MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2026 ME 107
Docket: Was-25-276
Argued: January 8, 2026
Decided: November 10, 2026

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

STATE OF MAINE

v.

NAKOMA V. POLCHES

LIPEZ, J.

[¶1] Nakoma V. Polches appeals from a judgment of conviction for gross sexual assault of a child under the age of twelve (Class A), 17-A M.R.S. § 253(1)(C) (2026), entered by the trial court (Washington County, *Stewart, J.*) after a jury trial. Polches contends that the trial court's decision to allow the child victim to testify remotely via Zoom contravened both state statute, *see* 15 M.R.S. § 1321 (2026), and the Confrontation Clause of the Sixth Amendment to the United States Constitution, *see* U.S. Const. amend. VI. We are unpersuaded by both arguments and accordingly affirm the judgment.

I. BACKGROUND

A. Facts

[¶2] When the evidence is viewed in the light most favorable to the verdict, the jury rationally could have found the following facts beyond a reasonable doubt. *See State v. Gervais*, 2025 ME 27, ¶ 2, 334 A.3d 645.

[¶3] The victim is related to Polches on her father's side, and she refers to him as "Uncle Nakoma." Between May 2023 and May 2024, the victim—then eight or nine years old—regularly spent time at Polches's home for visits and babysitting. On two occasions, Polches forcibly put his penis in the victim's vagina.

B. Procedure

[¶4] In July 2024, a grand jury indicted Polches on one count of gross sexual assault. Before trial, the State filed an unopposed motion in limine seeking to introduce at trial a recording of a forensic interview of the victim conducted at a child advocacy center (CAC). *See* 16 M.R.S. § 358(3) (2026) (creating "an exception to the hearsay rule . . . for the recording of a forensic interview of a protected person"). The court granted the motion.

[¶5] The State also sought permission to allow the victim to testify remotely at trial pursuant to 15 M.R.S. § 1321. Under that provision, "a child

who is 14 years of age or younger" may "testify outside the presence of the defendant . . . in a criminal proceeding" if certain enumerated requirements are met. 15 M.R.S. § 1321(1), (2). Although Polches conceded that the proposed remote testimony satisfied the requirements of section 1321, he nevertheless argued that its admission would violate his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution. After an evidentiary hearing, the court rejected Polches's Confrontation Clause challenge and granted the State's motion.

[¶6] At the trial, which took place on May 22, 2025, the recording of the victim's forensic interview, which occurred on May 29, 2024, was admitted into evidence and played for the jury. Consistent with its prior ruling, the court permitted the victim to testify via Zoom. At no time did the State ask the victim if the person she identified as "Uncle Nakoma" was in the courtroom. The State also presented testimony from two additional witnesses: a police officer from the Indian Township Police Department and the victim's mother. After the State rested, Polches moved for a judgment of acquittal, *see* M.R.U. Crim. P. 29(a), which the court denied. Polches did not present any witnesses or evidence.

[¶7] The jury returned a verdict of guilty, and the court subsequently

sentenced Polches to twenty years' imprisonment, followed by lifetime supervised release with the requirement that he register as a sex offender. Polches timely appealed his conviction. *See* M.R. App. P. 2B(b)(1).

II. DISCUSSION

[¶8] On appeal, Polches challenges the trial court's decision to allow the victim to testify remotely via Zoom, raising both statutory and constitutional arguments. First, he invokes the statutory exception set forth in section 1321(3), which precludes a child from giving remote testimony in cases where "the positive identification of the defendant is required." Polches contends that because he did not stipulate to being the person charged in the indictment, section 1321(3)'s exception applied and barred the victim from testifying remotely at trial. Second, Polches argues that even if the remote testimony was permissible under the statute, it nonetheless violated his Sixth Amendment right to confront witnesses against him.[1] We address each argument in turn.

A. Interpreting 15 M.R.S. § 1321

[¶9] We begin with Polches's contention that 15 M.R.S. § 1321 foreclosed the child victim from testifying remotely because the statute's "positive identification" exception applied. Because Polches did not raise this issue at

[1] Polches does not argue that the remote testimony violated his rights under the Maine Constitution.

trial, we review the trial court's decision to allow the remote testimony for obvious error. *See State v. Ouellette*, 2024 ME 29, ¶¶ 12-14, 314 A.3d 253.

[¶10] "To demonstrate obvious error, the defendant must show that there is (1) an error, (2) that is plain, and (3) that affects substantial rights." *State v. Dolloff*, 2012 ME 130, ¶ 35, 58 A.3d 1032 (quotation marks omitted). "Even if these three conditions are met, we will set aside a jury's verdict only if we conclude that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* (quotation marks omitted). We conclude that here, the trial court did not err, much less obviously err, in failing to rule sua sponte that section 1321(3)'s positive-identification exception precluded the child victim from testifying via Zoom.

[¶11] We interpret section 1321 de novo, and "our single goal is to give effect to the Legislature's intent in enacting the statute." *State v. Beaulieu*, 2025 ME 4, ¶ 14, 331 A.3d 280 (quotation marks omitted). We begin by considering "the plain meaning of the statutory language in the context of the whole statutory scheme," and "only if the statutory language is ambiguous—that is, reasonably susceptible to more than one interpretation—will we consider other indicia of legislative intent," such as legislative history. *Id.* (alteration and quotation marks omitted).

[¶12] Section 1321(1) authorizes the trial court to "allow a child who is 14 years of age or younger to testify outside the presence of the defendant pursuant to this section in a criminal proceeding concerning . . . [certain sexual offenses] in which the child is the alleged victim." The statute conditions the use of remote testimony on the satisfaction of four procedural requirements. *Id.* § 1321(2)(A)-(D).[2] The trial court found, and Polches does not dispute, that the four requirements were met in this case. Even if the four requirements are met, section 1321(3) sets forth two exceptions that preclude use of the statute's remote-testimony procedure. Specifically, it provides that the section "does not apply if the defendant is an attorney pro se or *if the positive identification of the defendant is required.*" *Id.* § 1321(3) (emphasis added). It is the second exception that Polches contends disallowed the remote testimony in this case.

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[2] The requirements are as follows:

> **A.** The testimony must be conducted by way of 2-way closed-circuit television or other audiovisual electronic means;
> **B.** The testimony must occur at a recognized children's advocacy center with only a victim or witness advocate present in the room in which the child is testifying;
> **C.** The opportunity for real-time cross-examination of the child must be provided to the defendant's attorney after the child's direct testimony; and
> **D.** The defendant must be able to observe the testimony of the child while the child is testifying and must be able to communicate with the defendant's attorney while the child is testifying.

15 M.R.S. § 1321(2)(A)-(D).

[¶13] To determine whether the exception in section 1321(3) applies, we must discern what it means for a "positive identification of the defendant" to be "required" in a particular case. *Id*. Polches interprets this language broadly and directs us to our decision in *State v. Donovan*, in which we stated that "identity is always an issue in a criminal trial unless the defendant admits having engaged in the alleged criminal conduct and relies on a defense such as consent or justification." 2004 ME 81, ¶ 20, 853 A.2d 772 (alteration and quotation marks omitted). Relying on *Donovan*, Polches argues that absent a stipulation as to identity or an admission of identity via the assertion of an affirmative defense, a "positive identification" is *always* required in a criminal case and thus the exception in section 1321(3) applies to bar remote testimony. *See Donovan*, 2004 ME 81, ¶ 20, 853 A.2d 772.

[¶14] Although we agree with the general principle that the State must prove the identity of the perpetrator beyond a reasonable doubt, *see State v. Kelley*, 308 A.2d 877, 885 (Me. 1973) ("[T]he jury may properly convict defendant only if it concludes beyond a reasonable doubt that the crime was committed *and it was defendant who committed it*." (emphasis added)), we disagree that the Legislature's use of the phrase "if the positive identification of

the defendant is required" refers to the State's generic burden to prove identity. 15 M.R.S. § 1321(3). We reach this conclusion for several reasons.

[¶15] First, Polches's interpretation of section 1321 would generate an illogical and unreasonable result under which the exception in section 1321(3) would swallow the general rule. *See Beaulieu*, 2025 ME 4, ¶ 15, 331 A.3d 280 ("[W]e may reject any construction that creates absurd, illogical, unreasonable, inconsistent, or anomalous results if an alternative interpretation avoids such results." (alteration and quotation marks omitted)). Taken to its logical end, Polches's construction would render section 1321's procedures authorizing child victims to testify outside the presence of the defendant unavailable in all but the seldom case where identity is conclusively *not* at issue—that is, in cases where identity is established by stipulation or affirmative defense. We doubt that the Legislature intended the statute to apply only in these narrow circumstances. Indeed, given the types of offenses to which section 1321 applies—those involving sexual assault and sexual exploitation of minors—Polches's interpretation would render the statute a virtual nullity.[3]

[3] Many of the common justifications and affirmative defenses available in Maine do not typically apply to allegations of child sexual assault or exploitation. *See State v. Jaime*, 2015 ME 22, ¶ 30, 111 A.3d 1050 (identifying examples of justification defenses, including self-defense and duress); *id.* ¶ 29 (identifying examples of affirmative defenses—among them, lack of criminal responsibility by reason of insanity as well as various affirmative defenses that do not apply to sexual offenses). The list narrows even further if the charges involve a victim who is under the age of 14—the subset of victims to which section 1321 applies. *See* 17-A M.R.S. § 254(1), (2) (2026) (setting forth a defense to sexual

[¶16] Second, we have consistently used the phrase "positive identification" to refer to instances in which a witness—at trial or in a pre-trial setting—affirmatively identifies the defendant. *See, e.g.*, *State v. Cruthirds*, 2014 ME 86, ¶ 4, 96 A.3d 80 ("During her trial testimony, the victim positively identified [the defendant] as her assailant."); *State v. Cefalo*, 396 A.2d 233, 235-42 (Me. 1979) (discussing the admissibility of a pre-trial "positive identification of defendant" made by photograph and a subsequent "positive in-court identification" of the defendant at trial); *State v. Gatcomb*, 397 A.2d 185, 186-87 (Me. 1979) (referring to the victim's "positive in-court identification" of the defendant). We presume that the Legislature was cognizant of our decisions, including our use of the phrase "positive identification," when it enacted 15 M.R.S. § 1321 in 2021. *See Stockly v. Doil,* 2005 ME 47, ¶ 14, 870 A.2d 1208 ("The Legislature is presumed to be aware of the state of the law and decisions of this Court when it passes an act." (quotation marks omitted)); *Acheson v. Johnson*, 86 A.2d 628, 631 (Me. 1952) ("Words which have acquired a meaning through judicial definition are construed in accordance therewith.").

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abuse of minors if the "actor reasonably believed the other person is 16 years of age," but making it applicable only in cases involving a victim who is 14 or 15 years old); *see also* 15 M.R.S. § 1321(1) (making remote-testimony procedure available to children who are "14 years of age or younger").

[¶17] Third, the structure of the statute indicates that the exception to remote testimony applies only when it is the testifying child making the "positive identification." Subsection 1 of the statute describes the general circumstances under which a "child [who] is the alleged victim" may testify outside the presence of the defendant. 15 M.R.S. § 1321(1). Subsection 2 then delineates the four requirements that the "[d]irect testimony of a child" must meet if it is to occur remotely. *Id.* § 1321(2). Each of those requirements places conditions on the child's testimony. In light of this structure, we read subsection 3 also to refer to the child's testimony: remote testimony is prohibited when "the positive identification of the defendant is required," *id.* § 1321(3), by the testifying child.

[¶18] Our decisions and principles of construction therefore favor narrowly interpreting the phrase "if the positive identification of the defendant is required," *id.*, to refer to circumstances where the State elects to prove the identity of the perpetrator by asking the victim to identify the perpetrator in court.[4] That is, if the State asks the victim to affirmatively identify the

[4] Of course, positive identification by an eyewitness is not the only manner by which the State may satisfy its burden of proving the identity of the perpetrator beyond a reasonable doubt. *See Kelley*, 308 A.2d at 885. Indeed, "[t]he State may establish the identity of [a perpetrator] through purely circumstantial evidence." *State v. Guptill*, 481 A.2d 772, 775 (Me. 1984).

perpetrator at trial, then the identification must occur in court in the physical presence of the defendant.

[¶19] This interpretation makes logical sense given the nature of remote testimony. *See Beaulieu*, 2025 ME 4, ¶ 15, 331 A.3d 280. There are both logistical complications and reliability concerns that may arise from asking a child victim testifying via Zoom to affirmatively identify as the perpetrator a defendant sitting in the courtroom. It follows that in such cases, the child should be physically present in the courtroom.[5]

[¶20] Thus, where, as here, the State elects to prove the perpetrator's identity through evidence other than an in-court identification by the victim, section 1321(3)'s "positive identification" exception is not implicated. We accordingly conclude that the plain language of section 1321(3) did not

[5] Although we conclude that the plain language of section 1321 is unambiguous and we therefore need not look beyond the plain language of the statute, we note that the legislative history of section 1321 supports our interpretation. The purpose of the statute is to protect minor victims of sexual abuse from further trauma by enabling them to testify outside the presence of their alleged abusers. *See* L.D. 1612 (130th Legis. 2021) (setting forth the title of the bill: "An Act To Facilitate Children's Testimony In Certain Sex Crime Cases"); *An Act to Facilitate Children's Testimony in Certain Sex Crime Cases: Hearing on L.D. 1612 Before J. Standing Comm. on Judiciary*, 130th Legis. (2021) (testimony of Rep. Genevieve McDonald) (stating that the bill's purpose is to "protect our youngest and most vulnerable victims when they testify"); *An Act to Facilitate Children's Testimony in Certain Sex Crime Cases: Work Session on L.D. 1612*, 130th Legis. (May 28, 2021) at 9:16:00 AM, 9:39:20 AM (setting forth comments made by legislators during a work session on the bill that its purpose is to "ensure that the children are not retraumatized by the . . . testimony" and that "the public interest here is very much in favor of protecting young children from having to be retraumatized in our justice proceedings"). The statute simply would not meaningfully protect minor victims as the Legislature intended, if, as Polches suggests, it was available only in the narrow and unlikely circumstances he outlines: where a defendant either stipulates to being the individual named in the indictment, or raises an affirmative defense to the charges. *See* 15 M.R.S. § 1321(1), (3).

preclude the victim from testifying remotely in this case, and that the trial court did not err, much less obviously err, in allowing the victim to testify via Zoom pursuant to section 1321.

B. Confrontation Clause

[¶21] Polches next argues that the child victim's remote testimony violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution, which provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI.[6] "We review application of the Confrontation Clause de novo." *State v. Adams*, 2019 ME 132, ¶ 19, 214 A.3d 496 (quotation marks omitted).

[¶22] In *Maryland v. Craig*, the United States Supreme Court held that the Confrontation Clause "may be satisfied absent a physical, face-to-face confrontation at trial only where [1] denial of such confrontation is necessary to further an important public policy and . . . [2] the reliability of the testimony is otherwise assured." 497 U.S. 836, 850 (1990). In rejecting a Confrontation Clause challenge to a Maryland statute allowing children to testify via one-way closed-circuit television, the Court reasoned that the right to face-to-face

[6] The Confrontation Clause was made applicable to the states through the Fourteenth Amendment to the United States Constitution. *State v. Jones*, 2018 ME 17, ¶ 8, 178 A.3d 481.

confrontation is not absolute and that occasionally, the right must give way to "considerations of public policy and the necessities of the case." *Id.* at 844, 849 (quotation marks omitted). It emphasized the "central concern" of the Confrontation Clause: ensuring "the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact." *Id.* at 845. Thus, although Maryland's statutory procedure denied the defendant a face-to-face courtroom encounter with the child witness, the Court concluded that the procedure nevertheless ensured the reliability of witness testimony by preserving the other critical "elements of confrontation—oath, cross-examination, and observation of the witness' demeanor." *Id.* at 851.

[¶23] Here, we apply *Craig*'s two-part analysis to determine whether the use of the remote-testimony procedure set forth in 15 M.R.S. § 1321 violated Polches's rights under the federal Confrontation Clause.

1. Necessity

[¶24] With respect to the first prong—whether dispensing with face-to-face confrontation is necessary to further an important public policy—Polches does not challenge the sufficiency of the trial court's findings regarding the necessity of the remote testimony, and in any case, we conclude that the

court's findings were more than sufficient. The Supreme Court in *Craig* made clear that "a State's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court." 497 U.S. at 853. The finding of necessity, however, must be "case-specific." *Id.* at 855, 858, 860. That is, "[t]he trial court must hear evidence and determine whether use of the [remote] procedure is necessary to protect the welfare of the particular child witness who seeks to testify." *Id.* at 855. Moreover, the trial court must find that the "child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant," and that the trauma the child would suffer "is more than *de minimis*, *i.e.*, more than mere nervousness or excitement or some reluctance to testify." *Id.* at 856 (quotation marks omitted).

[¶25] Here, prior to granting the State's motion to permit remote testimony, the court "hear[d] evidence" from several witnesses, including the victim's mental-health counselor and the victim's mother. *See Craig*, 497 U.S. at 855. The court then found that the victim would experience "increased trauma and an increase in level of fear, [and] a decrease in mental health and wellbeing if she was required to testify in court in the physical presence of the defendant"; that the defendant himself—not the courtroom generally—was the primary

source of the victim's fear; and that the victim's fear of being in the courtroom with the defendant was serious enough that it would likely impact her ability to testify. These findings regarding the necessity of the victim's remote testimony were supportable and adequate, and we accordingly turn to the second step in our analysis.

2. Reliability

[¶26] We are also persuaded that the remote-testimony procedure employed in this case preserved the essential elements of the right to confrontation by ensuring that the victim's testimony was "reliable and subject to rigorous adversarial testing." *Craig*, 497 U.S. at 851. As in *Craig*, the victim testified under oath; the defendant retained full opportunity for contemporaneous cross-examination; and the judge, jury, and defendant could view (albeit via Zoom) the demeanor of the witness as she testified. *Id.* at 851, 857. Furthermore, unlike in *Craig*, where the Supreme Court blessed the use of one-way closed-circuit television, 497 U.S. at 860, the two-way Zoom video technology employed here ensured that the courtroom was visible to the victim during her testimony. *See* 15 M.R.S. § 1321(2)(A).

[¶27] Polches nevertheless asserts for several reasons that this case lacked the safeguards of reliability present in *Craig*. First, he contends that

identity was "at issue" in this case in a way it was not in *Craig*, where several children apparently testified against the defendant. 497 U.S. at 842-43. Our reading of *Craig*, however, fails to uncover any fact—such as a stipulation to identity by the defendant—that convinces us that *Craig* was meaningfully different in this respect. To the extent that identity was an issue, there is little daylight between this case and *Craig*.

[¶28] Second, Polches notes that unlike in *Craig*, where the child witness testified from the judge's chambers within the courthouse, the victim in this case testified from outside the walls of the courthouse, at the CAC. The CAC setting, Polches argues, undermined the adversarial nature of the trial proceeding. We are not convinced. We recognize that a witness's physical presence in the courthouse serves an important symbolic function, as the formal courthouse setting reminds a witness of the gravity of the proceeding. Nonetheless, many of the hallmarks of that formal setting remained. Before the victim testified, the trial court placed her under oath, which impressed upon her the "seriousness of the matter and guard[ed] against the lie by the possibility of a penalty for perjury." *Craig*, 497 U.S. at 845-46. Furthermore, the use of two-way video technology, *see* 15 M.R.S. § 1321(2)(A), enabled the victim to observe the courtroom proceedings and decorum in a manner that the

child witnesses in *Craig*, testifying via one-way closed-circuit television, could not. 497 U.S. at 841-42. We believe that these circumstances were sufficient to impress upon the victim the gravity of the proceedings.[7]

[¶29] Finally, Polches attempts to distinguish this case from *Craig*, pointing to various problems with the forensic interview and weaknesses in the State's evidence—among them that the bulk of the victim's testimony came from her unsworn, year-old forensic interview; that her live testimony was brief and unresponsive; and that she was not asked at trial to endorse the statements that she made during the forensic interview. We note that Polches did not preserve an objection to the admissibility of the forensic interview, and he does not directly challenge admission of the interview on appeal. *Cf. State v. Engroff*, 2025 ME 83, ¶ 58, 345 A.3d 91 (holding that statute allowing admission of out-of-court forensic interview of child victim does not violate the Maine Confrontation Clause). Nor does he challenge the sufficiency of the evidence presented to convict him.

[7] Polches also notes that the victim was accompanied by a witness advocate, and that she looked to the advocate for assistance in answering a question. We are unconcerned that this resulted in what Polches deems improper "priming" of the victim, because the trial court quickly intervened and explained that the victim needed to answer questions herself. The jurors, furthermore, observed the entirety of this interaction and therefore could assess for themselves whether the presence of the advocate undercut the credibility of the victim's testimony.

[¶30] In any event, we think that Polches's focus on the forensic interview and the shortcomings of the State's evidence is misplaced. The thrust of many of Polches's arguments, both with respect to the forensic interview and the victim's live remote testimony, is that the victim's testimony was unreliable in the sense that it was not credible. As the Supreme Court has explained, however, this is not the type of reliability with which the Confrontation Clause is primarily concerned:

> To be sure, the [Confrontation] Clause's ultimate goal is to ensure reliability of evidence, *but it is a procedural rather than a substantive guarantee*. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined.

Crawford v. Washington, 541 U.S. 36, 61 (2006) (emphasis added).

[¶31] Because the Confrontation Clause sets forth a procedural right, the "reliability" prong of *Craig*'s test focuses on the presence of certain *procedural* safeguards (other than face-to-face confrontation) that "adequately ensure[] that the testimony is both reliable and subject to rigorous adversarial testing in a manner functionally equivalent to that accorded live, in-person testimony." *Craig*, 497 U.S. at 851. As discussed, *supra* ¶ 26, each of these procedural safeguards, i.e., "oath, cross-examination, and observation of the witness'

demeanor," were implemented in this case. *Id*. We accordingly conclude that there existed adequate safeguards to ensure that the victim's testimony was reliable and subject to meaningful adversarial testing.

III. CONCLUSION

[¶32] In short, the trial court's decision to allow the victim to testify remotely did not run afoul of either 15 M.R.S. § 1321 or the federal Confrontation Clause.

The entry is:

Judgment affirmed.

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