

Decision: 2026 ME 104
Docket: Som-25-305
Argued: March 5, 2026
Decided: October 27, 2026

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

STATE OF MAINE

v.

DEVON M. STEWART

LAWRENCE, J.

[¶1] Devon M. Stewart appeals from a judgment of conviction of one count of gross sexual assault entered by the trial court (Somerset County, *Mullen, C.J.*) after a jury trial. Stewart challenges the sufficiency of the evidence, argues that the trial court erred by admitting in evidence the victim’s 9-1-1 call and her testimony regarding Stewart’s out-of-court statement, and asserts that the trial court abused its discretion during the second step of the sentencing analysis by improperly setting his probation for longer than what is allowed under 17-A M.R.S. § 1804(1)(A) (2025).¹ We conclude that there was sufficient evidence to support a conviction of gross sexual assault by compulsion, that

¹ Title 17-A M.R.S. § 1804(1) has since been amended but not in any way that affects this appeal. See P.L. 2025, ch. 207, § 2 (effective Sep. 24, 2025) (codified at 17-A M.R.S. § 1804(1) (2026)).

Stewart waived his argument regarding the 9-1-1 call, and that the trial court did not err in admitting the victim’s testimony regarding Stewart’s statement. However, we also conclude that the trial court erred by improperly sentencing Stewart to a longer probationary period than is allowed by statute.² We therefore affirm the conviction but vacate the sentence and remand for resentencing.

I. BACKGROUND

[¶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 State v. Hansen*, 2020 ME 43, ¶ 2, 228 A.3d 1082.

[¶3] On February 17, 2023, the sixteen-year-old victim was walking in Waterville toward Fairfield. The victim recognized Stewart, a former schoolmate from junior high school, walking ahead of her and began talking with him as they continued to walk together toward Fairfield. The pair crossed and continued alongside the railroad tracks. Stewart began to say “random, inappropriate things” to the victim, such as stating that he loved her.

[¶4] They stopped on the tracks at a trestle—described at trial as an enclosed train overpass with beams—at which point Stewart unexpectedly

² We also note that the court may have strayed over the line in the exercise of its discretion when setting Stewart’s maximum sentence, which should be clarified on remand.

hugged the victim and then began kissing her and touching her buttocks inside her pants. Stewart pushed the victim against a railing on the side of the tracks so that the victim's back was towards him, pulled down her pants and underwear, and subjected her to penile penetration. The victim did not physically resist because she froze in response to her fear, but she said "no" and screamed "stop." Stewart ignored the victim and continued to subject her to penile penetration for a couple of minutes. After Stewart was done, he and the victim continued to walk toward Fairfield, with the victim walking behind Stewart.

[¶5] While they were walking, a police car drove by.³ Over Stewart's objection, the victim testified at trial that after the police passed them, Stewart told her that he was walking in front of her because he was not supposed to be around minors. The victim then separated from Stewart and walked to a nearby gas station and then a pizza restaurant as Stewart continued to walk in a different direction.

[¶6] After the victim walked to the restaurant, she called 9-1-1. Although clearly upset and at times unintelligible, the victim did not mention Stewart's

³ Stewart testified that the victim grabbed his hand as the police car passed them. A detective from the Fairfield Police Department confirmed that a surveillance video caught an image of the victim and Stewart holding hands.

name to the 9-1-1 operator because she did not want to get him in trouble and she did not feel comfortable speaking in public about the incident. An officer from the Fairfield Police Department responded to the call, and the victim still was very emotional and distraught during her encounter with the officer. The victim told the officer that she did not want to give Stewart's name because she did not want to get him in trouble, and that she felt pressured to submit to the sexual act because she recalled Stewart's past statements about suicide. The victim was transported to the hospital to undergo a sexual-assault examination. Stewart's DNA was later confirmed to be present in her vaginal area.

[¶7] The State filed a criminal complaint on January 19, 2024, and Stewart was indicted on April 19, 2024, on one count of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(A) (2026). Stewart pleaded not guilty on April 24, 2024.

[¶8] The court held a jury trial on January 27 and 28, 2025. The jury heard testimony from the victim, the responding officer from the Fairfield Police Department, the investigating detective from the Fairfield Police Department, the investigating detective from the Somerset County Sheriff's Office, and Stewart. In addition, the court admitted the following exhibits in evidence: a recording of the victim's 9-1-1 call, the sexual-assault-examination

lab report, and recordings of three interviews of Stewart by the investigating detectives.

[¶9] The jury returned a guilty verdict on the sole count of gross sexual assault. The court held a sentencing hearing on June 4, 2025. The court reviewed Stewart’s sex-offender risk-assessment report and referred to it as the “most chilling” assessment it had “ever seen.” Stewart allocuted at the hearing, stating that he was “sorry for what [he] did to the victim, and that [he is] willing to get as much help as [he] can.” The court conducted a *Hewey* analysis⁴ and set the basic sentence at fifteen years of incarceration, set the maximum sentence at twenty years of incarceration after finding that the aggravating factors clearly outweighed the mitigating factors, and then suspended a portion of the sentence and imposed probation. Stewart ultimately was sentenced to twenty years of imprisonment, with all but eleven years suspended, and six years of probation.⁵

⁴ “The *Hewey* analysis consists of three steps: (1) determin[ing] a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the offender; (2) determin[ing] the maximum period of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to that case; and (3) determin[ing] what portion, if any, of the maximum period of imprisonment should be suspended.” *State v. Weddle*, 2024 ME 26, ¶ 16, 314 A.3d 234 (quotation marks omitted).

⁵ As will be discussed *infra* ¶ 23, six years of probation exceeds the statutory maximum allowed under the facts presented in the circumstances here.

[¶10] Stewart timely appealed from the conviction on June 25, 2025. M.R. App. P. 2B(b)(1); 15 M.R.S. § 2115 (2026).

II. DISCUSSION

A. Sufficiency of the Evidence

[¶11] Stewart argues that there was insufficient evidence of compulsion to support a conviction for gross sexual assault.

[¶12] “We will set aside a conviction for insufficiency of the evidence only if no rational juror could have been convinced of the defendant’s guilt beyond a reasonable doubt,” viewing the evidence in the light most favorable to the verdict. *State v. Logan*, 2014 ME 92, ¶ 17, 97 A.3d 121. The jury determines the credibility of the witnesses and the weight to be given to the evidence, and “[a] victim’s testimony, by itself, is sufficient to support a guilty verdict for a sex crime . . . if the testimony addresses each element of the crime and is not inherently incredible.” *Id.* (quoting *State v. Moores*, 2006 ME 139, ¶ 9, 910 A.2d 373).

[¶13] “A person is guilty of gross sexual assault if that person engages in a sexual act with another person and . . . [t]he other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E.” 17-A M.R.S. § 253(1)(A). Section 251 defines “compulsion” as

the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being. “Compulsion” as defined in this paragraph places no duty upon the victim to resist the actor.

17-A M.R.S. § 251(1)(E) (2026). Stewart challenges only the sufficiency of the evidence of compulsion, not of the other elements of gross sexual assault. We therefore focus our review on the compulsion element.

[¶14] On this record, the jury could have found that the State proved the element of compulsion beyond a reasonable doubt. The victim testified that they were face to face when Stewart started kissing her and put his hands in her pants. He pushed her into the railing. He then pulled her pants down and penetrated her anally and then vaginally, while pushing her against the railing. While he was doing this, she said “no” and “started screaming stop” but Stewart did not stop. She testified that she was scared and that she froze and did not fight back because it felt like it did not matter. After the victim separated from Stewart, she called 9-1-1. She was very emotional and distraught during that call and her ensuing encounter with the responding police officer. Thereafter, she immediately underwent a sexual-assault examination.

[¶15] We have previously held that similar evidence was sufficient to prove the element of compulsion. *See, e.g., State v. Maizeroi*, 2000 ME 187, ¶ 18, 760 A.2d 638 (noting that evidence of compulsion was sufficient where the victim did not consent and was saying no and moving around while the defendant was on top of her); *State v. Almurshidy*, 1999 ME 97, ¶¶ 10-12, 732 A.2d 280 (holding that there was sufficient evidence of compulsion when the defendant held or pushed the victim against a tree while the defendant assaulted her, the victim was scared, and she asked the defendant to stop what he was doing, but he did not stop until she pushed him away).⁶

[¶16] It is the jury's prerogative to determine what testimony is credible. *See Logan*, 2014 ME 92, ¶ 17, 97 A.3d 121. Viewing the evidence in the light most favorable to the verdict, there is sufficient evidence to support the jury's finding that the victim submitted to a sexual act with Stewart as a result of compulsion.

B. The 9-1-1 Call

[¶17] Stewart argues that the court erred by allowing the victim to leave the courtroom while the State played the recording of her 9-1-1 call for the jury

⁶ Stewart argues that there was insufficient evidence that he made prior threats of suicide that compelled the victim to submit to avoid Stewart acting on those threats. *See* 17-A M.R.S. § 251(1)(E). However, because the evidence is sufficient without the jury finding that Stewart's prior threats compelled her, we need not address that argument.

because, he asserts, the 9-1-1 call was hearsay, the victim was not unavailable to testify as defined by Maine Rule of Evidence 804, and the court deprived Stewart of the opportunity to confront the victim on her prior statement.

[¶18] As a threshold matter, before we address these arguments, we must first determine whether they were waived. Stewart agreed on several occasions to the admission in evidence of the 9-1-1 call and to have the call played for the jury without the victim present. At the start of trial, the State initially planned to play the 9-1-1 call with one of the investigating detectives on the witness stand instead of with the victim on the stand because the call upset the victim. In response, Stewart stated, “I have no objection to it” and requested the ability to cross-examine the victim regarding the call, which the court allowed. Later, the State, the court, and Stewart agreed that the State would play the call during the victim’s testimony, instead of during the detective’s testimony, while the victim briefly stepped out of the courtroom. Again, Stewart stated that there was no objection to the victim leaving the courtroom while the recording of the call was played. When the State formally offered the recording of the 9-1-1 call, Stewart said, “No, your honor” when asked if he objected to its admission in evidence. After the recorded call was

played for the jury, the victim immediately returned to the witness stand, and Stewart was then able to cross-examine her regarding the call.

[¶19] Taken together, these actions go beyond a failure to object to evidence or to preserve an issue and instead amount to an affirmative agreement with the court’s decision to admit the 9-1-1 recording and then play it for the jury without the victim present. *See, e.g., State v. Rega*, 2005 ME 5, ¶ 17, 863 A.2d 917; *State v. Harding*, 2024 ME 67, ¶ 21, 322 A.3d 1175; *State v. Scott*, 2019 ME 105, ¶¶ 18-20, 211 A.3d 205. Given his manifest consent to the court’s handling of the 9-1-1 call, Stewart’s argument on appeal that the court erroneously allowed it to be played without the victim present was waived and is not subject to appellate review.⁷ *See Rega*, 2005 ME 5, ¶ 17, 863 A.2d 917.

C. The Victim’s Testimony

[¶20] Stewart argues that the court abused its discretion by allowing the victim to testify that Stewart told her that he was “not supposed to be around

⁷ Even if we reviewed Stewart’s argument for obvious error, his argument has no merit. *See State v. Gervais*, 2025 ME 27, ¶ 20, 334 A.3d 645. The 9-1-1 call falls within an exception to the rule against hearsay for an excited utterance, which the court noted when it admitted the call. M.R. Evid. 803(2); *see, e.g., State v. Sykes*, 2019 ME 43, ¶¶ 20-22, 204 A.3d 1282; *State v. Taylor*, 2011 ME 111, ¶¶ 25, 28-30, 32 A.3d 440; *State v. Ahmed*, 2006 ME 133, ¶ 15, 909 A.2d 1011. Further, the victim’s availability is not a part of the analysis for admissibility of an excited utterance. In any event, Stewart had the ability to cross-examine the victim immediately after the 9-1-1 call was played and, in fact, did so. Thus, the court did not obviously err. *See* M.R. Evid. 803(2); *see also State v. Adams*, 2019 ME 132, ¶¶ 21-22, 214 A.3d 496 (“When the declarant *is* available for cross-examination at trial, however, a defendant’s Sixth Amendment right to confront the witness is *not* compromised . . .”).

minors,” because the probative value of the statement was substantially outweighed by the unfair prejudice of the testimony. Stewart contends that the statement was an unmistakable suggestion of prior misconduct that invited the jury to infer that Stewart had a criminal history or other disqualifying background.

[¶21] Anticipating the victim’s testimony regarding Stewart’s statement about minors, Stewart objected, but he did not clearly state the grounds on which he was objecting.⁸ *See State v. Kelley*, 357 A.2d 890, 894 & n.3 (Me. 1976), *abrogated on other grounds by*, *State v. Gatcomb*, 478 A.2d 1129, 1131 n.3 (Me. 1984); M.R.U. Crim. P. 51. As such, we review the court’s ruling for obvious error. *See State v. Gervais*, 2025 ME 27, ¶ 19, 334 A.3d 645; M.R.U. Crim. P. 52(b); M.R. Evid. 103(a). To show obvious error, “there must be (1) an error, (2) that is plain, and (3) that affects substantial rights. If these conditions are met, we will exercise our discretion to notice an unpreserved error only if we also conclude that (4) the error seriously affects the fairness and integrity or

⁸ Stewart began to state the grounds for the objection, specifically that the testimony would be a “[p]rejudicial statement that in effect—,” but was interrupted by the court asking the victim if she was about to quote Stewart. No one advised the court as to the anticipated content of the testimony. The court overruled the objection, and Stewart did not attempt to reassert or clarify the objection or ask for a sidebar discussion with the court despite his obligation to make known to the court the grounds for his objection to preserve his argument for appeal. *See* M.R.U. Crim. P. 51; *see also State v. James*, 2026 ME 28, ¶ 13 n.9, 354 A.3d 1113 (noting that the appellant has the burden to provide us with an adequate record to permit fair consideration of the issues on appeal).

public reputation of judicial proceedings.” *Gervais*, 2025 ME 27, ¶ 20, 334 A.3d 645 (quoting *State v. Pabon*, 2011 ME 100, ¶ 29, 28 A.3d 1147).

[¶22] The victim’s testimony that Stewart stated on the day of the incident that he was “not supposed to be around minors” was relayed only once and never again referenced during the trial—there was no additional questioning by either party as to this statement. Instead, it was left ambiguous with no other context as to why Stewart was not allowed around minors. The brief testimony was so vague that we cannot hold, as a matter of law, that the court erred by allowing the victim’s testimony. *See State v. Vigue*, 420 A.2d 242, 245 (Me. 1980), *abrogated on other grounds by, State v. Woodburn*, 559 A.2d 343, 346 n.3 (Me. 1989) (“The trial Justice did not err in refusing to give the requested instruction in a case where no objection had been made when the ambiguous testimony was given and where defendant had done nothing on cross-examination to elucidate its meaning.”). As such, the court did not obviously err by allowing the victim to testify about Stewart’s prior statement.⁹

⁹ We note that even if it were error by the court to allow admission of this portion of the victim’s testimony, the admission of the evidence did not affect Stewart’s substantial rights. *See Gervais*, 2025 ME 27, ¶ 20, 334 A.3d 645. As noted above, Stewart’s prior statement was relayed only one time by the victim and was never again referenced during the trial. Furthermore, the evidence of Stewart’s guilt outweighs the one-time mention of his prior statement, and any prejudice from the statement did not affect the outcome of the proceeding. *See State v. Nightingale*, 2023 ME 71, ¶ 30, 304 A.3d 264. The jury received DNA evidence, testimony from the victim, testimony from the responding and investigating officers, and Stewart’s own inconsistent statements and admitted falsehoods to support

D. Sentencing

[¶23] Stewart was convicted of the Class A crime of gross sexual assault under 17-A M.R.S. § 253(1)(A). Stewart argues, and the State concedes, that 17-A M.R.S. 1804(1)(A) does not authorize a six-year period of probation. Title 17-A M.R.S. § 1804(1) provides the maximum periods of probation for the different classes of crimes, and for Class A crimes, “the period of probation for a person may not exceed . . . 4 years.” Section 1804 lists several exceptions to this limit that may increase the permitted length of probation. *See* 17-A M.R.S. § 1804(2)-(6). The record before us shows that none of the exceptions apply to Stewart. Therefore, pursuant to the plain language of 17-A M.R.S. § 1804, the court’s sentence exceeded the statutory time limit for probation. *See State v. Ellis*, 2025 ME 56, ¶ 22, 339 A.3d 794 (“We review questions of law, including the legality of a sentence, de novo.”). On remand, the court must comply with the limits for probation under 17-A M.R.S. § 1804(1).

[¶24] Stewart also argues that the court erred at sentencing when evaluating the mitigating and aggravating factors to determine the maximum period of imprisonment as part of the second step of the *Hewey* analysis. Because we are remanding this matter for resentencing, we include for the

its conviction of Stewart; the brief mention of Stewart’s prior statement that he could not be around minors could not have affected his substantial rights. *See id.*

court's consideration on remand some observations about Stewart's argument regarding the second step of the *Hewey* analysis.

[¶25] We review the determination of the maximum sentence at step two of the *Hewey* analysis for an abuse of discretion. *State v. Plummer*, 2020 ME 143, ¶ 10, 243 A.3d 1184. Generally, the sentencing court may consider a defendant's remorse and acceptance of responsibility as mitigating factors and may consider a defendant's "affirmatively demonstrated lack of remorse and rejection of responsibility as aggravating factors." *Ellis*, 2025 ME 56, ¶ 23, 339 A.3d 794. However, "the fact that a particular factor may be considered mitigating does not mean that the *absence* of that factor is necessarily aggravating." *Id.* ¶ 24.

[¶26] The sentencing court cannot base a finding of lack of remorse or failure to take responsibility solely on the defendant's exercise of his right to trial. *See State v. Moore*, 2023 ME 18, ¶ 26, 290 A.3d 533 ("Any doubt as to whether the defendant was punished for exercising his right to trial must be resolved in favor of the defendant." (quoting *State v. Farnham*, 479 A.2d 887, 894-95 (Me. 1984) (Glassman, J., concurring in part and dissenting in part))). Nor can a sentencing court make a finding of lack of remorse or failure to take responsibility solely because the defendant chose to forgo expressing remorse

or taking responsibility at trial or sentencing. *See Ellis*, 2025 ME 56, ¶ 26, 339 A.3d 794. Instead, a sentencing court’s finding that a defendant lacked remorse or failed to take responsibility for the defendant’s acts must be based on affirmative evidence in the record—typically shown through the defendant’s allocution at sentencing or his testimony at trial.¹⁰ *See id.* ¶¶ 24, 26; *Ellis*, 2025 ME 56, ¶ 26, 339 A.3d 794; *State v. Grindle*, 2008 ME 38, ¶ 26, 942 A.2d 673.

[¶27] Here, although it was clear that the court relied on appropriate aggravating factors—such as the age of the victim and the effect of the crime on the victim—and properly considered several mitigating factors, *see State v. Aldrich*, 2026 ME 8, ¶¶ 81-82, 353 A.3d 987, it is not entirely clear to us to what extent the court relied on affirmative evidence in the record in determining that Stewart lacked remorse or failed to take responsibility in arriving at its maximum sentence.¹¹ “[A] sentence based in part on an impermissible

¹⁰ The court’s analysis in *State v. Grindle* is instructive. There, the sentencing court considered the defendant’s untruthful “exculpatory testimony . . . *because* it demonstrated [the defendant’s] unwillingness to accept responsibility for his actions and his lack of remorse,” thereby directly supporting the defendant’s failure to accept responsibility with affirmative evidence in the record, and thus making that objective failure an aggravating factor. 2008 ME 38, ¶ 26, 942 A.2d 673 (emphasis added). If the sentencing court cannot point to some affirmative evidence in the record to show the defendant’s failure to accept responsibility, the use of failure to accept responsibility as an aggravating factor may constitute an impermissible encroachment on a defendant’s decision to go to trial. *See Ellis*, 2025 ME 56, ¶ 27, 339 A.3d 794; *Moore*, 2023 ME 18, ¶ 26, 290 A.3d 533.

¹¹ For example, when discussing the aggravating factors in step two of its *Hewey* analysis, the court noted Stewart’s “almost complete failure . . . to take any responsibility for this until way after the fact.” These comments on Stewart’s rejection of responsibility, however, are not supported by any reference to affirmative evidence in the record. Later in its analysis, the court discussed the jury’s

consideration is not made proper simply because the sentencing judge considered other permissible factors as well” *Ellis*, 2025 ME 56, ¶ 28, 339 A.3d 794 (quotation marks omitted). On remand, the court will have an opportunity to clarify the basis for its sentence to ensure that it did not impermissibly encroach on Stewart’s right to a trial. *See Ellis*, 2025 ME 56, ¶ 27, 339 A.3d 794; *Moore*, 2023 ME 18, ¶ 26, 290 A.3d 533.

III. CONCLUSION

[¶28] We hold that there is sufficient evidence to support the jury’s finding that the victim submitted to a sexual act with Stewart as a result of compulsion. We also hold that Stewart waived his argument as to the

rejection of Stewart’s trial testimony as being an indication that the testimony was untruthful, which can be the basis for finding a failure to take responsibility. *See Ellis*, 2025 ME 56, ¶ 26, 339 A.3d 794; *Grindle*, 2008 ME 38, ¶¶ 17, 19, 26, 942 A.2d 673. However, the court did not relate this discussion to a finding that Stewart failed to accept responsibility and instead determined that the jury’s rejection of Stewart’s testimony was an additional aggravating factor separate and apart from Stewart’s failure to accept responsibility.

In addition, when discussing mitigating factors, the court gave Stewart “some credit” for showing remorse in his allocution. While still discussing mitigating factors, the court turned to the report of Stewart’s sex-offender risk-assessment, discussed the prospects for rehabilitation and potential for reoffending, and then ostensibly returned to the subject of Stewart’s remorse and, apparently in reference to the report of the sex-offender risk-assessment, noted that Stewart “either minimized his involvement in the offense he was convicted of fairly quickly by a jury, if not outright denied any criminal responsibility even after he was convicted.” The court then returned to the report of Stewart’s sex-offender risk-assessment and stated that it was “one of the more thorough evaluations [the court had] ever read.” It is not clear, however, whether the court relied on the report as affirmative evidence of Stewart’s lack of remorse or failure to accept responsibility. *See Ellis*, 2025 ME 56, ¶ 26, 339 A.3d 794. Additional discussion of the report did not arise until the court considered probation and Stewart’s likelihood of reoffending during step three of the sentencing analysis; there was no further discussion of the report regarding the aggravating and mitigating factors in step two.

admission in evidence of the victim's 9-1-1 call and that the court did not obviously err by allowing the victim to testify about Stewart's prior statement regarding his limitation on contact with minors. However, because the court exceeded the statutory limit for probation in a sentence for a Class A crime under 17-A M.R.S. § 1804(1)(A), the sentence of six years of probation was illegal. We therefore affirm the conviction but vacate the sentence and remand for resentencing.

The entry is:

Sentence vacated. Remanded for resentencing
consistent with this opinion. Judgment affirmed
in all other respects.

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