THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Han-23-466

STATE OF MAINE
Appellee

v.

CRAIG A. WOODARD
Appellant

ON APPEAL from the Hancock County
Unified Criminal Docket

REPLY BRIEF OF APPELLANT

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INTRODUCTION

This Court needs only decide the first issue, as the remedy for that error is a new trial which would forestall the need for decision regarding the sentencing errors. Nonetheless, defendant writes to address the State's arguments on each of the four assignments of error:

(I) Despite the trial's brevity, there was ample evidence to support a third-person self-defense, so much so that *both* attorneys – for the defense and *for the State* – noted the theory in their closing arguments. It was obvious error to neglect to instruct jurors in third-party self-defense and the related dwelling-place exception to the duty to retreat.

(II) Neither did the State explicitly plead § 1604(3) nor did the jury explicitly find it was proven. Remand for resentencing is appropriate.

(III) There is no legitimate basis for increasing an adult criminal defendant's sentence because the defendant is 30 years old.

(IV) The court clearly increased defendant's sentence because of defense counsel's sentencing memorandum, a factor which this Court should hold is an improper sentencing basis upon which to knowingly increase a sentence.

ARGUMENT

First Assignment of Error

I. The court committed obvious error by neglecting to specify that it is lawful to use self-defense to protect third persons and failing to instruct that there is no duty to retreat when the person being protected is within a dwelling house.

The State appears to make two arguments, to which defendant responds.

A. A third-person self-defense claim was generated.

A self-defense instruction is generated whenever, in the light most favorable to the defendant, the self-defense theory represents "a reasonable hypothesis." *State v. Ouellette*, 2012 ME 11, ¶ 13, 37 A.3d 921. Even in our lightning-quick trial, there was plenty such evidence, including:

- Forrest Dale text-messaged defendant threats "to burn – to kill everybody and burn down the house and the RV." (Tr. 71). These threats caused defendant and his father to alert the family members within these dwellings and call the police. (Tr. 71-72, 82).
- Defendant told police, "If this guy's going to come here and try and kill my family, I can shoot him – pretty plain as day." (SX 1 ca. 19:00).
- Defendant's child and her mother were in either the RV or the main house, which caused defendant's father to be "really panicked, super panicked and scared." (Tr. 82).

- Defense counsel argued, in closing, that it was reasonable for defendant to believe that Forrest was there to "burn the RV down."[1] (Tr. 128). Counsel had previewed this theory in his opening statement. (Tr. 27: "I will burn you down, and I'll kill your family.").

While there might have been other concerns – *e.g.*, *I better shoot to protect myself, too* – clearly it was a "reasonable hypothesis" for jurors to believe that defendant shot in order to protect his family.

The State suggests that because Forrest was "at best eighty feet" away from the dwellings, Red Br. 5, there can be no reasonable use of force. However, it should have been the jury's province to determine what was reasonable, how close a self-defender must permit a would-be harm-doer to get to the dwellings (and to causing the harm), and how fast the self-professed "real life Forrest Gump" might have run to those dwellings, absent the use of self-defense. (*See* Tr. 45).

B. The lack of an instruction was prejudicial.

Defendant repeats by reference his arguments about harm, made in the Blue Brief at Pages 14-16. He merely notes that the Red Brief omits to wrestle with the harmful effects of the court's failure to instruct in the exception to the duty to retreat. As prosecutors often do at trial, the State in in its closing argument suggested that the jury need not even consider the

[1] Had this theory not been generated, one would have expected the State to object or judge to intervene. To the contrary, in its closing, *the State* recognized, "[T]here's some suggestion that Mr. Woodard was protecting his home or protecting people in his home." (Tr. 124).

self-defense theory because, if a defendant "can retreat in complete safety, then they don't get to use self-defense." (Tr. 124). Just taking that argument away might have made the difference in the verdict. Defendant had no duty to retreat, and the court's erroneous jury instructions neglected to convey that reality.

Second Assignment of Error

II. The court committed harmful error by ruling that the enhancement provision of 17-A M.R.S. § 1604(3) applies notwithstanding the fact that the provision was neither pled nor proven to the jury.

Respectfully, the State takes an expansive view of "pleads and proves," as those terms are used in 17-A M.R.S. § 1604(3). Defendant, to the contrary, is of the position that the State must "plead" in its indictment a specific reference to the enhancement provision, *e.g.*, "*and that qualifies as 'use of a firearm against an individual' for purposes of 17-A M.R.S. § 1604(3).*" No such reference is in the indictment. Clearly, as defense counsel objected to the enhancement at the time of sentencing, (*see* A83), the omission of such language, at the very least, creates ambiguity about whether the State is seeking enhancement. In a system where prosecutors enjoy sweeping discretion, it is not asking much for "pleads" to require a clear invocation in explicit terms.

Likewise, the notion that the jury found § 1604(3) to be proven relies on speculation. As is discussed in the Blue Brief at Pages 19-23, juries sometimes buck the expectations of judges and lawyers. They reach

compromise or inconsistent verdicts. Indeed, whether to have a jury- or bench-trial is often a momentous strategic choice for attorneys and their clients. Here, the State urges a double set of assumptions in its favor: It somehow pled § 1604(3) without explicitly referencing it, and the jury somehow found § 1604(3) proven without being asked to do so. Only if this Court wants to embrace those assumptions in future cases as a matter of course should it affirm.

Third Assignment of Error

III. The sentencing court unlawfully and improperly increased defendant's maximum sentence because defendant was 30 years old at the time of the shooting.

Age may be a viable reason to mitigate a sentence. In other words, when, because of a defendant's relative youth, it appears that he or she may lack adult-level culpability, a court can and should reduce that sentence. The cut-off line for doing so, based on current thinking, is about 25 years of age. *See* Kelsey B. Shust, *Extending Sentencing Mitigation for Deserving Young Adults*, 104 J. CRIM. L. & CRIMINOLOGY 667, 684-89 (Summer 2014) (arguing that Supreme Court case-law requires sentencing courts to consider mitigating effects of age up to age 25). Nothing about this assignment of error challenges such mitigation. *But see* Red Br. 7-8 ("[A]ppellant counsel suggests a new rule which would deprive many Maine citizens of being able to argue in mitigation….").

However, aggravating a sentence because defendant is 30, rather than 25, for example, is something else. A defendant in Maine criminal court is

already being punished as an adult, *i.e.*, as someone who is at least 25 years of age. Imposing another penalty because defendant is 30 is a form of double penalization. The fact that his was not a "youthful indiscretion," in the words of the trial judge, has already been accounted for before the court aggravated defendant's sentence.

Defendant is not asking for a holding that a judge cannot consider a defendant's age. Youth (and extreme old-age) will always be mitigating. But a defendant's status as a thirty-year-old: what does that mean that isn't already accounted for by 17-A M.R.S. § 10-A? The State has no answer.

Criminal record is not a proxy for age, either. Defendant's criminal record was counted as a separate aggravating factor. (STr. 29). If, as the State suggests, criminal record and age are one and the same, the court erred by counting the same thing twice.

Fourth Assignment of Error

IV. The court erred by knowingly holding counsel's work against defendant, increasing defendant's sentence as a result.

Had defense counsel not authored those portions of the sentencing memorandum that the judge found objectionable, defendant would now be serving a lesser sentence. It is clear that the court found a lack of acceptance of responsibility based on the defense sentencing memorandum, aggravating defendant's sentence as a result. The question on appeal is whether, given the sentencing review responsibilities of this Court, *see* 15 M.R.S. §§ 2154, 2155, it makes sense for a judge to *knowingly* increase a defendant's

sentence because of something his attorney wrote and filed in an optional filing.

Respectfully, it is difficult to understand the State's inability to see how defendant's sentence was influenced by counsel's statements in the sentencing memorandum. *See* Red Br. 11 (finding "no support"). The judge said so at least twice:

- "But the Court finds that there was an actual statement by the defendant in the sentencing memorandum. The Court does find that there was a lack of responsibility and remorse in that statement." (A29).
- "[I]t's the statement that he makes in this sentencing memorandum that has the most concern for the Court." (A29).

How is it possible to read these statements and conclude that the judge did anything other than penalize defendant for what defendant's attorney wrote?

Because the State has pointed to no legitimate purpose that is served by a judge doing so, it has waived the opportunity to do so.

CONCLUSION

For the foregoing reasons and those noted in the Blue Brief, this Court should vacate and remand, for a new trial or for resentencing – in that order.

Respectfully submitted,

April 22, 2024

/s/ Rory A. McNamara

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CERTIFICATE OF SERVICE

I sent a native PDF version of this brief to the Clerk of this Court and to opposing counsel at the email address provided in the Board of Bar Overseers' Attorney Directory. I mailed 10 paper copies of this brief to this Court's Clerk's office via U.S. Mail, and I sent 2 copies to opposing counsel and counsel for other parties at the addresses provided on the briefing schedule.

/s/ Rory A. McNamara

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CERTIFICATE OF SIGNATURE

Craig Woodard

I am filing the electronic copy of this brief with this certificate. I will file the paper copies as required by M.R.App.P. 7A(i). I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

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