know,” the court sustained each of his objections, and Burns did not move for a mistrial

⁹ The State does, however, characterize the nature of the errors as the prosecutor “using a phrase deemed unsavory by the Trial Court moments before the closing argument.” This apparent attempt to portray the court’s order as a mere preference about “unsavory” language and to shift the blame for the prosecutor’s errors from the prosecutor to the court is wholly unpersuasive.

or request any other additional relief. Thus, Burns’s claim that the court erred by not declaring a mistrial is not preserved, and we review it only for obvious error. *See, e.g., State v. Harding*, 2024 ME 67, ¶ 20, 322 A.3d 1175; *State v. Quirion*, 2000 ME 103, ¶ 25, 752 A.2d 170; *State v. Eastman*, 1997 ME 39, ¶ 14, 691 A.2d 179. To establish that a prosecutor’s statements in a closing argument constituted obvious error, a defendant must establish not only that the prosecutor erred but also that the errors “affected the outcome of the proceeding” and “seriously affect[] the fairness and integrity or public reputation of judicial proceedings.” *State v. Scott*, 2019 ME 105, ¶ 25, 211 A.3d 205 (quotation marks omitted).

[¶46] We are disturbed by the prosecutor’s inability (or unwillingness)¹⁰ to comply with a simple directive of the trial court, but for two principal reasons, we cannot say that the prosecutor’s use of “we know” affected the outcome or integrity of these proceedings. *See State v. Dolloff*, 2012 ME 130, ¶ 33, 58 A.3d 1032 (describing several of the factors we consider in determining the effect of a prosecutorial error).

¹⁰ We emphasize that “prosecutors, as officers of the court, are obligated to follow a court’s directive.” *State v. Chandler*, 414 P.3d 713, 735 (Kan. 2018); *see also Turner v. Dep’t of Pro. Regul.*, 460 So. 2d 395, 396 (Fla. Dist. Ct. App. 1984) (“No person, be he a government official or a private individual should ignore a court ruling, no matter how much he may disagree.”).

[¶47] First, apart from flouting the court's order, the prosecutor's erroneous uses of "we know" were not especially "severe." *See id.* Although a prosecutor errs by using "words that could [be] understood by the jury to present the prosecutor's personal opinion," *id.* ¶ 56, or by "impl[ying] that the jury should credit the prosecution's evidence simply because the government can be trusted," *State v. Schooley*, 2025 ME 84, ¶ 35, 345 A.3d 78 (quotation marks omitted), a prosecutor "may present an analysis of the evidence in opening or closing statements with vigor and zeal as long as those statements do not invite the jury to make its decision based on something other than the evidence," *State v. Pillsbury*, 2017 ME 92, ¶ 21, 161 A.3d 690 (quotation marks omitted). The "central question" in this inquiry is whether the prosecutor's comments are "fairly based on facts in evidence." *State v. Hassan*, 2013 ME 98, ¶ 33, 82 A.3d 86 (quotation marks omitted). Here, the prosecutor's use of "we know" may have "blur[red] the line between improper vouching and legitimate summary," *United States v. Younger*, 398 F.3d 1179, 1191 (9th Cir. 2005), but most of the prosecutor's statements were properly tethered to evidence in the record; the prosecutor used "we know" primarily in statements like "[w]e know part of the evidence showed that . . ." and "we know the date range beyond a reasonable doubt, because [the victim] told the interviewer that" *See, e.g.,*

Hassan, 2013 ME 98, ¶¶ 32-34, 82 A.3d 86. Compare *State v. Brown*, 577 P.3d 1045, 1071-73 (Haw. 2025) (concluding that there was no prosecutorial error when a prosecutor used “we know” as part of “sentences drawing reasonable inferences from the trial evidence”), with *State v. Brackett*, 2026 ME 9, ¶ 82, 353 A.3d 967 (indicating that a prosecutor erred by stating that “‘we know’ that the footprints at the scene were [the defendant’s]” when there was no evidence that “the sock-clad footprints definitively matched or were in fact [the defendant’s]”).

[¶48] Second, the court remedied any prejudice associated with the prosecutor’s erroneous use of “we know.” The court sustained each of Burns’s objections, instructed the jury to render its verdict based upon only the evidence, and made clear to the jury that the arguments of counsel were not evidence. See *supra* ¶¶ 11, 15-16; *State v. Osborn*, 2023 ME 19, ¶ 25, 290 A.3d 558. The prosecutor’s errors, though numerous, were confined to the beginning part of his closing argument, and he did not make any other statements that could have been taken to “express[] a personal opinion or invoke[] the prestige of the government.” *Schooley*, 2025 ME 84, ¶ 35, 345 A.3d 78 (quotation marks omitted). Under these circumstances, we are satisfied that the trial court adequately addressed any error in the prosecutor’s closing

argument and that it did not obviously err by not declaring a mistrial. *See, e.g., id.* ¶¶ 32-40; *Hassan*, 2013 ME 98, ¶¶ 32-34, 82 A.3d 86; *Osborn*, 2023 ME 19, ¶¶ 21-25, 290 A.3d 558.

The entry is:

Judgment affirmed.

Neil J. Prendergast, Esq. (orally), Fort Kent, for appellant Timothy Burns

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