

STATE OF MAINE

v.

JUDGMENT

MARK CARDILLI, JR.,

Defendant

On April 5, 2019, defendant, Mark Cardilli, Jr., was indicted on the charge of intentional or knowing murder with the use of a firearm of Isahak Muse on March 16, 2019 in Cumberland County. 17-A M.R.S. §§ 201(1)(A) & 1158-A(1)(B) (2018). A jury-waived trial was held on December 9-13, 2019.

FINDINGS

Isahak Muse was born on December 12, 1996. He was 22 years old when he was fatally shot by defendant in Portland, Maine. (St.'s Exs. 1, 2, 27.) Defendant fired the shots with a Glock model 23, .40 caliber pistol (St.'s Ex. 137.) Mr. Muse was confirmed deceased by emergency responders at 2:02 a.m. on March 16, 2019. The cause of Mr. Muse's death was two gunshot wounds to the torso, which resulted in internal and external bleeding.

1. Chelsey Cardilli

Chelsey Cardilli was born on April 7, 2001 and was seventeen in March 2019. She is the eighteen-year-old sister and only sibling of defendant. She was the girlfriend of Mr. Muse. According to Suzanne Cardilli, mother of Chelsey Cardilli and defendant, Chelsey Cardilli is now estranged from her father and brother. Chelsey Cardilli met Mr. Muse and they became boyfriend and girlfriend in 2018. This was Chelsey Cardilli's first serious relationship.

In March 2019, Chelsey Cardilli was on house arrest. She was prohibited from having contact with certain people, including Mr. Muse. The prohibition from contacting Mr. Muse was ordered in January 2019. Chelsey Cardilli and her parents were aware of the condition with regard to Mr. Muse but they ignored it. The negotiation among Chelsey Cardilli and her parents with regard to seeing Mr. Muse generally involved the parents granting permission for Mr. Muse to visit if Chelsey Cardilli agreed to do certain things, including attending school. Even when she did not perform as agreed, Mr. Muse visited. Mr. Muse once entered the house through a window to join a slumber party Chelsey Cardilli was having in the basement. Sometimes Mr. Muse entered the Cardilli house through other windows. (Def.'s Ex. 23.) On another occasion, he was found under Chelsey Cardilli's bed in her bedroom.

In October 2018, Mr. Muse began visiting the Cardilli house three or four times per week from four to twelve hours per visit, including overnights with Chelsey Cardilli. These frequent visits continued into 2019. A sample of text messages between Chelsey Cardilli and her father reveal that he set a series of requirements and deadlines that were not honored by Chelsey Cardilli but that the threatened consequences of Mr. Muse's not visiting or leaving at certain times were not imposed. (State's Ex. 127, nos. 399, 432, 2275, 2276, 2939, 4032, 4144, 4145, 4152, 4155, 4158, 4212, 4213, 4214, 4215, 4217, 4219, 4235, 4237.) These messages reveal many ultimatums delivered by Mark Cardilli, Sr. to Chelsey Cardilli, which she challenged or ignored. Mark Cardilli, Sr.'s stated goal of being a responsible parent was, on this record, not achieved. (See St.'s Ex.127, no. 2939.)

A diagram of the Cardilli home was introduced in evidence. (St.'s Ex. 4.) Defendant lived in the apartment over the garage, which was accessed by stairs leading from the driveway. Half way up those stairs, a right turn led into the kitchen, and then the living room, hall, and bathroom.

Chelsey Cardilli slept in the upper-right bedroom. Suzanne Cardilli slept in the lower-right bedroom. Mark Cardilli, Sr., slept in the downstairs daylight room of the split level house.

Before March 2018, Chelsey Cardilli habitually missed school but had never been on bail or deferred disposition; involved in juvenile court; arrested; stopped by police in a stolen vehicle or called her parents to pick her up because she was concerned for her safety due to her boyfriend. After March 2018, this state of affairs changed: she entered the juvenile justice system in September 2018 when she was placed on bail after being arrested. The bail was amended in January 2019 to provide for no contact with Mr. Muse. During this process, she had a Juvenile Community Corrections Officer, Jen Chun, and an attorney, Ned Chester. The bail conditions were explained to her by a judge, and she signed the bail conditions stating she understood the conditions. She agreed she understood what she could and could not do, yet Chelsey Cardilli violated her bail conditions. She stated she risked everything for Mr. Muse; he was her first love. She began drinking alcohol at age 16.

In December 2018, she was stopped by police while riding in a stolen vehicle. Mr. Muse was in the car. Her father texted her and told her to stay away from Mr. Muse. Her father also texted Mr. Muse and told him to stay away and that he was not welcome. In 2018, Mark Cardilli, Sr. imposed a rule that Mr. Muse would text before arriving but that rule was not followed. Mr. Muse often arrived at the house without permission.

Chelsey Cardilli was photographed with bite marks on her left arm. (Def.'s Ex. 11.) She testified that Mr. Muse "playfully put bite marks on me." Although another photograph of her right arm was taken at the same time, Chelsey Cardilli testified she did not know how she received the marks on her right arm. (Def.'s Ex. 12.) The court reasonably infers that the marks on both

arms were similarly inflicted. Mr. Muse supplied alcohol to Chelsey Cardilli when she asked for it and she drank it.

In June 2018, Chelsey Cardilli called her parents and asked to be picked up from the Casco Bay Bridge. She was with Mr. Muse and referred to him to her mother as a “f-ing psycho.” She testified on redirect examination that she made the statement because Mr. Muse had let their ride leave and she did not want to wait outside. Her explanation was not credible.

Chelsey Cardilli testified she did not believe she had a good relationship with her brother because everything changed when he went into the Army. Defendant offered photographs that showed a happier relationship between Chelsey Cardilli and defendant. She testified the photos showed the only times she and defendant got along and the photos did not accurately portray her relationship with defendant. (See Def.’s Exs. 1-5: 1: photo of Chelsey Cardilli and defendant 5-27-18; 2: photo of Chelsey Cardilli and defendant May 2018; 3: Chelsey Cardilli, defendant, Mark Cardilli, Sr., May 2018; 4: Chelsey Cardilli and defendant at grandmother’s house June 22, 2016; 5 and 6: Chelsey Cardilli and defendant, time unknown; 7: Chelsey Cardilli, Suzanne Cardilli, and defendant August 12, 2018 at Sackets Harbor, NY; 8: Chelsey Cardilli and defendant when defendant was in the Army.)

Defendant gave Chelsey Cardilli a bracelet when defendant was first in the Army and the family visited Ft. Benning in Georgia. (Def.’s Ex. 9.) The bracelet is engraved, “Proud sister of a Soldier.” She was twelve when she received the bracelet and testified she “wore it two times.” When asked whether she would hug her brother when he left for the Army, she testified, “could be.” She agreed defendant gave her money when she asked.

She also agreed during her testimony that defendant made no racial or ethnic comments when he met Mr. Muse or during the events of March 15–16. When asked whether defendant

shook Mr. Muse's hand at that meeting, she testified, "maybe." Her testimony regarding her relationship with her brother and his alleged comments about race, ethnicity, and religion was not credible and is rejected.

On March 15 at 8:00 p.m., Chelsey Cardilli asked her mother if Mr. Muse could come to the house, and Suzanne Cardilli said no. Mark Cardilli, Sr. had stated Mr. Muse was not permitted to come to the home because Chelsey Cardilli had been disrespectful and had not attended school. Chelsey Cardilli told Mr. Muse to come anyway, and he was dropped off at 10:00 p.m. His arrival was recorded on the camera on the outside of the door at the home. (St.'s Ex. 134, 33-0400.) He was wearing a jacket, and the hoodie was up on his head.

Mr. Muse had been drinking alcohol all day on March 15, 2019. Chelsey Cardilli and Mr. Muse drank alcohol in her room that evening and were affected by the alcohol consumption. When interviewed by the police, she referred to Mr. Muse as a drunk kid. Chelsey Cardilli recorded in her diary that she and Mr. Muse were drunk from March 15 to 16.

Mark Cardilli, Sr., Suzanne Cardilli, defendant, and Mr. Muse were in Chelsey Cardilli's bedroom after Mr. Muse arrived on March 15, 2019. After an argument, it was agreed that Mr. Muse could stay until 1:00 a.m. At approximately 1:00 a.m., defendant sent a text to his sister, informing her of the time. (St.'s Ex. 128, no. 430.) Chelsey Cardilli spoke with defendant on the telephone. (St.'s Ex. 128, no. 431.) Although Chelsey Cardilli testified that she had gone to her mother's room to ask permission for Mr. Muse to stay and leave in the morning and that her mother granted it, Chelsey Cardilli did not tell the police about this interaction during her multiple interviews with law enforcement. Her testimony about obtaining permission for Mr. Muse to stay was not credible.

When her mother and brother were in her room after 1:00 a.m. and told Mr. Muse that he had to leave, neither Chelsey Cardilli nor Mr. Muse said then that Suzanne Cardilli had given permission for Mr. Muse to stay until the morning, and the court finds that no permission was given. Suzanne Cardilli spoke to Mr. Muse, who stated that he clearly would leave this time but next time he would speak to Mark. Chelsey Cardilli recorded the conversation because she thought it was funny. (St.'s Ex. 3.)

Chesley Cardilli did not know whether Mr. Muse had his hoodie on his head when the fighting started on March 15, 2019 and did not remember telling that to Det. Tully. During the October 23, 2019 interview of Chelsey Cardilli by Det. Townsend and Det. Tully, Chelsey Cardilli stated that Mr. Muse did not normally wear his hoodie, although sometimes he did, and that night, he was not wearing it up. (But see St.'s Ex. 134, 33-0400.) She later stated that maybe he was wearing the hoodie up when the fighting started. (Def.'s Ex. 37.)

During the fight among Mr. Muse, Mark Cardilli, Sr., and defendant, Chelsey Cardilli hit and scratched her father and brother. When defendant showed the gun to Mr. Muse and told him to leave, he said, "shoot me, it will be nothing new." Mr. Muse and defendant were close to each other when the gun was fired.

2. Holly Richio

Holly Richio has lived across the street from the Cardillis for 25 years. In the early morning of March 16, 2019, she awakened and heard someone yelling for help. She realized the person was Suzanne Cardilli, who appeared frazzled, scared, shaking, and worried. Suzanne Cardilli said to call the police because there was an argument, Chelsey Cardilli's boyfriend was at the house, and defendant had a gun. Ms. Richio told Suzanne Cardilli to stay but Suzanne Cardilli stated she had to be with defendant. Ms. Richio told her husband to call 911. She and her husband went

outside, but defendant was in the street and told them not to come outside. Ms. Richio had previously observed Chelsey Cardilli's boyfriend enter the Cardilli house through windows.

3. Defendant's 911 Call

Defendant called 911 from his father's phone after the incident. (St.'s Exs. 135, 135A.) Defendant identified the phone number and the house address and stated, "I just shot a man in my house." Defendant told the dispatcher: "Ah, my sister's boyfriend was in my house and I was telling him to leave and I pulled my gun out and shot him at my house." Defendant said he shot Mr. Muse two or three times in the chest. Defendant explained:

Um, we were trying to get him to leave because he was supposed to be out of here by one in the morning. And, um, he wouldn't leave. And, uh, they won't, like, my sister started fighting with um . . . My mom and, um, I came down, I went, I was down there, went upstairs to ah, to get my gun. He grabbed my dad and started pushing my dad around and tried getting my hands on him and he was overpowering me strength. So I went and grabbed the gun . . . to tell him to leave the house and he started punching more. I didn't want to shoot him, but . . . a few times to see if he's stop and he didn't, so . . . I pulled the trigger.

Defendant stated Mr. Muse was dead. Defendant described the Glock pistol and where he left it. Sergeant Gervais later terminated the call.

4. Christopher Gervais

Patrol Sergeant Christopher Gervais has worked for the Portland Police Department since 2014. In the early morning of March 16, 2019, he was working patrol with Officer Nielson. They responded to 107 Milton Street in Portland after the 911 dispatcher notified them. Sergeant Miller told Sergeant Gervais to take a male and female, defendant and his mother, into custody. He told them to lie on the ground, and they were handcuffed. Defendant notified Sergeant Gervais about the magazine, and he retrieved it from defendant. Defendant told Sergeant Gervais that Mr. Muse was pummeling defendant and his dad. Defendant and Suzanne Cardilli were transported to the Portland Police Department in separate cruisers.

5. Mark Flomenbaum

Mark Flomenbaum is the Chief Medical Examiner for Maine and has been since January 2013. His medical specialty is forensic pathology.

On March 16, 2019, he performed an autopsy on Isahak Muse. Two technicians and two Portland Police Department officers were present. Dr. Flomenbaum determined incorrectly that Mr. Muse was 5' 9" tall and weighed 139 pounds.

Dr. Flomenbaum found five injuries to Mr. Muse's body consistent with gunshot wounds: two through the chest and abdomen, one of which exited completely and one of which reentered the left arm; a graze wound on the right eyebrow; and a graze wound to the left hand. The two fatal wounds were those to the chest and abdomen. The bullet that entered the left arm was recovered and sent to the Maine State Police Crime Lab. (St.'s Ex. 126.)

The jacket worn by Mr. Muse showed two entrance gunshot wounds. (St.'s Exs. 101, 102.) Holes as large as those in the jacket were almost certainly caused by contact between the muzzle of the gun and the fabric when the gun was discharged. A tight circle of gunshot residue, which suggests very close range, appears on the jacket. (St.'s Ex. 103.) A bullet hole is seen on the inside of the left side of the jacket. (St.'s Ex. 104.) The left-sleeve of the jacket has a reentrance hole from a bullet that traveled through the upper part of the body. (St.'s Ex. 5.) The hood of the jacket shows holes from at least one bullet with multiple folds in the material. (St.'s Ex. 106.)

The right-back side of the Mr. Muse's body shows two entrance gunshot wounds. Gunshot A is the uppermost wound and gunshot B is the second wound. Gunshots A and B are well circumscribed with black powder and represent gunshots at very close range, near contact. (St.'s Exs. 107, 108.)

The exit wounds are seen on the front of Mr. Muse's body. Gunshot A exited the chest and entered the upper arm. Gunshot A entered the body 16.5 inches below the top of the head and 5 inches to the right of the midline. Gunshot A exited 14 inches below the top of the head and 1/8 inch to the right of the midline. Gunshot B, the lower wound, exited the body. Gunshot B entered the body 24 inches below the top of the head and 2 inches right of the midline. Gunshot B exited the body 21 inches below the top of the head and 1 inch left of the midline. (St.'s Exs. 109, 110.)

The exit wound for gunshot A does not show the typical pattern for an exit wound and has an abrasion. (St.'s Ex. 111.) Gunshot A is consistent with something else pressing against the body as the bullet exits the body, as opposed to just blowing the skin apart as the bullet exited. (St.'s Ex. 112.) The exit wound for gunshot B has no abrasion. (St.'s Ex. 113.) The upper left arm shows a very irregular reentrance wound. (St.'s Exs. 114, 115, 116.) The reentrance-wound in the arm lines up with the exit wound on the chest if the arm is placed against Mr. Muse's body. (St.'s Exs. 117, 118, 119.) The exit wound was shored, which explains why the exit and reentrance wounds are so unusual.

There was a graze wound to Mr. Muse's right eyebrow. (St.'s Ex. 120.) The left hand did not show trauma but there was a graze wound to the left knuckle. (St.'s Exs. 121, 122, 123, 124.) The wounds to the eyebrow and knuckle could have been caused by two separate events or by the same bullet. If caused by the same bullet, the hand would have had to be in line with the eyebrow. No photographs of Mr. Muse right hand were offered into evidence.

Dr. Flomenbaum performed an internal exam. The entire right chest was filled with a significant amount of blood, which signifies a rapid bleed. There were holes in the right lung, which was collapsed, and the liver. (St.'s Ex. 125.) He concluded that the cause of Mr. Muse's death was the two gunshot wounds to the torso, which caused Mr. Muse to bleed out.

Dr. Flomenbaum had no idea how the body was positioned when the injuries were received so he performed his measurements on a standard anatomical plane, which stands the body upright at attention. On that plane, the trajectory of both bullets was from back to front, right to left, and upward. Dr. Flomenbaum also could not determine the order of the gunshots. He sent a specimen to the toxicology lab, which showed a blood alcohol content for Mr. Muse of 0.181 grams per 100 milliliters and the presence of caffeine. (Def.'s Ex. 21.) Mr. Muse's blood alcohol content was more than two times the legal limit allowed to operate a vehicle in Maine.

6. Catharine MacMillan

Catharine MacMillan is a forensic DNA analyst at the Maine State Police Crime Lab. She has worked in this field for almost 30 years and in Maine for 19 years. In her work, she extracts DNA from forensic samples; generates a DNA profile and compares the profile to a known sample; and issues a DNA report. DNA testing is used to show an association between a crime scene, a victim, and a suspect.

In this case, she received oral DNA swabs from Mr. Muse, Mark Cardilli, Sr., Suzanne Cardilli, Chelsey Cardilli, and defendant. All were tested, and full DNA profiles were generated from the swabs. They were used as comparison standards to any type of profile that was generated from crime scene materials.

She received the materials at the Crime Lab from the Portland Police Department. Her report was sent to Det. Jeff Tully.

She performed a human identification test on bullet K (lab number 19a), recovered in the autopsy, and found human blood. That blood and human bloodstain swabs from areas titled group 1 (lab number 51a), 2 (lab number 52a), 3 (lab number 53a), 6 (lab number 56), 7 (lab number 57a), and 8 (lab number 58a) were tested, and DNA profiles were generated. The human

bloodstain swabs from the bullet and groups 1, 2, 6, 7, and 8 matched the DNA profile of Mr. Muse. This was a 22 loci match to the known sample of Mr. Muse. The estimated probability of selecting an unrelated individual at random from the FBI African American population database matching this 22 loci profile is less than one in 300 billion. That source attribution statement concludes to a reasonable degree of scientific certainty that except for identical twins or close relatives, the DNA profile came from Mr. Muse.

The human bloodstain swabs from group 4 was a DNA mixture, which means that two people contributed to the human bloodstain. The major contributor was Mr. Muse. The minor DNA profile could not be compared to any of the known samples, which means that Catharine MacMillan was unable to determine a match through available testing.

The human bloodstain titled group 3 (subitem 53A) was a DNA mixture consistent with the DNA of Chelsey Cardilli and Mr. Muse. The human bloodstain swab from the right side of the Glock's slide (subitem 33bA) was a single source that matched the DNA profile of defendant from blood. The human bloodstain from the trigger guard of the Glock (subitem 33cA or 33aA) showed a DNA mixture. The major contributor was Mr. Muse and the minor was of limited genetic information. The human bloodstain swab from the right index finger (subitem 011a) and left index thumb (subitem 012a) from defendant was a DNA mixture. The major contributor was defendant and the minor was of limited genetic information. The DNA from defendant came from blood and not skin.

For the DNA profile of Mr. Muse from the swab in group 4 and of defendant from the swabs from the Glock, the estimated matched probability is less than one in 300 billion. In other words, except for an identical twin or close relative, this is the DNA of Mr. Muse (group 4) and defendant (Glock). The DNA profiles from the human bloodstain from the group 3 swab, item

53A, was consistent with the DNA profiles of Mr. Muse and Chelsey Cardilli and was a combined probability of inclusion. Based on the FBI African American population database, one in 138 billion individuals is a potential contributor to the mixed profile. The mixture was not consistent with the profiles of Mark Cardilli, Sr., Suzanne Cardill, or defendant.

7. Interview of Defendant

On March 16, 2019 beginning at 2:27 a.m., defendant was interviewed at the Portland Police Department by Det. Christopher Giesecke. (St.'s Exs. 142, 142A.) Defendant received Miranda warnings, waived his rights, and agreed to speak to the police.

On March 15, 2019, defendant drank one beer during the evening and was not using drugs or medicine. Mr. Muse was not supposed to be at the Cardilli house on March 15, 2019. Earlier in the day, defendant's parents did not want Mr. Muse to come over because his sister was having an attitude. The relationship between Chelsey Cardilli and Suzanne Cardilli was not good. Whenever her parents did not want Mr. Muse to come to the house, Chelsey Cardilli told him to come anyway.

At 10:00 p.m. on March 15, 2019, Mark Cardilli, Sr., Suzanne Cardilli, and defendant went to Chelsey Cardilli's room to speak to Mr. Muse and Chelsey Cardilli. Mark Cardilli, Sr. and Mr. Muse agreed that he would leave at 1:00 a.m. Mark Cardilli, Sr. went to bed but asked defendant to check on Chelsey Cardilli and Mr. Muse at 1:00 a.m. Defendant did not want to see Mr. Muse so he called his sister to check. (St.'s Ex. 128, no. 431.) Chelsey Cardilli stated that she spoke to her dad and he said that Mr. Muse could stay the night. Because he knows his sister lies very frequently, defendant checked with his father to see if Chelsey Cardilli's statement was true and learned it was not. Defendant spoke to his mother in the kitchen and she said if Mark Cardilli, Sr. said that Mr. Muse had to go, he had to go.

Defendant and Suzanne Cardilli went to Chelsey Cardilli's room and told Mr. Muse he had to leave. Mr. Muse kept arguing with Suzanne Cardilli and defendant. Mr. Muse was pleading with Suzanne Cardilli to stay and she kept saying no. Defendant asked Mr. Muse if he was going to keep asking until she said yes, and Mr. Muse said he would.

Suzanne Cardilli went into the living room, Mr. Muse followed her, and he continued to ask if he could stay. Defendant told Mr. Muse he had to respect defendant's parents' decision. Chelsey Cardilli was telling them to stop, that they were being stupid, that she hoped they would die, and that she never wanted to see them again.

Mr. Muse's pleading with Suzanne Cardilli continued for ten or fifteen minutes. Mark Cardilli, Sr. came upstairs and told Mr. Muse to leave. Mark Cardilli, Sr. and defendant walked Mr. Muse toward the door in the kitchen to the breezeway. They opened the door and tried to move Mr. Muse out the door to the stairs but "he just wouldn't go." When Suzanne Cardilli announced that Chelsey Cardilli had hit her, Mr. Muse pushed back into the house and kept pushing Mark Cardilli, Sr. and defendant. Defendant tried to grab Mr. Muse but could not overpower him.

Defendant went upstairs to his room but did not get his gun at that time. He returned to the kitchen where he found Mr. Muse and Mark Cardilli, Sr. locked on to each other. Defendant did not know what Mr. Muse would do to Mark Cardilli, Sr. so defendant rushed Mr. Muse and pushed him to the side of the counter. They were stumbling around the kitchen. Mr. Muse overpowered defendant and Mark Cardilli, Sr. They were unable to get Mr. Muse out of the kitchen door and were not succeeding in stopping Mr. Muse. When defendant returned home in March 2019, he noticed that his father had lost weight and complained about pain in his arm. Defendant knew that his father was not going to be able to defend himself against Mr. Muse. Defendant is 5'7" and

weighs 150 pounds. Mark Cardilli, Sr. is 5'8" and weighs 160 pounds. Defendant estimated Mr. Muse was 6' and 165 pounds.

Defendant told Mr. Muse again that he had to leave. Chelsey Cardilli began hitting her parents and defendant. Mr. Muse threw a punch at defendant, which missed. Everything was "haywire." Defendant went to his room, grabbed his pistol, and put it in his pocket.

Defendant returned to the kitchen and told his father to get behind defendant. Defendant pulled his gun out and told Mr. Muse he had to leave because defendant was not going to continue to struggle with him. Defendant then put the gun away when Chelsey Cardilli ran at defendant; she started hitting him and was freaking out. Defendant kept the gun pointed away. Mr. Muse approached defendant and again began punching him in the face. Mr. Muse continued to punch and push defendant back into Chelsey Cardilli's room. Defendant said he was not going to shoot Mr. Muse and he should just leave the house. Mr. Muse yelled words such as, "he wants to die and just shoot him." Mark Cardilli, Sr. grabbed Mr. Muse and threw him on the bed.

Back in the hallway, Mr. Muse started punching defendant again, at least four or five times in the face. Mr. Muse punched defendant again and, as he started to throw another punch, defendant raised the gun and shot Mr. Muse two or three times. Mr. Muse was standing up when the shots were fired. No shots were fired when Mr. Muse was lying on the ground. Defendant stated that one shot could have missed because he saw only two wounds. The third shot could have been as Mr. Muse was falling over. Mr. Muse went to the ground. Defendant believed his sister was behind him. He could not see his mother and thought she was in the kitchen. When defendant saw his father, he was coming from the kitchen area.

During the fight with Mr. Muse, defendant had been punched in the face multiple times. The struggle lasted for ten minutes. During the fight, defendant concluded that he could not let

Mr. Muse continue to punch and beat defendant and make him drop the gun. Defendant felt like there was nothing else he or his father would be able to do and he would not be able to run while Mr. Muse was swinging and pushing. Defendant and his father were overpowered by Mr. Muse and could not move him out of the house. Defendant could not continue struggling with Mr. Muse.

After the shooting, defendant told his father to call 911 and then they used towels to put pressure on Mr. Muse's wounds. Defendant took the phone from his father and made the 911 call because his father was not saying anything. Defendant then went to his sister's room, unloaded the gun, and left it on the bed. The magazine was in his pocket so it would not be with the gun. Defendant went outside to check on his mother. The two remained outside at the dispatcher's direction.

Det. Giesecke asked why defendant got his gun. Defendant replied that they could not physically move Mr. Muse out and that he could not just let someone beat them around the house.

Defendant's parents did not discuss Mr. Muse with defendant because they did not want him to worry while away. In response to Det. Giesecke's question about whether defendant knew Mr. Muse to drink alcohol or use drugs, defendant replied, "I know nothing about him, no."

Defendant told Det. Giesecke where defendant's phone could be located at the house and the pass code. He told Det. Giesecke where the safe for the gun was located and that it was open. Defendant drew a diagram of the house.

Det. Giesecke asked how far apart defendant and Mr. Muse were when Mr. Muse punched defendant before the shots were fired and defendant stated "about from you to me," which Det. Giesecke estimated to be "about five or six feet or so." Although Det. Giesecke's estimate of the distance between Det. Giesecke and defendant was accurate, the court finds, based on this record, that Mr. Muse and defendant were significantly closer together when the shots were fired.

Near the conclusion of the interview, defendant told Det. Giesecke that defendant had related exactly what had happened. Defendant was concerned that his sister would never want to see him again. He was concerned about his family, and he did not want to kill Mr. Muse.

8. Robert Miller

Patrol Sergeant Robert Miller has worked for the Portland Police Department for twelve years. On March 16, 2019, he responded to 107 Milton Street with two officers, Lt. Goodman and Sgt. Dyer. Sgt. Miller entered the house through the driveway door. (St.'s Exs. 5, 6.) He identified photographs of the rooms in the Cardilli house that appear on the diagram. (St.'s Exs. 4, 9 (steps), 10 (kitchen), 11 (kitchen and blood stains), 12 (kitchen to living room), 13 (hall), 14 (hall and living room).) The court also viewed the Cardilli house from the outside and the inside on October 21, 2019.

The officers found Mr. Muse partly in the bathroom but moved him to the hall. (St.'s Ex. 27.) They inspected the area and found a shell casing on a stair. (St.'s Ex. 26.) They also found a hole in the front door. It appeared that a bullet went through the door and stopped in the base board. (St.'s Ex. 25.) They removed Mark Cardilli, Sr. and Chelsey Cardilli from the house and locked the house down.

Sgt. Miller observed the wounds on Mr. Muse. Sgt. Miller believed the front wounds were the entrance wounds and the back wounds were the exit wounds because the back wounds appeared to be larger than the front wounds. He has no expertise in determining entrance and exit wounds but based his conclusions on his experience.

9. Video of Mark Cardilli, Sr. and Defendant

A video and audio recording was made of Mark Cardilli, Sr. and defendant as they sat in the Portland Police Department. (St.'s Ex. 144.) Mark Cardilli, Sr. stated that he thought

defendant had an air soft gun, he did not think the gun was real, that was why he did not say anything, and he thought defendant was trying to scare Mr. Muse. Defendant replied that Mr. Muse was pushing and hitting them and defendant was not going to play around anymore.

10. Kimberly James

Kimberly James is a senior laboratory scientist at the Maine State Police Crime Lab. She is the Supervisor and Technical Lead of the Firearms and Tool Mark Unit. She has extensive training and has been testifying as an expert in firearms examination for seventeen years.

She received a number of items from the Crime Lab in connection with this case. The Crime Lab received the items from the Portland Police Department. She prepared a PowerPoint to explain her analysis. (St.'s Ex. 129.) She received the Glock semi-automatic pistol, model 23, 40 caliber, to check for basic function and comparison to the evidence at the scene. (St.'s Ex. 137; Lab 33.) She received the Glock magazine and ten cartridges in the magazine. (St.'s Exs. 133, 133a; Slides 33, 10.) The magazine holds a total of 13 cartridges. With one in the chamber, the total is fourteen.

The Glock is fired by pulling the trigger as long as there is ammunition in the magazine. Once the magazine is loaded, the pulling back of the slide cocks the firing pin. When the slide closes, it takes the cartridge from the top of the magazine and places the cartridge in the chamber. The slide makes a noise when it is pulled back. The gun is ready to fire and is semi-automatic so it will continue to fire every time the trigger is pulled as long as there is ammunition in the magazine. Kimberly James examined and test fired the Glock and found that it functioned normally.

The Glock has a takedown lever that helps to remove the slide for cleaning the barrel and slide. (Def.'s Ex. 33.) The Glock has a Glock Safe Action System that does not function through

the use of a separate switch on the gun. (Def.'s Ex. 20.) The three parts of the safety system include the trigger, firing pin safety, and drop safety. After the slide has been moved back in order to put a round into the chamber, the gun is fired by pulling the trigger. To refire the gun after a shot is fired, the trigger is slightly, but not completely, released, the trigger will reset, and the gun will fire when the trigger is pulled again. Multiple rounds from the Glock can be fired quickly with no need to rereck the gun.

Kimberly James received three fired cartridge cases collected from the crime scene. (St.'s Exs. 139, 140, 141; Lab 16, 17, 18.) The cases are listed on the house diagram as placard A, L, and P. (St.'s Ex. 4.) The cartridge consists of the brass case and, at the bottom, a primer. Inside the case is powder and in front of that is the bullet placed at the end of the cartridge case. The cartridges are centerfire. When the gun is fired, the firing pin hits the primer, which ignites and goes through the flash hole. That creates a flash into the cartridge case which causes the powder to burn. The gases and expansion push the bullet out of the barrel. The ammunition tested in this case had copper covering over the lead bullet, as with most semi-automatic handgun rounds. Kimberly James did not examine any bullet fragments or jackets in this case.

She received one bullet that was recovered from the house at placard K. (St.'s Exs. 4, 138; Lab 19.) She examined a bullet from test fires from the firearm. This hollow point bullet did not really expand. She received a second bullet recovered at the autopsy. (St.'s Ex. 136; Lab 49.) This bullet is expanded and has fiber material adhering to the bullet. She received a Nike Air jacket worn by Mr. Muse at the time of the shooting along with packaging. (St.'s Exs. 131, 131A; Lab 39.)

She test fired the Glock to determine how the gun is marking, how the marks repeat, and what types of tool marks result. She performs a microscopic comparison and viewed the test fire

cartridge and the evidence cartridges simultaneously to examine the tool marks. She determined that the tool marks were in agreement, indicating that the evidence cartridges were fired from the Glock. (St.'s Ex. 129, Slides 8-9.)

She also received two bullets from the scene and performed a microscopic comparison. The bullets were the same size and caliber and the rifling was similar; but there was an insufficient amount of tool marks observed in agreement to connect the evidence bullets to the Glock. The evidence bullets were consistent with the test fires in every way except for the insufficiency of tool marks microscopically. (St.'s Ex. 129, Slide 11.)

When a cartridge is fired from the gun, lighter and heavier material comes out of the barrel. The heavier matter is the burned powder and unburned powder, which is much larger in size. The lighter matter is the soot or powder.

There are four categories of testing with regard to gunshot residue: visual inspection, infrared photography, and two types of chemical testing, the Modified Griess test, and the sodium rhodizonate test. The Modified Griess test is used first to test for any burned powder particles, showing the distribution and amount present. The sodium rhodizonate test is a three-part process that confirms for the presence of lead. All four tests were performed on the Nike jacket. Testing reveals where lead is at the time of testing because it can land in areas that were not damaged and can be transferred from one area to another. Generally, however, if there is very clear, strong residue, it would have been wiped through by a bullet.

She examined the Nike jacket worn by Mr. Muse to determine whether any gunpowder residue was present and whether she could determine at what distance the gun was fired. She examined the jacket visually and with the stereoscope; she also used infrared photography and chemical testing. The two holes in the back of the jacket, when observed visually, are clearly

contact shots, within very close range to the object. Both had tearing, singeing, and powder visible. Both holes were positive on infrared photography inside and out; positive on the Modified Griess for burned powder; and positive on the sodium rhodizonate test for lead.

She conducted distance tests with the Glock and the ammunition that she received. (St.'s Ex. 129, Slides 14, 15.) She purchased the exact Nike jacket worn by Mr. Muse to use in the distance tests to observe how the material would tear. (St.'s Ex. 129, Slides 16, lower two photos; St.'s Ex. 132.) Based on the testing, she determined again that the holes on the back of the original jacket worn by Mr. Muse were consistent with contact shots based on the size, shape, and singeing, and the contact shots confirm that determination.

She performed testing on the hood of the jacket as well. (St.'s Ex. 129, Slide 17.) Holes labeled H and G align with a wound track that occurred over Mr. Muse's eyebrow. There was no gunshot residue beyond the outside of the holes. She concluded that the gunshot range had to be greater than eleven and 7/8 inches. If there were an intervening object in front of the hood, it could change her distance analysis with regard to the deposits on the hood. If the hood had been worn up, holes H and G and the deposits found would not be consistent with a bullet coming from the back.

Her analysis of hole H on the jacket resulted in a positive result on the sodium rhodizonate test around the perimeter of the hole. (Def.'s Ex. 30.) The testing on hole G resulted in a positive infrared photography result around the perimeter of the hole and a negative result on the Modified Griess and sodium rhodizonate tests. The testing results for holes F, A, B, and C appear on her notes. (Def.'s Ex. 30.)

She also processed holes labeled L, M, K, J, and I on the right side of the hood. (St.'s Ex. 129, Slide 18.) The holes had some wipe or residue from the outside of the bullet left around the

entrance of the hole. Based on the Modified Griess test, no burned powder was observed. Lead residue also was not observed. If these holes were made by a bullet, the range was not closer than twelve inches. Based on the information from the scene of three shots fired, she was unsure whether these holes were caused by a bullet strike or if the hood was damaged prior to this event.

With regard to hole K on the hood of the jacket, the results were positive for infrared photography, positive for sodium rhodizonate at the area around the hole, and negative on the Modified Griess. (Def.'s Ex. 31.) For hole M, the test results show negative for infrared photography, a faint positive result for sodium rhodizonate right around the hole, and negative for the Modified Griess. (Def.'s Ex. 31.) For hole L, the tests results were negative for all tests. The test results for holes D and E appear on her notes. (Def.'s Ex. 31.)

No tests were conducted on the left side of the jacket because there were no apparent areas of impact or damage. (Def.'s Ex. 32.) On the right side of the hood of the jacket, for hole I, the tests were negative. For hole J, the test results showed positive for infrared photography and negative for sodium rhodizonate and Modified Griess.

11. Eli Chase

Det. Eli Chase has worked for the Portland Police Department for seventeen years and for thirteen years as a CID detective in Special Computer Crimes and Technical Services. He has a BS degree and extensive training. He assisted in the investigation of this case. He collected and preserved all of the video files stored on the Blink home surveillance system at the Cardilli house. (St.'s Ex. 134.) The system records on the basis of movement and for only twenty seconds. Mark Cardilli, Sr. and defendant consented to him logging into the account to retrieve the videos.

Four videos were collected. Each contains the date and time the video begins. The first was recorded on March 15, 2019 at 10:08 p.m. and shows Mr. Muse walking toward the front door

by the garage and stairs to the kitchen. (St.'s Exs. 6, 7.) The second was recorded on March 16, 2019 at 1:42 a.m.; it shows Suzanne Cardilli leaving the house and captures defendant yelling that she was "f-ing leaving" and, again, that she was leaving. The third was recorded on March 16, 2019 at 1:43 a.m.; it contains the sounds of the racking of a semi-automatic pistol and yelling, with Mr. Muse stating, "oh, yeah" and "grab my phone." The fourth was recorded on March 16, 2019 at 1:44 a.m.; it shows Suzanne Cardilli running toward the house and includes sounds of yelling and screaming.

Det. Chase also processed three Apple cell phones and a Galaxy 8 smart phone, defendant's phone, based on different search warrants. The content of these phones was transferred in a scientifically valid way to a forensic computer. Det. Chase produced a forensic content report and gave that report to the primary investigating officer on a CD.

The information on defendant's phone was given to Det. Tully and contained more than seventeen thousand image files. Det. Chase is not able to tell whether defendant actually viewed the images on the phone because some could be saved but not seen. Although it also may not be possible to know the specific source of the images, it is possible to know when an image was placed on the phone.

12. Daniel Townsend

Det. Daniel Townsend has worked for the Portland Police Department since October 2006. He performs forensic analysis of mobile device examinations. On October 8, 2019, he met with Chelsey Cardilli; her attorney, Gina Yarmartino; Chelsey's parents; Assistant Attorneys General Ellis and Robbin; and Det. Tully to discuss the forensic process to extract and analyze the information on the phone she had on March 16, 2019.

On October 15, 2019, Det. Townsend met again with Det. Tully, Attorney Yarmartino, and Chelsey. Det. Townsend performed the extraction in a scientifically valid manner. The numbers of Chelsey's family members were 207-409-9914 for Mark Cardilli, Sr.; 207-332-4591 for Suzanne Cardilli; and 207-409-2460 for defendant. (St.'s Exs. 127, 128.) There are two relevant videos: one from March 13, 2019 and one from March 16, 2019 at 1:19 a.m.

A search warrant was not obtained for Chelsey's phone. The authority relied upon to extract the information was Chelsey's consent, which was very limited in scope. She agreed to access to texts among her, Suzanne Cardilli, Mark Cardilli, Sr., and defendant for different dates from June 1, 2018 through March 16, 2019. The original scope of her consent regarding defendant was March 1, 2019 through March 16, 2019. That scope was later expanded to October 1, 2018 through March 16, 2019. Chelsey Cardilli denied access to any communication between Mr. Muse and her, including during the days leading to March 16, 2019. No search warrant was sought for Chelsey Cardilli's phone when she denied access to those communications.

13. Victor Cote

Victor Cote has worked for the Portland Police Department for more than 23 years and for 16 years as an evidence and crime scene technician. He has a BA degree and extensive training. He prepared a PowerPoint presentation of the evidence in this case. (St.'s Ex. 130.)

He photographed the following: defendant's injuries, including dried blood and bruising and swelling in the nose area, blood on his jaw and temple, scratches and abrasions on his neck and elbow, and blood on his hands and fingers, on March 16, 2019 (St.'s Ex. 130, Slides 1, 3-4, 6-25.); Mark Cardilli, Sr.'s injuries on March 16, 2019 (Def.'s Exs 16-17.) (he also had blood on his pants and sleeves and red marks on his right side). Evidence Technician Cote agreed that defendant's injuries were consistent with his being hit in the face.

Evidence Technician Cote also photographed the following: bullet markings on the front door and threshold and the spent casing found on the front stairs (St.'s Ex. 130, Slides 26-29.); Mr. Muse and bloodstains in the bathroom (St.'s Ex. 130, Slides 30-32.); a mostly intact bullet found on the last stair before the landing (St.'s Ex. 130, Slide 33.); a defect in the floor by the bathroom (St.'s Ex. 130, Slide 34.); a casing found in the living room by the couch (St.'s Ex. 130, Slide 35.); pants and a Nike sneaker (St.'s Ex. 130, Slide 36.); a bullet jacket fragment, another jacket fragment, a defect in the floor, and a Nike sneaker (St.'s Ex. 130, Slides 37.); jacket pieces and/or lead (St.'s Ex. 130, Slide 39.); a jacket piece (St.'s Ex. 130, Slide 40.); a floor defect (St.'s Ex. 130, Slide 41.); scissors (St.'s Ex. 130, Slide 42.); a small jacket fragment (St.'s Ex. 130, Slide 43.); a Nike sneaker (St.'s Ex. 130, Slide 44.); the Glock (St.'s Ex. 130, Slide 46.); a recovered bullet and casing (St.'s Ex. 130, Slide 47.); lower front stairs (St.'s Ex. 130, Slides 48-49.); a spent bullet (St.'s Ex. 130, Slide 50.); jacket/bullet fragment (St.'s Ex. 130, Slides 51-53.); space between front door and foundation (St.'s Ex. 130, Slide 54-55.); fragment of a bullet (St.'s Ex. 130, Slides 56-58.); a broken fingernail (St.'s Ex. 130, Slides 59-60.); a casing (St.'s Ex. 130, Slides 61-62.). Evidence Technician Cote agreed there had been a lot of movement at the scene before he arrived because of the number of people who had entered the house. The bullets, jacket fragments, and casings could have been moved prior to when he arrived and photographed the scene. Magnets on the refrigerator were askew, as was a painting on the left wall by the bathroom.

Evidence Technician Cote photographed efforts to determine the trajectory of the bullets (St.'s Ex. 130, Slides 63-65.); efforts to determine the height of the gun when the bullets were fired (St.'s Ex. 130, Slides 66-73.) (the highest measurement at which the gun could have been fired was 45.75 inches; if one foot away from the wall, the gun height was 38.5 inches; if two feet from the wall, the gun height was 31.75 inches; if three feet from the wall, the gun height was 25.5

inches; and if four feet from the wall, the gun height was 20.0 inches.) These photographs were taken to show the possible position of the shooter and the possible position the gun. Based on these measurements, with defendant standing up, 45.75 inches from the floor measured just past defendant's elbow; 38.5 inches measured to defendant's forearm; 31.75 inches; measured to the bottom of defendant's suit jacket; 25.5 inches measured to the top of defendant's thigh; and 20.0 inches measured to defendant's knee.

Evidence Technician Cote photographed a defect in the hall floor to show the possible trajectory of a bullet. (St.'s Ex. 130, Slides 74-75.) He visually inspected the defect but did not send the part of the floor containing the defect to the Crime Lab because he did not want to take up the floor. He did not take swabs because blood had contaminated the area, although he could have performed a lead test. Evidence Technician Cote testified that if the defect walks like a duck and talks like a duck, he would not send the defect for testing because it seemed obvious what it was. During the walk through of the crime scene with defendant, Det. Tully and others, the floor had been taken up and defendant was not able to see the defect. (St.'s Exs. 143, DSC_8688, 23:50; 143A, p. 19; 136, nos. 0571, 8058, 8061.) No further evidence regarding this defect was presented by the State.

Finally, Evidence Technician Cote photographed bloodstains on the wall, pattern 1 (St.'s Ex. 130, Slides 76-82, 84.) (consistent with high force impact and approximate height of origination of blood at 28-32 inches from wall); bloodstains on wall, pattern 2 (St.'s Ex. 130, Slides 83, 85.) (consistent with origination of blood at 12-13 inches from wall).

Evidence Technician Cote took swabs and sent them to the Crime Lab. (St.'s Ex. 130, Slides 86-93.) He also photographed additional areas of the Cardilli house: the hallway to the kitchen and defendant's apartment (St.'s Ex. 90.); the stairs to defendant's apartment (St.'s Ex.

91.); the entrance to the living room in defendant's apartment (St.'s Ex. 92.); the living room of defendant's apartment (St.'s Ex. 93.); the kitchen and door to the bedroom in defendant's apartment (St.'s Ex. 94.); the kitchen of defendant's apartment (St.'s Ex. 95.); the bedroom of defendant's apartment and safe (St.'s Ex. 96.); the safe (St.'s Ex. 97-98.); defendant's computer (St.'s Ex. 99.); defendant's phone, which was collected (St.'s Ex. 100.)

Evidence Technician Cote examined Chelsey Cardilli. He observed bloodstains on her leggings and blood on her right eyebrow and left and right arms and hands. He noted bruising on her right tricep, right forearm, and right and left bicep.

Evidence Technician Cote collected and identified a significant amount of evidence and data from the Cardilli house. He is a qualified evidence and crime scene technician with 16 years of experience. In many instances, he was not requested to explain the significance of that evidence and data to the court.

14. Donna Ryan

Donna Ryan is a friend, neighbor, and co-worker of Suzanne Cardilli. On March 14, 2019, Ms. Ryan went to the gym with Suzanne Cardilli. Suzanne Cardilli expressed concern that, while at the gym, she was leaving Mark Cardilli, Sr., Mr. Muse, and defendant in the house. She was concerned and upset that defendant owned a gun. Ms. Ryan knew that Suzanne Cardilli did not like guns.

15. David Gutierrez

David Gutierrez served in the United States Navy from August 17, 1998 until September 30, 2007. He served in the Navy Reserves for six months. He joined the United States Army in April 2008. He achieved the rank of Staff Sergeant, was deployed to Iraq, and received numerous

citations, including the Bronze Star for valor in combat. He was honorably discharged and retired after twenty years in February 2019.

Mr. Gutierrez and defendant were stationed together at Ft. Drum in New York and served together for two years. They started as co-workers and became friends.

Soldiers are trained on rifles and an M4 rifle is a soldier's firearm. Soldiers are expected to be proficient in rifles and machine guns. Brief training in grenades is also given. No training is given on pistols. In a company of 250 soldiers, five pistols may be distributed.

A soldier does not receive a pistol unless there is a specific reason to have one. Mr. Gutierrez and defendant were non-commissioned officers in leadership roles. They were not required to be proficient in pistols. The majority of defendant's time was spent in the field teaching and mentoring other soldiers.

Soldiers are trained in de-escalation and nonlethal force and to manage high stress situations. Basic de-escalation training involves shout, show, shove, shoot, shoot: shout to get the person's attention; show the firearm so the person knows the firearm is there; shove to apply physical force in the hope the situation does not progress further; shoot twice in rapid succession if necessary.

Mr. Gutierrez stated that life changes in the military. Race, ethnicity, and religion do not matter; what a soldier brings to the table does matter. The system does not allow a soldier to be openly racist. A soldier is a member of the infantry and that job overrides all other factors. Defendant did not treat anyone differently because of their race or religion. He dealt very well with other soldiers in high pressure situations. He dealt professionally with people and problems.

16. Christopher Dyer

Portland Police Officer Christopher Dyer was dispatched to the Cardilli home on March 16, 2019. He observed Mr. Muse on the threshold of the bathroom. He observed two wounds on the front of Mr. Muse and two on the back. Officer Dyer also believed the two bullet holes on Mr. Muse's front were entrance wounds and exit wounds were on his back. But, like Sgt. Miller, Officer Dyer has no expertise in entrance and exit wounds.

17. John Nelson

Portland Police Department Officer John Nelson responded to 107 Milton Street on March 16, 2019. He met with defendant and noted that he was injured. There was blood in his nose and upper lip. The nose appeared to be crooked or broken. Officer Nelson described defendant as emotionless but Officer Nelson agreed defendant could have been in shock.

18. Jonathan Reeder

Portland Police Department evidence technician Jonathan Reeder was assigned to work on the March 16, 2019 shooting. Portland Police Department Det. Jeff Druan interviewed Suzanne Cardilli. He asked whether she had any injury and she held up her hand. He noticed the discoloration and asked Officer Reeder to document the injury. Officer Reeder met with Suzanne Cardilli and photographed her injuries. (St.'s Ex. 149.) Her right hand was swollen and bruised. (Def.'s Exs. 18, 19.) She stated that Mr. Muse had tried to grab her phone from her hand. (St.'s Ex. 148, 045350-04543.)

19. Suzanne Cardilli

Suzanne Cardilli and Mark Cardilli, Sr. are married but announced in 2018 that they were divorcing. Mark Cardilli, Sr. moved from the couple's bedroom to a room on the lower level of

the house. Suzanne Cardilli and Mark Cardilli, Sr. have two children, Chelsey Cardilli and defendant. Mark Cardilli, Sr. was diagnosed with ALS in 2019.

Defendant lives in the apartment over the garage and parks his car in the driveway. He has keys to all doors in the house and has free reign in the house. The breezeway is used for storage and to access the kitchen and defendant's apartment. (Def.'s Ex. 40.) The deck leads to the breezeway. (Def.'s Ex. 41.)

At 8:00 p.m. on March 15, 2019, Chelsey asked Suzanne Cardilli if Mr. Muse could come over. Suzanne Cardilli said no. At 10:00 p.m., Suzanne was working in her bedroom and heard footsteps. She used a key and opened Chelsey Cardilli's door and found Mr. Muse in the bedroom. She stated that he was not supposed to be there and that he needed to leave; he did not leave. Mark Cardilli, Sr., Suzanne Cardilli, and defendant discussed with Mr. Muse and Chelsey Cardilli that he had to leave. Mr. Muse stated he did not want to leave and he was not leaving. A compromise was reached. Mark Cardilli, Sr. stated that Mr. Muse could stay until 1:00 a.m. and then leave. Mr. Muse agreed. Defendant was present for that conversation. After that discussion, Suzanne never told Chelsey Cardilli that Mr. Muse could stay past 1:00 a.m.

At 1:00 a.m., Suzanne Cardilli opened Chelsey Cardilli's door with the key and found Mr. Muse in the room. She said it was 1:00 a.m and it was time to leave but Mr. Muse did not leave. The conversation between Suzanne Cardilli and Mr. Muse was recorded. (St.'s Ex. 3.) Mr. Muse told Suzanne Cardilli that he will leave but the next time, he will talk to Mark. Mr. Muse did not leave. Once again, Chelsey Cardilli, Suzanne Cardilli, defendant and Mr. Muse discussed Mr. Muse's leaving. He was told to leave but he did not leave.

Suzanne Cardilli walked to the couch. Mr. Muse followed her and continued to ask if he could stay. She said no but he did not leave. Defendant told Mr. Muse to stop disrespecting

Suzanne Cardilli and it was time to go. Mark Cardilli, Sr. was downstairs during this discussion. Mr. Muse continued to appeal to Suzanne Cardilli and was rude and disrespectful. Mr. Muse did not look right to Suzanne Cardilli. She did not like the way his eyes looked. He just stared at her.

Mark Cardilli, Sr. returned upstairs and joined the discussion that Mr. Muse had to leave. Mr. Muse still did not leave. Mark Cardilli, Sr. escorted Mr. Muse to the kitchen and tried to get him to leave. Mr. Muse began punching, shoving, and pushing. Chelsey Cardilli was hitting Mark Cardilli, Sr. Suzanne Cardilli was in the kitchen and tried to call 911 at 1:42 a.m. on March 16, 2019. This attempt, however, was not successful and the call did not go through. (Def.'s Exs. 42, 39; St.'s Ex. 148, no. 1: 041237-041446, no. 2: 043652-04370.) Mr. Muse hit or grabbed her hand. (See St.'s Ex. 148A 7, 29, 35, 49, 55; St.'s Ex. 148, no. 3: 045350-04543, no. 4: 051056-051112.) She did not believe she saw Mr. Muse on the ground before she left the house. (See St.'s 148A 28.)

On March 16, 2019, she left the house and went to the Richios' home and told Holly Richio to call 911. Suzanne Cardilli returned to her house, reentered the house, and saw Mr. Muse on the floor. She was interviewed by Det. Druan on March 16, 2019. (St.'s Ex. 148A.)

20. Naldo Gagnon

Naldo Gagnon is the Chief Deputy of the Cumberland County Sheriff's Office. The jail prefers to obtain its information about inmates from some type of identification. If that identification is not available, the jail relies on the person's statement and observes the person to determine whether the information is accurate. According to intake information at the Cumberland County jail, Mr. Muse was 6' and weighed 150 pounds. (Def.'s Ex. 38.) Mr. Muse's license lists him as 6' and 150 pounds. (Def.'s Ex. 36.) The court finds credible the jail and license information about Mr. Muse, as opposed to the autopsy information. (See also St.'s Ex. 2.)

21. Jonathan Arden

Jonathan Arden is a medical doctor and is Board certified in anatomic and forensic pathology. He received his undergraduate and medical degrees from the University of Michigan. He previously served as First Deputy Chief Medical Examiner in the Office of the Chief Medical Examiner in New York City. He then served as Chief Medical Examiner in the Office of Chief Medical Examiner in Washington, D.C. He currently serves part time as a forensic pathologist in the Office of Chief Medical Examiner for West Virginia. He also currently serves as President of the National Association of Medical Examiners. (Def.'s Ex. 52.)

For over 35 years, he has been personally involved in investigating hundreds of shooting deaths and autopsies and has supervised thousands of autopsies. He has consulted on many shooting cases, including cases involving police shootings.

In preparation for his testimony in this case, he reviewed Portland Police Department reports; the DNA and firearms reports from the Maine State Police Crime Lab; the Maine Office of the Chief Medical Examiner's reports; photographs from the scene, the autopsy, and defendant's injuries; the video of the crime scene walk through with defendant and police; and the PowerPoint of the firearms evidence.

Mr. Muse's blood alcohol content of 0.181 grams is a substantially high level and more than twice the legal limit for operating a vehicle. That elevated level of blood alcohol content diminishes a person's inhibitions, including an inhibition to violence and aggression, and results in diminished judgment.

The cause of Mr. Muse's death was the two gunshot wounds to his torso, which resulted in internal and external bleeding. The entrance wounds were on the back of the right side of the torso. (Def.'s Ex. 44.) Both are contact entrance wounds with the gun muzzle touching the outer

surface of the clothing. The exit wounds on the front of the body correspond to the two entrance wounds in the back of the body. (Def.'s Ex. 45.) Dr. Arden reviewed the description in the autopsy report of the bullet's trajectories. Dr. Flomenbaum described the trajectory as back to front, right to left, and upward.

Gunshot wound A was to the right of and above gunshot wound B. The entrance wound was 16.5 inches below the top of the head and the exit wound was 14 inches below the top of the head. This bullet traveled upward 2.5 inches at a fairly shallow angle, back to front and right to left. Gunshot wound B was closer to the center of the back. This entrance wound was 24 inches below the top of the head and two inches right of the midline. The exit wound was 21 inches below the top of the head and one inch left of the midline. This bullet traveled at a similar angle of three inches upward. (Def.s' Exs. 44, 45.)

Gunshot wound A exited the chest and entered the left bicep and came to rest near the left elbow. (Def.'s Exs. 46, 47.) The left arm had to have been positioned up to some degree for the bullet to enter and continue toward the elbow. The wound inside the left index finger knuckle and the wound on the right eyebrow were caused by a grazing gunshot wound. (Def.'s Exs. 48-50.) Dr. Arden concluded that the wounds to the left arm, left hand, and right eyebrow were consistent with the left arm up with the left hand in front of the face, which lines up the index finger and eyebrow. He understood that three shots had been fired. Two entered the back and the third accounts for the grazing wounds to the finger and eyebrow.

Dr. Arden prefers the term "normal anatomical position" to "anatomical plane." The normal anatomical position envisions a body straight up, facing the observer, with arms down and hands facing forward. There are three three-dimensional planes with reference to the body: right or left, front or back, up or down. A trajectory is a three-dimensional description of the actual path

and direction of a wound. If the shooter or the person being shot moves between the shots, the trajectory will be affected by the relative positions of the persons involved. Changing the position of the gun or the body changes the location of the entrance wounds and creates a different trajectory from one wound to the next.

Defensive wounds are well known by pathologists. When a person is confronted with a weapon, a person throws up a hand or arm, twists, flinches, ducks, or runs away to ward off the weapon. The force of a bullet does not, however, turn, twist, or throw people and does not stop a person who is already in motion.

The objective evidence in this case includes the autopsy depiction of the wounds, the examination of the clothing and any associated residue, the examination of the scene, the location of the body, bloodstains, blood splatter, and the recovered bullets. Subjective evidence can be considered depending on the evidence. Objective and subjective evidence can be compared to determine consistency. Dr. Arden viewed the walk through interview of defendant. Defendant stated that the shooting took place in the hall near the bathroom. Defendant also stated he was being punched in the face by Mr. Muse, which is supported by the photographs of defendant's injuries. Defendant consistently described the shooting as face to face with defendant and Mr. Muse in close proximity.

In Dr. Arden's opinion, the wounds are consistent with defendant and Mr. Muse being face to face for the first shot. Mr. Muse raised his left arm and that first shot grazed his left finger and eyebrow. (Def.'s Exs. 48, 49, 50.) Mr. Muse twisted and was then shot in the back twice. The gun was not below the level of the entrance wounds; the gun was at the level of the contact entrance wounds but angled slightly up. The positioning of the left arm up from the shoulder and in front

of the chest accounts for gunshot A entering the left bicep. (Def.'s Exs. 46, 47.) In this case, the objective and subjective evidence are consistent.

22. Mark Cardilli, Jr.

Defendant joined the U.S. Army in May 2014 after graduating from Deering High School. He was stationed for three months at Ft. Benning in Georgia for basic training. The principal focus was rifles and not pistols. He then was stationed for three years at Ft. Wainwright in Alaska. He received more advanced rifle training and in 2016, he qualified to be issued a pistol. He achieved the rank of sergeant after two and one-half years. He was then stationed at Ft. Drum in New York for approximately two years. He received more advanced rifle and machine gun training there. Defendant returned to his home on March 4, 2019 after an honorable discharge from the Army.

The Army is very diverse in terms of race, religion, and ethnicity. There were 8,000 -10,000 soldiers at Ft. Drum from different backgrounds and cultures. Defendant did well in that environment. He did not engage in racism or racial comments with regard to any group. His focus was on the performance of the soldiers under his command. He did not know whether his sister approved of his being in the Army. She believed the military was targeting certain people as opposed to being at war with terrorists.

During his calls and texts and visits home during the military, he learned that his sister was not attending school, was staying up late, and sleeping all day. Defendant heard nothing about Mr. Muse except that he was Chelsey Cardilli's friend. Defendant then learned that Mr. Muse was Chelsey's boyfriend. (St.'s Ex. 128, 220, 223-227.) Defendant did not know about the dynamics of the relationships among Chelsey Cardilli, Mr. Muse, Suzanne Cardilli, and Mark Cardilli, Sr. Defendant believed he had a good relationship with his sister. (Def.'s Exs. 1-8, 53.)

Defendant met Mr. Muse briefly in October 2018 and again in December. Defendant shook Mr. Muse's hand and asked why he was dating someone in high school. Mr. Muse did not respond. Mark Cardilli, Sr. had the same concern. (St.'s Ex.127, no. 3499.)

Shortly after 10:00 p.m. on March 15, 2019, Mark Cardilli, Sr. called defendant downstairs. Mark Cardilli, Sr. and Suzanne Cardilli discussed with Chelsey Cardilli and Mr. Muse that he was not supposed to be present, Chelsey Cardilli was not allowed to have any visitors, and he should leave. Mr. Muse did not leave and the conversation continued. Mark Cardilli, Sr. and Mr. Muse agreed that Mr. Muse could stay until 1:00 a.m. Shortly after 1:00 a.m., defendant texted Chelsey Cardilli and stated that it was 1:00 a.m. (St.'s Ex. 128, 430.) He then called and Chelsey Cardilli stated that her father had said Mr. Muse could stay the night. (St.'s Ex. 128, 431.) Defendant checked with his father and learned that no permission for Mr. Muse to stay had been given.

Defendant and Suzanne Cardilli were in Chelsey Cardilli's bedroom and Mr. Muse was still there. The conversation continued about Mr. Muse's leaving. He pleaded with Suzanne Cardilli but she did not relent. Defendant advised Mr. Muse that he had to leave and respect their home and wishes but Mr. Muse did not leave. The discussion continued in the living room. Mr. Muse was told to leave but refused. Mark Cardilli, Sr. entered the living room from downstairs and unsuccessfully advised Mr. Muse that he had to leave. Mr. Muse refused to leave and stated he was not going to leave.

Mark Cardilli, Sr. and defendant tried to take Mr. Muse to the door to the breezeway. When Suzanne Cardilli yelled that she had been hit by Chelsey Cardilli, Mr. Muse pushed his way back into the house. Mark Cardilli, Sr. and defendant were not succeeding at all in stopping Mr. Muse. When defendant returned home in March 2019, he noticed that his father had lost weight and complained about pain in his arm. Defendant is 5'7" and weighs 150 pounds. Mark Cardilli,

Sr. is 5'8" and weighs 160 pounds and has been diagnosed with ALS. Defendant estimated Mr. Muse was 6' and 165 pounds.

Defendant went to his apartment but decided not to get his gun. He returned and after defendant succeeded in getting Mr. Muse away from Mark Cardilli, Sr., Mr. Muse punched defendant. He then went to his apartment again and got his gun. He returned to the kitchen and he again pulled Mark Cardilli, Sr. away from Mr. Muse. All three were entangled with each other. Defendant did not call 911 because he believed that when Mr. Muse saw the gun, he would leave. Defendant was concerned about what would happen during the wait time if he called 911.

After Mr. Muse again refused to leave, defendant pulled the gun and put a bullet in the chamber. Defendant again told Mr. Muse to leave. Mr. Muse instead approached defendant and began punching him. The two backed into Chelsey Cardilli's room and Mark Cardilli, Sr. and Mr. Muse fell on her bed. Mr. Muse and defendant walked to the hall as Mr. Muse continued to punch defendant. Defendant said he was not going to shoot Mr. Muse, who responded that defendant should shoot or kill Mr. Muse because he wanted to die. Defendant was afraid of what would happen to his family. Mr. Muse was in front of defendant, facing him, in the hall and punching defendant. Defendant shot the gun two or three times at Mr. Muse's chest. Defendant remembers that Mr. Muse punched at defendant as he shot the gun.

Defendant knew that Mr. Muse had no gun and defendant did not see Mr. Muse with a knife. Mr. Muse did not try to grab the gun. Defendant was concerned that if he dropped the gun, Mr. Muse could use it against defendant and his family.

23. Walk Through of Crime Scene

On April 4, 2019, defendant met with Det. Tully, Det. Napijalo, Evidence Technician Cote, Attorney Neale Duffett, and a legal intern at the Cardilli house. Also present were Mark Cardilli,

Sr. and Suzanne Cardilli. Defendant agreed to walk through the house and explain what happened. The walk through was recorded by video. (St.'s Exs. 143, 143A.)

Mark Cardilli, Sr. called defendant when Mr. Muse arrived. Mark Cardilli, Sr., Suzanne, Chelsey, Mr. Muse, and defendant discussed the situation at Chelsey Cardilli's bedroom. Chelsey Cardilli was asked why she allowed someone in because she was not supposed to have anyone in. Mr. Muse was asked why he was at the house. After discussion, Mark Cardilli, Sr. and Mr. Muse agreed that Mr. Muse would leave at 1:00 a.m. At his father's request, defendant called his sister at 1:00 a.m. to ask if Mr. Muse was still at the house. Chelsey Cardilli said he was still there because Mark Cardilli, Sr. said Mr. Muse could stay the night. Because defendant believes Chelsey Cardilli lies frequently, defendant went to his father's room to check on Chelsey's story and Mark Cardilli, Sr. denied having given permission for Mr. Muse to stay the night.

Defendant and Suzanne Cardilli went to Chelsey Cardilli's room and asked why Mr. Muse was still in the house. Mr. Muse began pleading with Suzanne Cardilli to let him stay the night and leave in the morning. Suzanne Cardilli said no and stated that Mr. Muse was not supposed to be at the house at all. Mr. Muse continued to plead with Suzanne Cardilli, who repeatedly told him he had to leave. Defendant asked Mr. Muse whether he was going to wait for Suzanne Cardilli to change her mind and Mr. Muse said he would. Defendant told Mr. Muse he had to leave.

Suzanne Cardilli walked to the living room and Mr. Muse followed her. He continued to ask to stay and she continued to say no and that he had to leave. At one point, Suzanne Cardilli looked at Mr. Muse and asked if he was high on anything because he was falling asleep standing up. His eyes were closed and he was rocking. He continued to plead with Suzanne Cardilli, but she and defendant told Mr. Muse to leave. Mr. Muse ignored defendant.

Mark Cardilli, Sr. returned upstairs and also told Mr. Muse he had to leave. Mark Cardilli, Sr. and defendant escorted Mr. Muse to the door. Defendant stood outside the kitchen door in the breezeway to show Mr. Muse's location. (St.'s Ex. 143, 2 DSC-8688, 6:40.) When Suzanne Cardilli yelled that Chelsey Cardilli hit Suzanne, Mr. Muse tried to push his way back inside. Defendant and Mark Cardilli, Sr. were unable to hold Mr. Muse. They were thrown into the refrigerator and Mark Cardilli, Sr. was thrown against the table. Chelsey Cardilli began hitting her father and defendant. Mr. Muse continued to try to push through defendant and Mark Cardilli, Sr. They were unable to hold him or push him out the door.

Defendant walked to his apartment but returned quickly because he did not want his parents to be alone with Mr. Muse. As the three continued fighting, with Chelsey Cardilli interfering, defendant concluded they were not going to be able to get Mr. Muse out of the house. Defendant retrieved his gun from his apartment and put the gun in his pocket. He returned to find Mr. Muse in the kitchen. Defendant told his father to stand behind defendant. Suzanne Cardilli was gone and Chelsey Cardilli was to the left. Defendant removed the gun, aimed it at Mr. Muse, and said you need to leave our house right now. Mr. Muse began punching defendant and pushing him backwards toward Chelsey Cardilli's room. Defendant stated that he was not going to shoot and Mr. Muse replied that defendant should shoot or kill Mr. Muse and he wanted to die. Mark Cardilli, Sr. pushed Mr. Muse onto Chelsey's bed.

They then left Chelsey Cardilli's room and Mr. Muse continued to hit defendant. Defendant kept the gun pointed down and his hand up to defendant to defend against the punches. Defendant did not know how many more punches he could take and began fearing that Mr. Muse would knock defendant out or kill him from the punches. Defendant feared then that Mr. Muse

would be able to take the gun and be able to use it on defendant or his family. Mr. Muse was trying to punch defendant in the face the entire time. Mr. Muse did not try to take the gun.

Defendant aimed the gun because he had concluded there was no way they were going to be able to remove Mr. Muse from the house. Defendant had assumed Mr. Muse would leave when the gun was presented. Defendant did not expect Mr. Muse to attack defendant instead. Defendant aimed at Mr. Muse's chest and pulled the trigger two or three times. When asked by Det. Tully whether defendant aimed at center mass, defendant stated, "I aimed toward the chest." (St.'s Ex. 143A, p.17.) Defendant was being hit in the face the entire time. Mr. Muse fell to the ground, partly in the bathroom.

As defendant called 911 with his father's phone, he walked to Chelsey Cardilli's room and put the gun on the bed. He kept the magazine in his pocket.

Analysis

As discussed above, the court accepts Dr. Arden's opinion that the wounds are consistent with defendant and Mr. Muse being close together and face to face for the first shot. Mr. Muse raised his left arm and that first shot grazed his left finger and eyebrow. (Def.'s Exs. 48, 49, 50.) This opinion is consistent with Kimberly James's opinion that an intervening object could change her distance analysis for holes H and G in the jacket hood and that if Mr. Muse's hood was up, and the court concludes the hoodie was up, holes H and G and deposits were not consistent with a bullet coming from the back. Dr. Arden concluded that Mr. Muse twisted and was then shot in the back twice. The gun was not below the level of the entrance wounds; the gun was at the level of the contact entrance wounds but angled slightly up. The positioning of the left arm up from the shoulder and in front of the chest accounts for gunshot A entering the left bicep. (Def.'s Exs. 46, 47.)

Dr. Arden's analysis accounts for all of Mr. Muse's wounds and is consistent with the findings made based on the testimony of Dr. Mark Flomembaum, Kimberly James, and Catharine MacMillan. As Dr. Arden testified, the objective and subjective evidence in this case are consistent.

The court has placed no weight or significance on the testimony of Chelsey Cardilli unless her testimony was corroborated by other credible testimony or by the exhibits. The level of dysfunction in her relationship with her parents and in her life in general in March 2019 cannot be overstated. Rules, including those imposed by the juvenile justice system, meant nothing to her and she ignored them. Yet the State asks the court to conclude that she will comply with the rule that she must tell the truth when under oath. Her demeanor on the witness stand was that of a witness striving to answer questions in a way she deemed prejudicial to defendant. In addition, she was consuming alcohol and was drunk from March 15 to March 16, which most assuredly calls into question her ability to recall events and testify accurately.

It remains unexplained why no search warrant was sought by the State when Chelsey Cardilli gave very limited consent for the search of her phone and refused consent for her conversations with Mr. Muse. It remains unexplained why the State chose to rely on and offer, through this witness, the only evidence, highly inflammatory evidence, of an improper motive on defendant's part.

The court also places no significance on a defect in the floor in the hall of the Cardilli house. In a case replete with exhibits and qualified expert witnesses, including members of law enforcement, the State failed to test a defect because testing would have required taking up the floor. Based on the video of the walk through of the house, the floor was taken up at some point after March 16, 2019 and before April 4, 2019.

Defendant's conduct in this case supports his credibility. He immediately called 911 after Mr. Muse fell to the floor. Defendant remained on that call until law enforcement arrived and he was handcuffed and taken to the police station. He cooperated with law enforcement, waived Miranda, and agree to an interview by Det. Giesecke on March 16, 2019. Among other information provided, defendant identified where evidence would be found. Defendant consented to allowing Det. Chase to log into the Blink home surveillance system. Defendant then agreed to a walk through of the crime scene with Det. Tully, Det. Napijalo, Evidence Technician Cote, and Attorney Duffett on April 4, 2019. Throughout this case, defendant's description of the events of March 15 and 16, 2019 has been consistent.

CONCLUSIONS

1. A person is guilty of murder if the person:
 - A. Intentionally or knowingly causes the death of another human.

17-A M.R.S. § 201(1)(A) (2018).

1. "Intentionally."

A. A person acts intentionally with respect to a result of the person's conduct when it is the person's conscious object to cause such a result.

B. A person acts intentionally with respect to attendant circumstances when the person is aware of the existence of such circumstances or believes that they exist.

2. "Knowingly."

A. A person acts knowingly with respect to a result of the person's conduct when the person is aware that it is practically certain that the person's conduct will cause such a result.

B. A person acts knowingly with respect to attendant circumstances when the person is aware that such circumstances exist.

17-A M.R.S. § 35 (2018).

A firearm is defined as

any weapon, whether loaded or unloaded, which is designed to expel a projectile by the action of an explosive and includes any such weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun or shotgun. Any weapon which can be made into a firearm by the insertion of a firing pin, or other similar thing, or by repair, is a firearm.

17-A M.R.S. § 2(12-A) (2018).

The manslaughter statute provides:

1. A person is guilty of manslaughter if that person:

A. Recklessly, or with criminal negligence, causes the death of another human being.

17-A M.R.S. § 203(1)(A) (2018).

3. "Recklessly."

A. A person acts recklessly with respect to a result of the person's conduct when the person consciously disregards a risk that the person's conduct will cause such a result.

B. A person acts recklessly with respect to attendant circumstances when the person consciously disregards a risk that such circumstances exist.

C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

4. "Criminal Negligence."

A. A person acts with criminal negligence with respect to a result of the person's conduct when the person fails to be aware of a risk that the person's conduct will cause such a result.

B. A person acts with criminal negligence with respect to attendant circumstances when the person fails to be aware of a risk that such circumstances exist.

C. For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

5. "Culpable." A person acts culpably when the person acts with the intention, knowledge, recklessness or criminal negligence as is required.

17-A M.R.S. § 35 (2018).

Lesser Included Offense

In order for the court to consider a lesser included offense there "must be an evidentiary basis sufficient to generate" the lesser crime. State v. Gantnier, 2012 ME 123, ¶ 18, 55 A.3d 404. When making the determination of whether "the evidence provides a rational basis for finding the defendant guilty of the lesser included offense, the court must consider the evidence and the inferences that may be drawn from the evidence in the light most favorable to the defendant." Id. Reckless or criminally negligent manslaughter is a lesser included offense of intentional or knowing murder. 17-A M.R.S. § 13-A (2018).

The statute for use of physical force in defense of premises provides:

3. A person in possession or control of a dwelling place or a person who is licensed or privileged to be therein is justified in using deadly force upon another person:
 - A. Under the circumstances enumerated in section 108; or
 - B. When the person reasonably believes that deadly force is necessary to prevent or terminate the commission of a criminal trespass by such other person, who the person reasonably believes:
 - (1) Has entered or is attempting to enter the dwelling place or has surreptitiously remained within the dwelling place without a license or privilege to do so; and

- (2) Is committing or is likely to commit some other crime within the dwelling place.
4. A person may use deadly force under subsection 3, paragraph B only if the person first demands the person against whom such deadly force is to be used to terminate the criminal trespass and the trespasser fails to immediately comply with the demand, unless the person reasonably believes that it would be dangerous to the person or a 3rd person to make the demand.

17-A M.R.S. § 104(3)-(4) (2018).

The statute for the use of physical force in defense of a person provides:

2. A person is justified in using deadly force upon another person:
 - A. When the person reasonably believes it necessary and reasonably believes such other person is:
 - (1) About to use unlawful, deadly force against the person or a 3rd person; or
 - (2) Committing or about to commit a kidnapping, robbery or a violation of section 253, subsection 1, paragraph A, against the person or a 3rd person; or
 - B. When the person reasonably believes:
 - (1) That such other person has entered or is attempting to enter a dwelling place or has surreptitiously remained within a dwelling place without a license or privilege to do so; and
 - (2) That deadly force is necessary to prevent the infliction of bodily injury by such other person upon the person or a 3rd person present in the dwelling place;
 - C. However, a person is not justified in using deadly force as provided in paragraph A if:
 - (1) With the intent to cause physical harm to another, the person provokes such other person to use unlawful deadly force against anyone;
 - (2) The person knows that the person against whom the unlawful deadly force is directed intentionally and unlawfully provoked the use of such force; or

- (3) The person knows that the person or a 3rd person can, with complete safety:
 - (a) Retreat from the encounter, except that the person or the 3rd person is not required to retreat if the person or the 3rd person is in the person's dwelling place and was not the initial aggressor;
 - (b) Surrender property to a person asserting a colorable claim of right thereto; or
 - (c) Comply with a demand that the person abstain from performing an act that the person is not obliged to perform.

3. A person is not justified in using force against another based solely on the discovery of, knowledge about or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance toward the person or in which the person and victim dated or had a romantic or sexual relationship.

17-A M.R.S. § 108(2)-(3) (2018).

Deadly force is defined as

physical force that a person uses with the intent of causing, or that a person knows to create a substantial risk of causing, death or serious bodily injury . . . intentionally, knowingly or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

17-A M.R.S. § (2)(8) (2018).

Serious bodily injury is defined as

a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss of substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health.

17-A M.R.S. § 2(23) (2018).

Bodily injury is defined as

physical pain, physical illness or any impairment of physical condition.

17-A M.R.S. § 2(5) (2018).

Dwelling place is defined as

a structure that is adapted for overnight accommodation of persons, or sections of any structure similarly adapted. A dwelling place does not include garages or other structures, whether adjacent or attached to the dwelling place. That are used solely for storage of property or structures formerly used as dwelling places that are uninhabitable. It is immaterial whether a person is actually present.

17-A M.R.S. § 2(10) (2018).

With regard to justification,

Conduct that is justifiable under this chapter constitutes a defense to any crime; except that, if a person is justified in using force against another, but the person recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness. If a defense provided under this chapter is precluded solely because the requirement that the person's belief be reasonable has not been met, the person may be convicted only of a crime for which recklessness or criminal negligence suffices.

17-A M.R.S. § 101(3) (2018).

In order to find defendant guilty of intentional or knowing murder, the State must prove beyond a reasonable doubt the following: "(1) the victim is dead; (2) the defendant caused his death; (3) the defendant's conduct was voluntary; and (4) the defendant acted knowingly or intentionally." State v. Jeskey, 2016 ME 134, ¶ 31, 146 A.3d 127. (quotation omitted) "Voluntary conduct means that defendant's actions that caused the death were the result of defendant's conscious choice and not the result of reflex, convulsion or some other nonvoluntary act." Id. ¶ 31 n.8. (quotation omitted).

The State has proved beyond a reasonable doubt that Isahak Muse is dead, that defendant caused Mr. Muse's death by shooting him with the Glock, and that defendant's conduct was voluntary. The State has not proved beyond a reasonable doubt that defendant acted intentionally. The State has not proved beyond a reasonable doubt that it was defendant's conscious object to cause the death of Mr. Muse. See State v. Dumas, 2010 ME 57, ¶ 25, 997 A.2d 760.

The State has proved beyond a reasonable doubt that defendant acted knowingly. Defendant, an Army veteran, had training in rifles and machine guns and some training in pistols. Defendant prepared the Glock to be fired, aimed at Mr. Muse's chest, and fired the gun three times. When asked if he aimed at center mass, defendant stated, "I aimed toward the chest." Defendant stated that Mr. Muse was pushing and hitting them and defendant wasn't going to play around anymore. The State has proved defendant was practically certain that this conduct would cause the death of Mr. Muse. See State v. Anderson, 409 A.2d 1290, 1295-96 (Me. 1979.)

Self-Defense

Self-defense is a justification that places on the defendant the burden to generate the issue with sufficient evidence. The State then has the burden of disproving beyond a reasonable doubt at least one element of self-defense. See State v. Scott, 2019 ME 105, ¶ 38, 211 A.3d 205; State v. Fletcher, 2015 ME 114, ¶ 11, 122 A.3d 966; State v. Holland, 2012 ME 2, ¶ 28, 34 A.3d 1130. "To determine whether self-defense has been placed in issue, the trial court views the evidence in the light most favorable to the defendant and considers whether there is some evidence to support each element of the justification. The issue of self-defense is raised 'when substantial evidence bearing on the issue is introduced, from whatever source.'" Fletcher, 2015 ME 114, ¶ 11, 122 A.3d 966 (quoting State v. Millet, 273 A.2d 504, 508 (Me. 1971) (internal citation omitted)). When determining whether the evidence has generated a defense, the court views the facts in the light

most favorable to the defendant and assesses “whether the evidence is sufficient to render the existence of all facts constituting the defense” and is “a reasonable hypothesis for the fact finder to entertain.” State v. Barretto, 2008 ME 121, ¶ 4, 953 A.2d 1138 (quotation omitted.)

When determining whether a defendant believed deadly force was necessary, the factfinder should consider the defendant’s state of mind at the time of the shooting. The State may not overcome the justification defense “simply [by] negating the reasonableness of the belief, or even [by] demonstrating that a belief was reckless.” State v. Roberts, 2008 ME 112, ¶¶ 42-43, 951 A.2d 803 (quoting Alexander Maine Jury Instruction Manual § 6-55 at 6-76 (4th ed. 2008)). To overcome a justification defense for a charge involving proof of intentional or knowing action, the State must prove beyond a reasonable doubt either that defendant knew he was not threatened with imminent physical harm or that he knew that his use of force was not necessary. See State v. Forbes, 2003 ME 106, ¶ 18, 830 A.2d 417. On this record, defendant has generated the issue of self-defense. See State v. Herzog, 2012 ME 73, ¶ 11, 44 A.3d 307.

Imperfect Self Defense

An “imperfect” self-defense occurs when the defendant’s belief that deadly force was necessary was unreasonable. State v. Grant, 418 A.2d 154, 156 (Me. 1980). “If a defendant acted with imperfect self-defense, in that it may have been unreasonable for him to believe that deadly force was necessary, then the defendant cannot be held criminally liable for any crime requiring intention or knowledge of the actor, but he can be held responsible for a crime for which recklessness or criminal negligence suffices as the culpable mental state.” State v. Hanaman, 2012 ME 40, ¶ 13 n.4, 38 A.3d 1278 (quotation marks omitted); see also 17-A M.R.S. § 101(3); Grant, 418 A.2d 154, 156 (Me. 1980) (if the defendant acted with an “imperfect” self-defense, defendant

cannot be held criminally liable for any crime requiring a culpable mental state of intentionally or knowingly).

Defense of Premises: 17-A M.R.S. § 104(3)-(4)

Pursuant to 17-A M.R.S. § 104, in order to find the absence of self-defense, the court must determine whether the State has proved beyond a reasonable doubt that: (1) defendant did not have a license to be in the dwelling place; (2) defendant did not actually believe that deadly force was necessary to prevent or terminate a criminal trespass by the victim; (3) defendant did not actually believe that the victim entered the dwelling place without a license or privilege to do so, was attempting to enter the dwelling place without a license or privilege to do so, or surreptitiously remained in the dwelling place without a license or privilege to do so; (4) defendant did not actually believe that the victim was committing or likely to commit some other crime within the dwelling place; (5) prior to using deadly force, defendant did not make a demand that the victim leave the dwelling place; (6) if a demand was made, the victim immediately complied with defendant's demand to leave; and (7) defendant's actual beliefs were objectively unreasonable;. 17-A M.R.S. § 104(3)-(4); see also State v. Ouellette, 2012 ME 11, ¶ 10, 37 A.3d 921.

The court's analysis of self-defense pursuant to section 104(3)-(4) is as follows:

1. Has the State proved beyond a reasonable doubt that Isahak Muse is dead? Yes.
2. Has the State proved beyond a reasonable doubt that defendant caused the death of Isahak Muse? Yes.
3. Has the State proved beyond a reasonable doubt that defendant caused the death of Isahak Muse intentionally or knowingly? Yes.
4. Has the State proved beyond a reasonable doubt that in intentionally or knowingly causing the death of Isahak Muse:
 - a. defendant did not have a license to be in the dwelling place; or

- b. defendant did not actually believe that his use of deadly force was necessary to prevent Isahak Muse's criminal trespass; or
- c. defendant did not actually believe that Isahak Muse had entered, attempted to enter or surreptitiously remained in the dwelling place without a license; or
- d. defendant did not actually believe that Isahak Muse was committing or was likely to commit some other crime within the dwelling place; or
- e. defendant did not make a demand that Isahak Muse leave the premises; or
- f. if defendant did make a demand that Isahak Muse leave the premises, Isahak Muse immediately complied.

The State has not proved beyond a reasonable doubt the above paragraphs (a) through (f).

5. Has the State proved beyond a reasonable doubt that in intentionally or knowingly causing the death of Isahak Muse:

- a. if defendant did actually believe that his use of deadly force was necessary to prevent Isahak Muse's criminal trespass, his belief to that effect was objectively unreasonable; or
- b. if defendant did actually believe Isahak Muse had entered, attempted to enter or surreptitiously remained in the dwelling place without a license, his belief to that effect was objectively unreasonable; or
- c. if defendant did actually believe that Isahak Muse was committing or was likely to commit some other crime within the dwelling place, his belief to that effect was objectively unreasonable.

The State has proved beyond a reasonable doubt paragraphs (a) and (b) above.

Defense of a Person: 17-A M.R.S. §108(2)(B)

Pursuant to 17-A M.R.S. § 108(2)(B), in order to find the absence of self-defense, the court must determine whether the State has proved beyond a reasonable doubt that: (1) defendant did not actually believe that the victim entered the dwelling place without a license or privilege to do so, was attempting to enter the dwelling place without a license or privilege to do so, or surreptitiously remained in the dwelling place without a license or privilege to do so; (2) defendant

did not actually believe the use of deadly force is necessary to prevent the infliction of bodily injury by the victim upon the defendant or a third person present in the dwelling; and (3) defendant's beliefs were objectively unreasonable. 17-A M.R.S. § 108(2); see also Ouellette, 2012 ME 11, ¶ 10, 37 A.3d 921.

The court's analysis of self-defense pursuant to section 108(2)(B) is as follows:

1. Has the State proved beyond a reasonable doubt that Isahak Muse is dead? Yes.
2. Has the State proved beyond a reasonable doubt that defendant caused the death of Isahak Muse? Yes.
3. Has the State proved beyond a reasonable doubt that defendant caused the death of Isahak Muse intentionally or knowingly? Yes.
4. Has the State proved beyond a reasonable doubt that in intentionally or knowingly causing the death of Isahak Muse:
 - a. defendant did not actually believe that Isahak Muse had entered, attempted to enter or surreptitiously remained in the dwelling place without a license; or
 - b. defendant did not actually believe that his use of deadly force was necessary to prevent Isahak Muse from inflicting bodily injury upon defendant or a third person present in the dwelling.

The State has not proved beyond a reasonable doubt paragraphs (a) or (b) above.

5. Has the State proved beyond a reasonable doubt that in intentionally or knowingly causing the death of Isahak Muse:
 - a. if defendant did actually believe Isahak Muse had entered, attempted to enter or surreptitiously remained in the dwelling place without a license, his belief to that effect was objectively unreasonable; or
 - b. if defendant did actually believe that his use of deadly force was necessary to prevent Isahak Muse from inflicting bodily injury upon defendant or a third person present in the dwelling, his belief to that effect was objectively unreasonable.

The State has proved beyond a reasonable doubt paragraphs (a) and (b) above.

The Court's Judgment:

Defendant, Mark Cardill, Jr., is Guilty of Manslaughter: on or about March 16, 2019 in Cumberland County, State of Maine, Defendant, Mark Cardilli, Jr., recklessly or with criminal negligence caused the death of Isahak Muse with the use of a firearm, a Glock model 23, .40 caliber, serial number BATH906, in violation of 17-A M.R.S. §§ 203(1)(A) and 1158-A(1)(B).

Date: December 27, 2019

Nancy Mills
Justice, Superior Court