STATE OF MAINE
ANDROSCOGGIN, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: And-24-105

STATE OF MAINE
Appellee

v.
KULMIYE IDRIS
Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

I. Whether the trial court committed error by instructing the jury to apply a reckless *mens rea* where the Legislature has already determined that a criminal negligence *mens rea* was necessary and sufficient.

II. Whether the trial court correctly admitted statements made to medical providers for purposes of medical diagnosis and treatment.

III. Whether the state's closing argument that recited admissible evidence and testimony of the victim was proper.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

On appeal, Kulmiye Idris (hereinafter cited as Idris) contends that at his trial on Gross Sexual Assault (1) the trial court erred in imposing a stricter *mens rea* than what the Legislature enacted for another Gross Sexual Assault subsection without an explicit *mens rea* following this Court's decision in *State of Maine v. Asaad*; (2) the trial court erred in admitting statements made to medical providers, and; (3) that the State committed prosecutorial error by referencing these statements and other evidence related to medical examinations at trial. (Blue Br. 7-9.) The evidence in the record establishes the following.

On the night of April 2, 2022, [redacted] (hereinafter cited as [redacted] went to her best friend Lana's home for an evening with friends. (Trial Tr. 31.) The evening started out with a group of women who were later joined by several other mutual friends, one of which was Idris. (Trial Tr. 31-33.) [redacted] and Idris were close, platonic friends at the time, and this was something that [redacted] felt there was no confusion about. *Id.* On the evening of April 2, this group of friends spent the evening listening to music, dancing, and drinking alcohol. *Id.* At one point in the evening, around midnight, [redacted] went up to sleep in Lana's bed for the night as she often did and as had been planned for that evening. (Trial Tr. 32, 77.) [redacted] assumed that Lana would eventually come up

to bed and sleep next to her, as was typically the case when [redacted] spent the night. (Trial Tr. 32.) Although [redacted] felt intoxicated, she was not so inebriated that she did not know what she was doing or to remember her evening. *Id.* When [redacted] went to bed for the night, several friends were still in the home spending time with Lana, including Idris. (Trial Tr. 33.)

Idris was one of the last three people to leave that evening, and was driving the two other friends back to their vehicle that was at his house. (Trial Tr. 79.) As this group was saying goodbye to Lana, Idris made a comment about coming back and drinking more to Lana. *Id.* Lana told him that he didn't need to come back, because she was the only person left awake and she was going to bed. *Id.* After Idris left, Lana laid down on her couch in the living room and fell asleep. (Trial Tr. 80.)

Hours later, [redacted] was suddenly awoken to Idris sexually assaulting her. (Trial Tr. 34.) Idris was on top of and between [redacted] legs, with his penis inside of her vagina. *Id.* [redacted] put her arm up and told Idris to stop, but he did not do so until he was "done," what she described as him ejaculating. *Id.* When Idris was finished, he got up and left the home quickly. (Trial Tr. 35.) [redacted] sent him a text message, asking him why he had just done what he did to her. (Trial Tr. 37.) This message was sent at 5:25 a.m. (Trial Tr. 40.)

Around 9:52 in the morning on April 3, Idris responded to [redacted] message saying "I don't even remember. I'm so sorry." *Id.* This message was followed up with another text from Idris reiterating that he had no words for the night before other than he was sorry. *Id.* In addition to the text messages, Idris began sending messages to [redacted] through Facebook messenger. (Trial Tr. 41.) He asked her what happened, and then sent the following:

> Hey, good morning. I have no words for last night except I'm sorry. I would rather talk in person because I really, really care about you, and that's not how I want our vibes to be. I want to own up and man up because I'm not the type to shy away from the way I made you feel. You don't have to talk to me, but I want you to know I'm truly sorry, and you really are dope to me. Even being black out drunk, that's never an excuse.

(Trial Tr. 42.)

[redacted] did not respond to this message, and lay in Lana's bed crying for a period of time following the assault. *Id.* Later in the morning, Lana moved from the couch where she had fallen asleep and went to her bed with [redacted] *Id.* [redacted] tried to talk to Lana about what happened, but Lana did not immediately understand that something was wrong and indicated to [redacted] that she wanted to get some more sleep. *Id.* [redacted] left Lana's home, unsure of how to process what just happened to her and what she needed to do. (Trial Tr. 43.) At some point that morning, [redacted] spoke with Lana and told her that she had been

sexually assaulted in her bed early that morning. (Trial Tr. 82.) Later that afternoon, [redacted] decided she needed to report what had happened to the police and went to the station to make a report. (Trial Tr. 45.)

After speaking to police, [redacted] went to St. Mary's Medical Center for a sexual assault examination. *Id.* She was medically treated by a nurse and doctor. (Trial Tr. 160, 192.) [redacted] described to these medical providers what happened to her in response to their questions during treatment. (Trial Tr. 164.) As part of this questioning during the sexual assault examination, a comprehensive history of the sexual assault is taken in order to treat the patient's physical, emotional, and psychological needs. (Trial Tr. 195.) This includes asking whether [redacted] had consensual sex within the 3 days prior to the exam, whether the perpetrator was a stranger or known to her, and getting a brief summary of the assault. (Trial Tr. 197-198.) Also during this examination, swabs were collected from [redacted] body and ultimately sent to the Maine State Crime Lab for testing. (Trial Tr. 310.)

Detective Craig Johnson from the Lewiston Police Department was assigned to investigate [redacted] report of sexual assault and as a result made contact with her and other friends that were at Lana's house on April 2nd. (Trial Tr. 262-263.) Lana corroborated the timeline that Detective Johnson learned from [redacted] as to the evening's events. (Trial Tr. 76-81.) This timeline was also

corroborated by one of the friends that Idris drove home that evening, who reported that Idris told her he was going back to Lana's right after dropping them off. (Trial Tr. 145.)

Detective Johnson spoke with Idris over the phone on April 3rd and asked if he was willing to talk about what had happened the night prior. (Trial Tr. 275.) In response to this question and being told no information about what had been reported, Idris asked for time to coordinate childcare if he was going to be arrested. (Trial Tr. 275-276.) When law enforcement ultimately did make contact with Idris, his phone was seized and an extraction of the phone was performed. (Trial Tr. 214.) An extraction was also completed for Lana and [redacted] phones. *Id.* In examining these examinations, Detective Johnson was able to see that Idris had deleted a number of messages from his phone, including all of the messages that were exchanged between him and [redacted] following the sexual assault. (Trial Tr. 279-280.)

Despite some content being deleted, Detective Johnson was able to locate some remaining messages on the phone of evidentiary value. (Trial Tr. 280.) On April 5th, Idris messaged a family member stating that he was still waiting and asking if that person had any other advice for him. (Trial Tr. 281.) When the relative responded to him "you good, three days later[]", Idris answered "we'll see. Depending on how vigilant the other person is. I deleted social media

because I know even if I'm good law-wise, there's going to be blowback on social media, etcetera." (Trial Tr. 281-282.) Several days later, Idris updated this family member that things were "so far, so good" but that he was "still scared shitless." (Trial Tr. 283-284.)

In addition to the electronic evidence that Detective Johnson processed, he also coordinated evidence from the sexual assault examination be sent to the Maine State Crime Laboratory. (Trial Tr. 284.) This was sent along with a known DNA sample collected from Idris. (Trial Tr. 285.) Through testing at the Maine Crime Laboratory, sperm cells and alpha-amylase (a component of saliva) were identified in an extract from [redacted] genital swab. (Trial Tr. 320.) A male DNA profile was identified from this sample. (Trial Tr. 323.) The forensic DNA analyst was also able to identify DNA profiles for both [redacted] and Idris based on the known samples provided of each. (Trial Tr. 320.) In comparing these samples, the analyst was able to determine that the DNA from the genital swab was the same as the defendant or his paternal relatives with an overall match probability of one in 2072, which she indicated was about as high of a probability that the type of DNA profiling utilized could provide. (Trial Tr. 323, 324.)

A criminal complaint charging Idris with Gross Sexual Assault was filed on April 14, 2022. (App. 1.) Idris plead not guilty to this charge on October 12,

2022. (App. 3.) Trial began on February 12, 2024, at which the jury heard the evidence discussed above along with testimony from Idris. (App. 8, Trial Tr. 381.) Idris testified—in contradiction to Lana and [redacted] that as he was leaving to drive friends home he asked if he should come back, and both of the women told him to return. (Trial Tr. 398.)

Idris said that the door was locked when he returned and [redacted] let him in. (Trial Tr. 399.) Idris testified that [redacted] then led him upstairs, that they consensually kissed in the hallway. (Trial Tr. 404.) He claimed that they then went into Lana's bed to begin having sex, despite the existence of multiple guest beds. (Trial Tr. 404, 411.) Idris ultimately claimed that they had consensual sex on three different occasions that night, and that [redacted] was an active participant who was "on top, riding [him]" as they had sex twice in fast succession. (Trial Tr. 406-407.) He testified that they then cuddled and slept for several hours, and then upon waking in the early morning they had sex for a third time after [redacted] rolled over to face him and put her arms around him. (Trial Tr. 408-409.) Idris claimed after he ejaculated this third time, he had a "pivotal moment" in his head that he should not have been having sex with [redacted] in Lana's bed and left. (Trial Tr. 409-412.)

In explaining his text to [redacted] the following morning, Idris told the jury that "an apology is not an admission of guilt," and that despite there being no

reason for [redacted] to send the message she did based on the evening he testified to, he responded as he did to apologize for making her feel bad. (Trial Tr. 415.) He claimed he had a clear memory of what happened that evening, and only responded to [redacted] that he didn't remember because he was in shock. (Trial Tr. 433-434.) Idris acknowledged the messages that he sent to [redacted] and others, and also acknowledged that he deleted those messages off of his phone. (Trial Tr. 438.) Idris claimed that [redacted] was functioning, not blacked out, and had no reason not to remember the multiple instances of what he claimed to be consensual intercourse. (Trial Tr. 441.)

On cross-examination, Idris agreed that "putting your penis inside of a sleeping woman is criminal;" that "if a person's sleeping they can't consent to having sex with you;" and that "if somebody doesn't consent to having sex with you, that that is a sexual assault." (Trial Tr. 442-43.)

During trial, the parties had extensive conversations about what, if any, *mens rea* should be read into the charge where it was otherwise absent in light of this Court's ruling in *State v. Asaad*, 2020 ME 11, 224 A.3d 596. (Trial Tr. 137, 250-254, 352-359.) The State argued that given the Court's ruling in *Asaad* and the Legislature's subsequent amendment to Gross Sexual Assault under 17-A M.R.S. § 253(2)(M), the appropriate *mens rea* for the jury to consider was criminal negligence. (Trial Tr. 250-251.) Ultimately, the trial court instructed

the jury that Idris needed to act recklessly with regard to whether [redacted] consented to the sexual act. (Trial Tr. 479.)

In closing arguments, the State summarized the evidence that the jury heard and why that evidence supported a finding that Idris was guilty beyond a reasonable doubt. (Trial Tr. 490- 519.) This included referencing that [redacted] sought medical care and made consistent statements in the course of this treatment, and also referencing [redacted] description of this medical treatment where the hospital "poked and swabbed every hole in [her] body" for the sexual assault examination. (Trial Tr. 495-496.)

On February 13, 2024, the jury returned a guilty verdict for the charge of Gross Sexual Assault. (A. 8.) Idris filed a motion for a new trial on February 22, 2024, which was denied on February 26, 2024. (A. 10.) On that same date, Idris was sentenced to 8 years to the Department of Corrections, with all but 42 months suspended, followed by 4 years of probation. (A. 9.) On February 29, 2024, Idris filed a timely notice of appeal. (A. 11.)

ARGUMENT

I. The trial court committed no error by instructing the jury to apply a reckless *mens rea* where the Legislature has already determined that a criminal negligence *mens rea* was necessary and sufficient.

The trial court's decision to instruct the jury with a reckless *mens rea* for this crime—a higher burden than that prescribed by the Legislature following *State v. Asaad,* 2020 ME 11, 224 A.3d 596—was appropriate and constituted no error.

A. Standard of Review

"In general, [this Court] review[s] jury instructions in their entirety to determine whether they presented the relevant issues to the jury fairly, accurately, and adequately, and we will vacate the court's judgment only if the erroneous instruction resulted in prejudice." *State v. Hansley*, 2019 ME 35, ¶ 8, 203 A.3d 827 (quotation marks omitted). The State agrees that although the transcript is less-than-clear on the specific language Idris requested, Idris sufficiently preserved this issue for appeal by arguing before the trial court that the appropriate *mens rea* should be knowing. (Trial Tr. 251, 352-53.)

Therefore, this Court reviews "preserved challenges to jury instructions for prejudicial error." *State v. Abdullahi*, 2023 ME 41, ¶ 36, 298 A.3d 815. "Prejudice occurs when an erroneous instruction on a particular point of law affects the jury's verdict, or alternatively, when the instruction is so plainly wrong and the point involved so vital that the verdict must have been based upon a misconception of the law." *Id.* (quotation marks omitted.) Idris bears the burden of demonstrating prejudice. *Id.* Further, this Court will "vacate the judgment only if the appellant can demonstrate that the denied instruction '(1)

stated the law correctly, (2) was generated by the evidence, (3) was not misleading or confusing, and (4) was not sufficiently covered in the instructions the court gave.'" *Id.* at ¶ 9 (quoting *State v. Hanaman*, 2012 ME 40, ¶ 16, 38 A.3d 1278).

Moreover, "[w]hen reviewing a judgment for sufficiency of the evidence, [this Court] views the evidence in the light most favorable to the State to determine whether the fact-finder could rationally have found each element of the offense beyond a reasonable doubt. We defer all credibility determinations and reasonable inferences drawn by the fact-finder, even if those inferences are contradicted by parts of the direct evidence. [This] review does not intrude on the jury's role to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *State v. Edwards*, 2024 ME 55, ¶ 17, --- A.3d --- (quotation marks and internal citation omitted).

Finally, on issues of statutory interpretation, this Court reviews a statute de novo. *State v. Santerre*, 2023 ME 63, ¶ 8, 301 A.3d 1244. "In interpreting a statute, [this Court's] single goal is to give effect to the Legislature's intent in enacting the statute." *Id.* (quotation marks omitted). This Court first looks "to the plain language of the statute to determine its meaning if we can do so while avoiding absurd, illogical, or inconsistent results." *State v. Conroy*, 2020 ME 22,

¶ 19, 225 A.3d 1011.This Court will also "consider the subject matter, design, and structure of the statute, as well as the consequences of specific interpretations." *Santerre*, 2023 ME 63, ¶ 9, 301 A.3d 1244. If the statutory meaning is ambiguous, this Court will "look beyond the words of the statute to examine other potential indicia of the Legislature's intent, such as the legislative history." *Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011.

B. Law

Title 17-A M.R.S. § 253(2)(D) (2022) provides that a "person is guilty of gross sexual assault if that person engages in a sexual act with another person and . . . [t]he other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act."[1]

The State agrees that this statute requires proof of a *mens rea* in light of this Court's decision in *State v. Asaad*, 2020 ME 11, 224 A.3d 596, and the Legislature's response to that decision by amending 17-A M.R.S. § 253(2)(M) (2023). *See* 17-A M.R.S. § 34(1), (4) (2022).

Here, the trial court instructed the jury, along with applicable definitions, that the State had to prove beyond a reasonable doubt that Idris "engaged in a sexual act with [redacted] and that [she] was unconscious or otherwise

[1] The State acknowledges that the mirror to the Gross Sexual Assault statute at issue in the Unlawful Sexual Contact statute, for instance, also does not include a *mens rea* standard. 17-A M.R.S. § 255-A(1)(C) (2022).

physically incapable of resisting the sexual act and that [redacted] had not consented to the sexual act and that with regard to whether [redacted] had consented, [Idris] acted recklessly." (A. 33; Trial Tr. 479.) The court instructed the jury on all definitions of reckless. 17-A M.R.S. § 35(3) (2022) (Trial Tr. 480-81; A. 34-35.)

In *State v. Asaad*, this Court "assume[d] that knowledge is the required *mens rea*" and determined that the evidence was "more than sufficient" to support that Asaad had acted knowingly as to whether the victim had "expressly or impliedly acquiesced." 2020 ME 11, ¶¶ 7, 13, 224 A.3d 596. In so assuming, this Court explicitly left to the Legislature to determine the appropriate mental state—whether a defendant "*actually* understands the victim's communication . . . or if, instead, he misunderstands the victim's communication but his misunderstanding is reckless or criminally negligent—because in "this complicated and nuanced area of human behavior in which norms—and, nationally, legal standards—are varied and rapidly changing, courts must look to the Legislature for broad-based policy judgments. *Id.* at ¶ 15 (emphasis in original).

In dicta, the Court noted that,

> [t]here is a substantial difference between imposing felony liability when a defendant knowingly violates a victim's desire not to have sex and imposing that

> liability when a defendant recklessly or criminally negligently misunderstands that a victim does not consent. Given the significance of this distinction, in this important and unsettled area of the law the standard of behavior should be determined by the people's elected representatives.

Id. at ¶ 16.

C. Application

a. Specifically in response to *Asaad*, the Legislature determined that the appropriate *mens rea* standard is criminal negligence when the State must prove beyond a reasonable doubt that a victim did not consent.

This Court decided *State v. Asaad* on January 28, 2020. In 2022, during the Second Regular Session of the 130th Maine Legislature, L.D. 1903, H.P. 1410, was proposed, titled "An Act to Update Criminal and Related Statutes and Respond to Decisions of the Law Court." The summary to that bill discussed the amendments contained in Part E "to respond to the issue identified by the Law Court in *State v. Asaad*, . . . specifically the absence of a mens rea requirement in the Class C crime of gross sexual assault" under section 253(2)(M), and proposed a knowing mental state. *Id.* at 7. The summary also noted that this proposal "reflects the original proposal of [CLAC] in L.D. 710 and differs from the committee amendment to that bill," which required a reckless mens rea. *Id.*

Following testimony at the working groups on the Committee on Criminal Justice and Public Safety, Committee Amendment A to H.P. 1410, L.D.

1903, was proposed, that established the *mens rea* as criminal negligence. This bill ultimately passed. P.L. 2021, c. 608, sec. E-1 (eff. Aug. 8. 2022).

Here, the Legislature expressly considered the Law Court's suggestion in dicta that a mental state of knowing is required for a felony sexual assault conviction, but it was clearly rejected in favor of a criminal negligence standard.[2] The plain language of section 253(2)(D)—"the other person . . . and has not consented to the sexual act"—is not ambiguous and is identical to the first part of section 253(2)(M)'s language at issue in *Asaad*—"[t]he other person has not consented to the sexual act." This is contrary to Idris' argument that "the Legislature has failed to provide a specific level of *mens rea*." (Blue Br. 26.) Because the statutory language at issue is identical, and the Legislature has spoken on the requisite *mens rea* to be prove by the State, this Court should determine that criminal negligence is the appropriate *mens rea* for section 253(2)(D).

[2] The Defendant argues that the rule of lenity should apply such that the more stringent *mens rea* of knowing must be resolved in Idris' favor. (Blue Br. 31-32.) Only if statutory language is ambiguous—meaning susceptible of different meanings—does this Court consider the legislative history and other "indicia of legislative intent." *State v. Dubois Livestock, Inc.*, 2017 ME 223, ¶ 6, 174 A.3d 308 (quotation marks omitted). Only "if the Legislature's intent remained indecipherable after using the tools of construction available to [this Court], the rule of lenity would require [this Court] to resolve any ambiguities in [a defendant's] favor." *State v. McLaughlin*, 2018 ME 97, ¶ 9, 189 A.3d 262 (quotation marks omitted) (citing *U.S. v. Wells*, 519 U.S. 482, 499 (1997) ("The rule of lenity applies only if, after seizing everything from which aid can be derived, . . . we can make no more than a guess as to what Congress intended)). Here, because the statute is *not* ambiguous and, moreover, the Legislative intent is clear, the rule of lenity does not apply to provide Idris with the reprieve he seeks.

As in *Asaad* where this Court left that determination to the body of people's elected representatives, this Court should do so here and recognize that for the prosecution of a defendant pursuant to 17-A M.R.S. § 253(2)(D), the State must prove that the defendant acted with criminal negligence. 2020 ME 11, ¶¶ 15-16, 224 A.3d 596.

Therefore, because the trial court gave an instruction more favorable to the defense, i.e., required the State to unanimously prove beyond a reasonable doubt a more difficult *mens rea*, Idris was not prejudiced by the court's instruction.

b. While Idris requested a knowing instruction, it is not clear that he preserved the request that it be applied to the entirety of section 253(2)(D) and, thus, this Court should review for obvious error.

Idris argues that the *mens rea* requirement must apply to the entirety of section 253(2)(D). (Blue Br. 23-24.) From the State's review of the trial transcript, while Idris requested a jury instruction that he acted knowing, it was not clear whether that request was limited to the "consent" element or to the entirety of the statute thereby including proof that he knew that "the other person was unconscious or otherwise physically incapable of resisting." (Trial Tr. 135, 236-42, 250-55, 352-57.) While the court noted that it was not "asking for further pushback" on its determination of recklessness, Idris did not "take

issue" with the proposal that the jury be instructed that the reckless *mens rea* apply only to the victim's consent. (Trial Tr. 357-58.) Therefore, this issue is not sufficiently preserved and should be reviewed by this Court for obvious error. *State v. Coleman*, 2019 ME 170, ¶ 22, 221 A.3d 932.

Obvious error requires that there be "(1) error, (2) that is plain, and (3) that affects substantial rights." *Id.* (quotation marks omitted). If those three conditions are met, this Court must then conclude that the "error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* (quotation marks omitted); *see also* M.R.U. Crim. P. 52(a) (harmless error).

It was not error, much less an error that plainly affected the fairness and integrity or public reputation of judicial proceedings where the evidence established at trial was that Idris knew (aware that such circumstances exist, 17-A M.R.S. § 35(2)(B)) that [redacted] was sleeping in Lana's bed, i.e., "unconscious or otherwise physically incapable of resisting" at the time that he penetrated her. (Trial Tr. 34, 42.) To the extent that the court erred, it is harmless in light of the evidence against Idris, including his own admissions, DNA evidence, and corroborative testimony from multiple witnesses. (Trial Tr. 42, 79, 145, 323-324.) M.R.U. Crim. P. 52(a) (harmless error means "[a]ny error, defect, irregularity, or variance that does not affect substantial rights shall be disregarded").

c. Even if it was error for the trial court to instruct on recklessness, the wealth of evidence supports that Idris acted knowingly and, therefore, he was not prejudiced by the trial court's instruction.

As with the argument supra, evidence introduced at trial supports that Idris knew that [redacted] did not consent to the sexual act. (Trial Tr. 34, 40, 42, 59.) Thus, Idris was not prejudiced by the trial court's reckless instruction. *Abdullahi*, 2023 ME 41, ¶ 36, 298 A.3d 815. Moreover, any error is harmless given the sufficiency of the evidence to support such a finding that Idris acted knowing with respect to [redacted] lack of consent. M.R.U. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights shall be disregarded.").

d. Effect of the Lack of Availability of the Voluntary Intoxication Defense.

The fact that the Legislature settled on criminal negligence as the appropriate *mens rea* for a gross sexual assault where the other person did not consent to the sexual act militates against Idris' reading that a knowing requirement must be necessary in order for a defendant to take advantage of a voluntary intoxication defense. (Blue Br. 27-29.)

For instance, at the February of 2022 working groups on L.D. 1903, the Act to Update Criminal and Related Statues and Respond to Decisions of the Law Court," the State of Maine Office of the Attorney General (OAG) and

Criminal Law Advisory Commission (CLAC) both submitted testimony in support of that bill. In so doing, the OAG encouraged the Legislature to adopt a reckless mental state because it would "reflect[] a policy of discouraging drunken assaults" and would "preclude a defendant from asserting that the State failed to prove the state of mind element due to the defendant's voluntary intoxication." *An Act to Update Criminal and Related Statutes and Respond to Decisions of the Law Court: Hearing on L.D. 1903 Before the Committee on Criminal Justice and Public Safety*, 130th Legis. (Feb. 2, 2022, testimony of Aaron M. Frey, Attorney General).

CLAC submitted testimony that was not in unanimous agreement as to what culpable state of mind should be enacted. *An Act to Update Criminal and Related Statutes and Respond to Decisions of the Law Court: Hearing on L.D. 1903 Before the Committee on Criminal Justice and Public Safety*, 130th Legis. (Feb. 2, 2022, memorandum/testimony of CLAC). Some members preferred a knowing standard, which the Law Court adopted in *Asaad*, but others supported a reckless standard. *Id.* The CLAC testimony noted that, were the Legislature to adopt a reckless standard, there would be "significant practical effect to opting for this level of culpable mental state." *Id.* Specifically, noting that the "Legislature has declared that 'self-inducted intoxication' (alcohol or drugs) is not material to whether or not a person is aware of a risk. 17-A M.R.S. § 37. Thus

applying a culpable mental state of recklessness reflects a policy that would not excuse defendants who were 'too drunk' to be aware that the other person did not acquiesce to certain conduct." *Id.*

Moreover, this Court also highlighted the importance of allowing the Legislature to make the determination about the appropriate *mens rea* standard: "In this complicated and nuanced rea of human behavior in which norms—and, nationally, legal standards—are varied and rapidly changing, courts must look to the Legislature for broad-based policy judgments." *Asaad*, 2020 ME 11, ¶ 15, 224 A.3d 596.

Ultimately, the Legislature decided that an even *lower* mental state was appropriate: criminal negligence. L.D. 1903, P.L. 2021, c. 608. This Court should not disturb the "broad-based policy judgment" of the Legislature. *Asaad*, 2020 ME 11, ¶ 15, 224 A.3d 596.

II. The Trial Court Correctly Admitted Statements Made to Medical Providers for Purposes of Medical Diagnosis and Treatment.

A. Standard of Review

This Court reviews a trial court's evidentiary rulings for clear error or an abuse of discretion. *State v. Kimball*, 2015 ME 67, ¶ 14, 117 A.3d 585. Further, even when it is determined that the trial "court has abused its discretion in admitting evidence, the abuse of discretion will not require vacatur if it

constitutes harmless error, *State v. Penley*, 2023 ME 7, ¶ 9, 288 A.3d 1183, i.e., if 'it is highly probable the error did not affect the jury's verdict.' *State v. Donovan*, 1997 ME 181, ¶ 9, 698 A.2d 1045." *State v. Coleman*, 2024 ME 35, ¶ 18 n.6, 315 A.3d 698. A determination of relevance by the trial court is reviewed for clear error. *State v. Cookson,* 2003 ME 136, ¶ 24, 837 A.2d 101.

B. Law

Maine Rule of Evidence 802 provides that hearsay is not admissible at trial unless statute or other rules of evidence apply or as prescribed by this Court. One such exception provided by the Rules of Evidence is for statements made for medical diagnosis or treatment. M.R. Evid. 803(4). Statements that qualify for this exception are those that are "made for—and [] reasonably pertinent to—medical treatment, and; describe medical history, past or present symptoms or sensations, their inception, or their general cause." *Id.*

This Court has noted that "[p]ertinence, within the contemplation of Rule 803(4), is an objective consideration beyond the declarant's state of mind." *State v. Sickles,* 655 A.2d 1254, 1257 (Me. 1995) (quotation marks omitted). Although the Court has noted that there are cases where extraneous details of an assault might not be pertinent to medical treatment or diagnosis, there are also cases where "certain details that may not be relevant to treatment for physical injuries may be pertinent to treatment for emotional or psychological

trauma." *Walton v. Ireland*, 2014 ME 130, ¶ 19, 104 A.3d 883.[3] *See e.g. State v. Rosa*, 575 A.2d 727, 729 (Me. 1990) ("Obviously, the fact that the victim told the physician that the act was forced and that she had been choked during it are relevant to his diagnosis and treatment. Furthermore, the physician prefaced his remark by saying that the emotional ramifications of rape are a significant part of the victim's problem in relation to treatment. Accordingly, the recounting of the knife threat pertained to the emotional trauma that the physician was also addressing.")

In addition to the hearsay exception prescribed by Rule 803(4), Maine Revised Statute Title 16, section 357 also provides the following:

> Records kept by hospitals . . . and other medical facilities similarly conducted or operated or which, being incorporate, offer treatment free of charge, shall be admissible, as evidence in the courts of this State so far as such records relate to the treatment and medical history of such cases *and the* court shall admit copies of such records, if certified by the persons in custody thereof to be true and complete, but nothing therein contained shall be admissible as evidence which has reference to the question of liability.

16 M.R.S. § 357 (2024).

[3] *See also: State v. Cookson*, 2003 ME 136, ¶ 26, 837 A.2d 101 ("Gould's statements to the nurse about having a problem with Cookson and about Cookson following and stalking her were made to describe to the nurse the external source of her depression. Gould's statements were also pertinent to her treatment, including the provision of antidepressant drugs, given by the nurse practitioner. For these reasons, the court did not err in allowing the nurse practitioner to testify about the cause of Gould's depression or to recite Gould's statements to her.")

In analyzing the interplay between the Rules of Evidence and Section 357, this Court noted the following:

> "By its terms, section 357 provides a method of authenticating the hospital records and provides an exception to Rule 802 of the Maine Rules of Evidence, which, as a general matter, bars the admission of hearsay evidence. The statute's effect is similar to the hearsay exception provided in Rule 803(4) in that the statute creates an exception to the exclusion of the records as hearsay despite the fact that they contain statements made out of court, offered for the truth of the matter asserted related to treatment and medical history. Accordingly, Rule 803(4) need not be analyzed when the record meets the qualifications of section 357."

State v. Jones, 2019 ME 33, ¶ 12, 203 A.3d 816, 821.

C. Application

Although Idris now challenges the admission of the statements under Maine Rules of Evidence Rule 803(4), he raised no such claim below; to the contrary, he agreed to the admission of the medical records containing the statements that he now takes issue with. (Trial Tr. 157.) Therefore, this Court should review his unpreserved claim of error under an obvious error standard, requiring "either a determination or an assumption that an error was made, and then a determination as to whether the error was obvious and affected substantial rights." *State v. Roberts*, 2008 ME 112, ¶ 21, 951 A.2d 803 (quotation

marks omitted). If those "conditions are met, [this Court] must 'also conclude that . . . the error seriously affects the fairness and integrity or public reputation of judicial proceedings' before" vacating a judgment based on that error. *State v. Nichols*, 2013 ME 71, ¶ 23, 72 A.3d 503 (quoting *State v. Pabon*, 2011 ME 100, ¶ 29, 28 A.3d 1147).

Idris' claim that certain statements made to the medical providers were unfairly prejudicial is arguably preserved for appeal given his objection at trial that the doctor's recitation of triage notes was "rehashing the testimony from [redacted] and "duplicative." (Blue Br. 35; Trial Tr. 164.) Although preserved, however, this argument still fails because the trial court did not abuse its discretion in admitting this testimony. *Kimball*, 2015 ME 67, ¶ 14, 117 A.3d 585, *see also* *State v. Rancourt*, 435 A.2d 1095, 1103 (Me. 1981) (holding that the evidence was not unduly prejudicial where it was "at most cumulative").

Idris' suggestion that the testimony from medical providers was unfairly prejudicial is problematic for several reasons, including that the trial court specifically rejected this argument (Trial Tr. 165), [redacted] testimony was not unreliable or "suspect" as Idris suggests,[4] and that that the testimony was

[4] [redacted] was clear in her testimony that she had no jealousy towards her ex-boyfriend, and that she was only upset because he had canceled plans with her son. (Trial Tr. 56.) Similarly, [redacted] did recall getting a snack before going to bed, and noted that she did dishes every time she was in Lana's kitchen. (Trial Tr. 58.) Although she had been drinking, she was never to the level of intoxication where she was "blacked out" or could not remember what was happening. (Trial Tr. 454.)

corroborated by a wealth of evidence beyond the testimony of medical providers. (Blue Br. 37; Trial Tr. 27-46, 74-101, 140-146, 259-285, 305-324.)

Even if Idris' argument that the testimony exceeded the bounds of Rule 803(4) had been preserved, this argument also fails for several reasons. The nurse who conducted the sexual assault examination testified that, much like treatment discussed in *Cookson* and *Rosa*, the treatment provided to [redacted] was to address her "physical needs,[] emotional needs, [and] psychological" ones. (Trial Tr. 195.) Given that, the trial court could appropriately conclude the statements that Idris now objects to were pertinent to her comprehensive medical treatment and diagnosis. M.R. Evid. 803(4).

Finally, should this Court find error in the statements that were admitted, any error was harmless.[5] *See State v. Moore*, 2023 ME 18, 290 A.3d 533, 536 ("we conclude that the testimony was harmless because Moore admitted to being involved in the confrontation depicted in the videos; the jury viewed the videos numerous times during the trial and twice during deliberations,

[5] It is important to note that Idris did not object to the admission of the medical records as a whole, presumably based on his knowledge of section 357. (Trial Tr. 157.) Had he not, the State could have further inquired of the medical providers as to why these portions were relevant to their medical diagnosis and treatment. Additionally, the statements that Idris takes issue with were disputed facts, however, his own testimony established the location of the sexual act and that he was the other person involved. (Trial Tr. 404.)

suggesting that the jury decided for itself who was depicted in the videos; and the record contains overwhelming evidence in support of the jury's verdict.")

III. The State's Closing Argument was Proper and not Misconduct

A. Standard of Review

If a defendant does not timely object, this Court reviews for obvious error and will vacate the judgment "only if [this Court] determine[s] that the prosecution's conduct was improper." *State v. Clark*, 2008 ME 136, ¶ 7, 954 A.2d 1066. Instances of alleged prosecutorial misconduct will amount to obvious error when "a defendant . . . first demonstrate[s] that (1) there was prosecutorial misconduct that went unaddressed by the court and (2) the error was plain." *State v. Scott*, 2019 ME 105, ¶ 25, 211 A.3d 205 (quotation marks omitted). If the defendant meets this initial burden, they then "'must next demonstrate (3) that the error was sufficiently prejudicial to have affected the outcome of the proceeding.'" *Id.* (quoting *State v. Nobles*, 2018 ME 26, ¶ 21, 179 A.3d 910). Should a defendant prevail, this Court "will set aside a jury's verdict only if [it] conclude[s] that . . . the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* (quotation marks omitted).

B. Law

The Court has noted that "[w]hen a prosecutor's statement is not sufficient to draw an objection, particularly when viewed in the overall context of the trial, that statement will rarely be found to have created a reasonable probability that it affected the outcome of the proceeding." *Scott*, 2019 ME 105, ¶ 25, 211 A.3d 205; *see also Nobles*, 2018 ME 26, ¶ 28, 179 A.3d 910 (The context of the prosecutor's repeated statements regarding accountability were important particularly when the prosecutor "predicated the jury's duty to make that decision on its consideration of the evidence, stating, 'that's what you should decide this case on. Based upon the evidence.'").

C. Application

Idris' challenges to closing argument made by the State, discussing the medical testimony and quoting [redacted] testimony, were all proper and did not constitute obvious error. (Blue Br. 38.) Contrary to Idris' argument, the State is free to comment upon evidence to support that a victim did not have a motive to lie, such as subjecting oneself to difficult medical treatment like a sexual assault examination and follow-up medication. (Blue Br. 38). This Court has noted that "[a] prosecutor may present an analysis of the evidence in summation with vigor and zeal. . . . We have repeatedly upheld the prosecutor's ability to argue vigorously for any position, conclusion, or inference supported by the evidence." *Scott*, 2019 ME 105, ¶ 26, 211 A.3d 205.

Further, the statement made by the State about [redacted] being "poked and swabbed [in] every hole in [her] body" was an almost exact recitation of her own testimony. (Trial Tr. 45.) It was also made in the context of suggesting to the jury evidence they could consider in deciding credibility, something that the State also informed the jury was "solely in [their] province," and part of a closing argument where the State indicated it did not want the jury to "make decisions on anything other than the evidence that was before [it]." (Trial Tr. 490, 517.) The arguments relating to the medical treatment [redacted] received, and testimony that she gave regarding this treatment, were properly admitted; therefore, there is no "reasonable probability that it affected the outcome of the proceeding." *Scott*, 2019 ME 105, ¶ 25, 211 A.3d 205.

CONCLUSION

For the foregoing reasons, the State of Maine respectfully requests that the judgment of conviction be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Katherine E. Bozeman, Assistant District Attorney, hereby certify that I mailed two copies of the foregoing "BRIEF OF APPELLEE" to Idris' attorney of record, Timothy Zerillo, Esq.

DATED: April 9, 2024

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STATE OF MAINE
ANDROSCOGGIN, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: And-24-105

STATE OF MAINE
Appellee

v.
KULMIYE IDRIS
Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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b. While Idris requested a knowing instruction, it is not clear that he preserved the request that it be applied to the entirety of section 253(2)(D) and, thus, this Court should review for obvious error.

c. Even if it was error for the trial court to instruct on recklessness, the wealth of evidence supports that Idris acted knowingly and, therefore, he was not prejudiced by the trial court's instruction.

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STATEMENT OF THE ISSUES

I. Whether the trial court committed error by instructing the jury to apply a reckless *mens rea* where the Legislature has already determined that a criminal negligence *mens rea* was necessary and sufficient.

II. Whether the trial court correctly admitted statements made to medical providers for purposes of medical diagnosis and treatment.

III. Whether the state's closing argument that recited admissible evidence and testimony of the victim was proper.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

On appeal, Kulmiye Idris (hereinafter cited as Idris) contends that at his trial on Gross Sexual Assault (1) the trial court erred in imposing a stricter *mens rea* than what the Legislature enacted for another Gross Sexual Assault subsection without an explicit *mens rea* following this Court's decision in *State of Maine v. Asaad*; (2) the trial court erred in admitting statements made to medical providers, and; (3) that the State committed prosecutorial error by referencing these statements and other evidence related to medical examinations at trial. (Blue Br. 7-9.) The evidence in the record establishes the following.

On the night of April 2, 2022, [redacted] (hereinafter cited as [redacted] went to her best friend Lana's home for an evening with friends. (Trial Tr. 31.) The evening started out with a group of women who were later joined by several other mutual friends, one of which was Idris. (Trial Tr. 31-33.) [redacted] and Idris were close, platonic friends at the time, and this was something that [redacted] felt there was no confusion about. *Id.* On the evening of April 2, this group of friends spent the evening listening to music, dancing, and drinking alcohol. *Id.* At one point in the evening, around midnight, [redacted] went up to sleep in Lana's bed for the night as she often did and as had been planned for that evening. (Trial Tr. 32, 77.) [redacted] assumed that Lana would eventually come up

to bed and sleep next to her, as was typically the case when [redacted] spent the night. (Trial Tr. 32.) Although [redacted] felt intoxicated, she was not so inebriated that she did not know what she was doing or to remember her evening. *Id.* When [redacted] went to bed for the night, several friends were still in the home spending time with Lana, including Idris. (Trial Tr. 33.)

Idris was one of the last three people to leave that evening, and was driving the two other friends back to their vehicle that was at his house. (Trial Tr. 79.) As this group was saying goodbye to Lana, Idris made a comment about coming back and drinking more to Lana. *Id.* Lana told him that he didn't need to come back, because she was the only person left awake and she was going to bed. *Id.* After Idris left, Lana laid down on her couch in the living room and fell asleep. (Trial Tr. 80.)

Hours later, [redacted] was suddenly awoken to Idris sexually assaulting her. (Trial Tr. 34.) Idris was on top of and between [redacted] legs, with his penis inside of her vagina. *Id.* [redacted] put her arm up and told Idris to stop, but he did not do so until he was "done," what she described as him ejaculating. *Id.* When Idris was finished, he got up and left the home quickly. (Trial Tr. 35.) [redacted] sent him a text message, asking him why he had just done what he did to her. (Trial Tr. 37.) This message was sent at 5:25 a.m. (Trial Tr. 40.)

Around 9:52 in the morning on April 3, Idris responded to [redacted] message saying "I don't even remember. I'm so sorry." *Id.* This message was followed up with another text from Idris reiterating that he had no words for the night before other than he was sorry. *Id.* In addition to the text messages, Idris began sending messages to [redacted] through Facebook messenger. (Trial Tr. 41.) He asked her what happened, and then sent the following:

> Hey, good morning. I have no words for last night except I'm sorry. I would rather talk in person because I really, really care about you, and that's not how I want our vibes to be. I want to own up and man up because I'm not the type to shy away from the way I made you feel. You don't have to talk to me, but I want you to know I'm truly sorry, and you really are dope to me. Even being black out drunk, that's never an excuse.

(Trial Tr. 42.)

[redacted] did not respond to this message, and lay in Lana's bed crying for a period of time following the assault. *Id.* Later in the morning, Lana moved from the couch where she had fallen asleep and went to her bed with [redacted] *Id.* [redacted] tried to talk to Lana about what happened, but Lana did not immediately understand that something was wrong and indicated to [redacted] that she wanted to get some more sleep. *Id.* [redacted] left Lana's home, unsure of how to process what just happened to her and what she needed to do. (Trial Tr. 43.) At some point that morning, [redacted] spoke with Lana and told her that she had been

sexually assaulted in her bed early that morning. (Trial Tr. 82.) Later that afternoon, [redacted] decided she needed to report what had happened to the police and went to the station to make a report. (Trial Tr. 45.)

After speaking to police, [redacted] went to St. Mary's Medical Center for a sexual assault examination. *Id.* She was medically treated by a nurse and doctor. (Trial Tr. 160, 192.) [redacted] described to these medical providers what happened to her in response to their questions during treatment. (Trial Tr. 164.) As part of this questioning during the sexual assault examination, a comprehensive history of the sexual assault is taken in order to treat the patient's physical, emotional, and psychological needs. (Trial Tr. 195.) This includes asking whether [redacted] had consensual sex within the 3 days prior to the exam, whether the perpetrator was a stranger or known to her, and getting a brief summary of the assault. (Trial Tr. 197-198.) Also during this examination, swabs were collected from [redacted] body and ultimately sent to the Maine State Crime Lab for testing. (Trial Tr. 310.)

Detective Craig Johnson from the Lewiston Police Department was assigned to investigate [redacted] report of sexual assault and as a result made contact with her and other friends that were at Lana's house on April 2nd. (Trial Tr. 262-263.) Lana corroborated the timeline that Detective Johnson learned from [redacted] as to the evening's events. (Trial Tr. 76-81.) This timeline was also

corroborated by one of the friends that Idris drove home that evening, who reported that Idris told her he was going back to Lana's right after dropping them off. (Trial Tr. 145.)

Detective Johnson spoke with Idris over the phone on April 3rd and asked if he was willing to talk about what had happened the night prior. (Trial Tr. 275.) In response to this question and being told no information about what had been reported, Idris asked for time to coordinate childcare if he was going to be arrested. (Trial Tr. 275-276.) When law enforcement ultimately did make contact with Idris, his phone was seized and an extraction of the phone was performed. (Trial Tr. 214.) An extraction was also completed for Lana and [redacted] phones. *Id.* In examining these examinations, Detective Johnson was able to see that Idris had deleted a number of messages from his phone, including all of the messages that were exchanged between him and [redacted] following the sexual assault. (Trial Tr. 279-280.)

Despite some content being deleted, Detective Johnson was able to locate some remaining messages on the phone of evidentiary value. (Trial Tr. 280.) On April 5th, Idris messaged a family member stating that he was still waiting and asking if that person had any other advice for him. (Trial Tr. 281.) When the relative responded to him "you good, three days later[]", Idris answered "we'll see. Depending on how vigilant the other person is. I deleted social media

because I know even if I'm good law-wise, there's going to be blowback on social media, etcetera." (Trial Tr. 281-282.) Several days later, Idris updated this family member that things were "so far, so good" but that he was "still scared shitless." (Trial Tr. 283-284.)

In addition to the electronic evidence that Detective Johnson processed, he also coordinated evidence from the sexual assault examination be sent to the Maine State Crime Laboratory. (Trial Tr. 284.) This was sent along with a known DNA sample collected from Idris. (Trial Tr. 285.) Through testing at the Maine Crime Laboratory, sperm cells and alpha-amylase (a component of saliva) were identified in an extract from [redacted] genital swab. (Trial Tr. 320.) A male DNA profile was identified from this sample. (Trial Tr. 323.) The forensic DNA analyst was also able to identify DNA profiles for both [redacted] and Idris based on the known samples provided of each. (Trial Tr. 320.) In comparing these samples, the analyst was able to determine that the DNA from the genital swab was the same as the defendant or his paternal relatives with an overall match probability of one in 2072, which she indicated was about as high of a probability that the type of DNA profiling utilized could provide. (Trial Tr. 323, 324.)

A criminal complaint charging Idris with Gross Sexual Assault was filed on April 14, 2022. (App. 1.) Idris plead not guilty to this charge on October 12,

2022. (App. 3.) Trial began on February 12, 2024, at which the jury heard the evidence discussed above along with testimony from Idris. (App. 8, Trial Tr. 381.) Idris testified—in contradiction to Lana and [redacted] that as he was leaving to drive friends home he asked if he should come back, and both of the women told him to return. (Trial Tr. 398.)

Idris said that the door was locked when he returned and [redacted] let him in. (Trial Tr. 399.) Idris testified that [redacted] then led him upstairs, that they consensually kissed in the hallway. (Trial Tr. 404.) He claimed that they then went into Lana's bed to begin having sex, despite the existence of multiple guest beds. (Trial Tr. 404, 411.) Idris ultimately claimed that they had consensual sex on three different occasions that night, and that [redacted] was an active participant who was "on top, riding [him]" as they had sex twice in fast succession. (Trial Tr. 406-407.) He testified that they then cuddled and slept for several hours, and then upon waking in the early morning they had sex for a third time after [redacted] rolled over to face him and put her arms around him. (Trial Tr. 408-409.) Idris claimed after he ejaculated this third time, he had a "pivotal moment" in his head that he should not have been having sex with [redacted] in Lana's bed and left. (Trial Tr. 409-412.)

In explaining his text to [redacted] the following morning, Idris told the jury that "an apology is not an admission of guilt," and that despite there being no

reason for [redacted] to send the message she did based on the evening he testified to, he responded as he did to apologize for making her feel bad. (Trial Tr. 415.) He claimed he had a clear memory of what happened that evening, and only responded to [redacted] that he didn't remember because he was in shock. (Trial Tr. 433-434.) Idris acknowledged the messages that he sent to [redacted] and others, and also acknowledged that he deleted those messages off of his phone. (Trial Tr. 438.) Idris claimed that [redacted] was functioning, not blacked out, and had no reason not to remember the multiple instances of what he claimed to be consensual intercourse. (Trial Tr. 441.)

On cross-examination, Idris agreed that "putting your penis inside of a sleeping woman is criminal;" that "if a person's sleeping they can't consent to having sex with you;" and that "if somebody doesn't consent to having sex with you, that that is a sexual assault." (Trial Tr. 442-43.)

During trial, the parties had extensive conversations about what, if any, *mens rea* should be read into the charge where it was otherwise absent in light of this Court's ruling in *State v. Asaad*, 2020 ME 11, 224 A.3d 596. (Trial Tr. 137, 250-254, 352-359.) The State argued that given the Court's ruling in *Asaad* and the Legislature's subsequent amendment to Gross Sexual Assault under 17-A M.R.S. § 253(2)(M), the appropriate *mens rea* for the jury to consider was criminal negligence. (Trial Tr. 250-251.) Ultimately, the trial court instructed

the jury that Idris needed to act recklessly with regard to whether [redacted] consented to the sexual act. (Trial Tr. 479.)

In closing arguments, the State summarized the evidence that the jury heard and why that evidence supported a finding that Idris was guilty beyond a reasonable doubt. (Trial Tr. 490- 519.) This included referencing that [redacted] sought medical care and made consistent statements in the course of this treatment, and also referencing [redacted] description of this medical treatment where the hospital "poked and swabbed every hole in [her] body" for the sexual assault examination. (Trial Tr. 495-496.)

On February 13, 2024, the jury returned a guilty verdict for the charge of Gross Sexual Assault. (A. 8.) Idris filed a motion for a new trial on February 22, 2024, which was denied on February 26, 2024. (A. 10.) On that same date, Idris was sentenced to 8 years to the Department of Corrections, with all but 42 months suspended, followed by 4 years of probation. (A. 9.) On February 29, 2024, Idris filed a timely notice of appeal. (A. 11.)

ARGUMENT

I. The trial court committed no error by instructing the jury to apply a reckless *mens rea* where the Legislature has already determined that a criminal negligence *mens rea* was necessary and sufficient.

The trial court's decision to instruct the jury with a reckless *mens rea* for this crime—a higher burden than that prescribed by the Legislature following *State v. Asaad,* 2020 ME 11, 224 A.3d 596—was appropriate and constituted no error.

A. Standard of Review

"In general, [this Court] review[s] jury instructions in their entirety to determine whether they presented the relevant issues to the jury fairly, accurately, and adequately, and we will vacate the court's judgment only if the erroneous instruction resulted in prejudice." *State v. Hansley*, 2019 ME 35, ¶ 8, 203 A.3d 827 (quotation marks omitted). The State agrees that although the transcript is less-than-clear on the specific language Idris requested, Idris sufficiently preserved this issue for appeal by arguing before the trial court that the appropriate *mens rea* should be knowing. (Trial Tr. 251, 352-53.)

Therefore, this Court reviews "preserved challenges to jury instructions for prejudicial error." *State v. Abdullahi*, 2023 ME 41, ¶ 36, 298 A.3d 815. "Prejudice occurs when an erroneous instruction on a particular point of law affects the jury's verdict, or alternatively, when the instruction is so plainly wrong and the point involved so vital that the verdict must have been based upon a misconception of the law." *Id.* (quotation marks omitted.) Idris bears the burden of demonstrating prejudice. *Id.* Further, this Court will "vacate the judgment only if the appellant can demonstrate that the denied instruction '(1)

stated the law correctly, (2) was generated by the evidence, (3) was not misleading or confusing, and (4) was not sufficiently covered in the instructions the court gave.'" *Id.* at ¶ 9 (quoting *State v. Hanaman*, 2012 ME 40, ¶ 16, 38 A.3d 1278).

Moreover, "[w]hen reviewing a judgment for sufficiency of the evidence, [this Court] views the evidence in the light most favorable to the State to determine whether the fact-finder could rationally have found each element of the offense beyond a reasonable doubt. We defer all credibility determinations and reasonable inferences drawn by the fact-finder, even if those inferences are contradicted by parts of the direct evidence. [This] review does not intrude on the jury's role to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *State v. Edwards*, 2024 ME 55, ¶ 17, --- A.3d --- (quotation marks and internal citation omitted).

Finally, on issues of statutory interpretation, this Court reviews a statute de novo. *State v. Santerre*, 2023 ME 63, ¶ 8, 301 A.3d 1244. "In interpreting a statute, [this Court's] single goal is to give effect to the Legislature's intent in enacting the statute." *Id.* (quotation marks omitted). This Court first looks "to the plain language of the statute to determine its meaning if we can do so while avoiding absurd, illogical, or inconsistent results." *State v. Conroy*, 2020 ME 22,

¶ 19, 225 A.3d 1011.This Court will also "consider the subject matter, design, and structure of the statute, as well as the consequences of specific interpretations." *Santerre*, 2023 ME 63, ¶ 9, 301 A.3d 1244. If the statutory meaning is ambiguous, this Court will "look beyond the words of the statute to examine other potential indicia of the Legislature's intent, such as the legislative history." *Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011.

B. Law

Title 17-A M.R.S. § 253(2)(D) (2022) provides that a "person is guilty of gross sexual assault if that person engages in a sexual act with another person and . . . [t]he other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act."[1]

The State agrees that this statute requires proof of a *mens rea* in light of this Court's decision in *State v. Asaad*, 2020 ME 11, 224 A.3d 596, and the Legislature's response to that decision by amending 17-A M.R.S. § 253(2)(M) (2023). *See* 17-A M.R.S. § 34(1), (4) (2022).

Here, the trial court instructed the jury, along with applicable definitions, that the State had to prove beyond a reasonable doubt that Idris "engaged in a sexual act with [redacted] and that [she] was unconscious or otherwise

[1] The State acknowledges that the mirror to the Gross Sexual Assault statute at issue in the Unlawful Sexual Contact statute, for instance, also does not include a *mens rea* standard. 17-A M.R.S. § 255-A(1)(C) (2022).

physically incapable of resisting the sexual act and that [redacted] had not consented to the sexual act and that with regard to whether [redacted] had consented, [Idris] acted recklessly." (A. 33; Trial Tr. 479.) The court instructed the jury on all definitions of reckless. 17-A M.R.S. § 35(3) (2022) (Trial Tr. 480-81; A. 34-35.)

In *State v. Asaad*, this Court "assume[d] that knowledge is the required *mens rea*" and determined that the evidence was "more than sufficient" to support that Asaad had acted knowingly as to whether the victim had "expressly or impliedly acquiesced." 2020 ME 11, ¶¶ 7, 13, 224 A.3d 596. In so assuming, this Court explicitly left to the Legislature to determine the appropriate mental state—whether a defendant "*actually* understands the victim's communication . . . or if, instead, he misunderstands the victim's communication but his misunderstanding is reckless or criminally negligent—because in "this complicated and nuanced area of human behavior in which norms—and, nationally, legal standards—are varied and rapidly changing, courts must look to the Legislature for broad-based policy judgments. *Id.* at ¶ 15 (emphasis in original).

In dicta, the Court noted that,

> [t]here is a substantial difference between imposing felony liability when a defendant knowingly violates a victim's desire not to have sex and imposing that

> liability when a defendant recklessly or criminally negligently misunderstands that a victim does not consent. Given the significance of this distinction, in this important and unsettled area of the law the standard of behavior should be determined by the people's elected representatives.

Id. at ¶ 16.

C. Application

a. Specifically in response to *Asaad*, the Legislature determined that the appropriate *mens rea* standard is criminal negligence when the State must prove beyond a reasonable doubt that a victim did not consent.

This Court decided *State v. Asaad* on January 28, 2020. In 2022, during the Second Regular Session of the 130th Maine Legislature, L.D. 1903, H.P. 1410, was proposed, titled "An Act to Update Criminal and Related Statutes and Respond to Decisions of the Law Court." The summary to that bill discussed the amendments contained in Part E "to respond to the issue identified by the Law Court in *State v. Asaad*, . . . specifically the absence of a mens rea requirement in the Class C crime of gross sexual assault" under section 253(2)(M), and proposed a knowing mental state. *Id.* at 7. The summary also noted that this proposal "reflects the original proposal of [CLAC] in L.D. 710 and differs from the committee amendment to that bill," which required a reckless mens rea. *Id.*

Following testimony at the working groups on the Committee on Criminal Justice and Public Safety, Committee Amendment A to H.P. 1410, L.D.

1903, was proposed, that established the *mens rea* as criminal negligence. This bill ultimately passed. P.L. 2021, c. 608, sec. E-1 (eff. Aug. 8. 2022).

Here, the Legislature expressly considered the Law Court's suggestion in dicta that a mental state of knowing is required for a felony sexual assault conviction, but it was clearly rejected in favor of a criminal negligence standard.[2] The plain language of section 253(2)(D)—"the other person . . . and has not consented to the sexual act"—is not ambiguous and is identical to the first part of section 253(2)(M)'s language at issue in *Asaad*—"[t]he other person has not consented to the sexual act." This is contrary to Idris' argument that "the Legislature has failed to provide a specific level of *mens rea*." (Blue Br. 26.) Because the statutory language at issue is identical, and the Legislature has spoken on the requisite *mens rea* to be prove by the State, this Court should determine that criminal negligence is the appropriate *mens rea* for section 253(2)(D).

[2] The Defendant argues that the rule of lenity should apply such that the more stringent *mens rea* of knowing must be resolved in Idris' favor. (Blue Br. 31-32.) Only if statutory language is ambiguous—meaning susceptible of different meanings—does this Court consider the legislative history and other "indicia of legislative intent." *State v. Dubois Livestock, Inc.*, 2017 ME 223, ¶ 6, 174 A.3d 308 (quotation marks omitted). Only "if the Legislature's intent remained indecipherable after using the tools of construction available to [this Court], the rule of lenity would require [this Court] to resolve any ambiguities in [a defendant's] favor." *State v. McLaughlin*, 2018 ME 97, ¶ 9, 189 A.3d 262 (quotation marks omitted) (citing *U.S. v. Wells*, 519 U.S. 482, 499 (1997) ("The rule of lenity applies only if, after seizing everything from which aid can be derived, . . . we can make no more than a guess as to what Congress intended)). Here, because the statute is *not* ambiguous and, moreover, the Legislative intent is clear, the rule of lenity does not apply to provide Idris with the reprieve he seeks.

As in *Asaad* where this Court left that determination to the body of people's elected representatives, this Court should do so here and recognize that for the prosecution of a defendant pursuant to 17-A M.R.S. § 253(2)(D), the State must prove that the defendant acted with criminal negligence. 2020 ME 11, ¶¶ 15-16, 224 A.3d 596.

Therefore, because the trial court gave an instruction more favorable to the defense, i.e., required the State to unanimously prove beyond a reasonable doubt a more difficult *mens rea*, Idris was not prejudiced by the court's instruction.

b. While Idris requested a knowing instruction, it is not clear that he preserved the request that it be applied to the entirety of section 253(2)(D) and, thus, this Court should review for obvious error.

Idris argues that the *mens rea* requirement must apply to the entirety of section 253(2)(D). (Blue Br. 23-24.) From the State's review of the trial transcript, while Idris requested a jury instruction that he acted knowing, it was not clear whether that request was limited to the "consent" element or to the entirety of the statute thereby including proof that he knew that "the other person was unconscious or otherwise physically incapable of resisting." (Trial Tr. 135, 236-42, 250-55, 352-57.) While the court noted that it was not "asking for further pushback" on its determination of recklessness, Idris did not "take

issue" with the proposal that the jury be instructed that the reckless *mens rea* apply only to the victim's consent. (Trial Tr. 357-58.) Therefore, this issue is not sufficiently preserved and should be reviewed by this Court for obvious error. *State v. Coleman*, 2019 ME 170, ¶ 22, 221 A.3d 932.

Obvious error requires that there be "(1) error, (2) that is plain, and (3) that affects substantial rights." *Id.* (quotation marks omitted). If those three conditions are met, this Court must then conclude that the "error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* (quotation marks omitted); *see also* M.R.U. Crim. P. 52(a) (harmless error).

It was not error, much less an error that plainly affected the fairness and integrity or public reputation of judicial proceedings where the evidence established at trial was that Idris knew (aware that such circumstances exist, 17-A M.R.S. § 35(2)(B)) that [redacted] was sleeping in Lana's bed, i.e., "unconscious or otherwise physically incapable of resisting" at the time that he penetrated her. (Trial Tr. 34, 42.) To the extent that the court erred, it is harmless in light of the evidence against Idris, including his own admissions, DNA evidence, and corroborative testimony from multiple witnesses. (Trial Tr. 42, 79, 145, 323-324.) M.R.U. Crim. P. 52(a) (harmless error means "[a]ny error, defect, irregularity, or variance that does not affect substantial rights shall be disregarded").

c. Even if it was error for the trial court to instruct on recklessness, the wealth of evidence supports that Idris acted knowingly and, therefore, he was not prejudiced by the trial court's instruction.

As with the argument supra, evidence introduced at trial supports that Idris knew that [redacted] did not consent to the sexual act. (Trial Tr. 34, 40, 42, 59.) Thus, Idris was not prejudiced by the trial court's reckless instruction. *Abdullahi*, 2023 ME 41, ¶ 36, 298 A.3d 815. Moreover, any error is harmless given the sufficiency of the evidence to support such a finding that Idris acted knowing with respect to [redacted] lack of consent. M.R.U. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights shall be disregarded.").

d. Effect of the Lack of Availability of the Voluntary Intoxication Defense.

The fact that the Legislature settled on criminal negligence as the appropriate *mens rea* for a gross sexual assault where the other person did not consent to the sexual act militates against Idris' reading that a knowing requirement must be necessary in order for a defendant to take advantage of a voluntary intoxication defense. (Blue Br. 27-29.)

For instance, at the February of 2022 working groups on L.D. 1903, the Act to Update Criminal and Related Statues and Respond to Decisions of the Law Court," the State of Maine Office of the Attorney General (OAG) and

Criminal Law Advisory Commission (CLAC) both submitted testimony in support of that bill. In so doing, the OAG encouraged the Legislature to adopt a reckless mental state because it would "reflect[] a policy of discouraging drunken assaults" and would "preclude a defendant from asserting that the State failed to prove the state of mind element due to the defendant's voluntary intoxication." *An Act to Update Criminal and Related Statutes and Respond to Decisions of the Law Court: Hearing on L.D. 1903 Before the Committee on Criminal Justice and Public Safety*, 130th Legis. (Feb. 2, 2022, testimony of Aaron M. Frey, Attorney General).

CLAC submitted testimony that was not in unanimous agreement as to what culpable state of mind should be enacted. *An Act to Update Criminal and Related Statutes and Respond to Decisions of the Law Court: Hearing on L.D. 1903 Before the Committee on Criminal Justice and Public Safety*, 130th Legis. (Feb. 2, 2022, memorandum/testimony of CLAC). Some members preferred a knowing standard, which the Law Court adopted in *Asaad*, but others supported a reckless standard. *Id.* The CLAC testimony noted that, were the Legislature to adopt a reckless standard, there would be "significant practical effect to opting for this level of culpable mental state." *Id.* Specifically, noting that the "Legislature has declared that 'self-inducted intoxication' (alcohol or drugs) is not material to whether or not a person is aware of a risk. 17-A M.R.S. § 37. Thus

applying a culpable mental state of recklessness reflects a policy that would not excuse defendants who were 'too drunk' to be aware that the other person did not acquiesce to certain conduct." *Id.*

Moreover, this Court also highlighted the importance of allowing the Legislature to make the determination about the appropriate *mens rea* standard: "In this complicated and nuanced rea of human behavior in which norms—and, nationally, legal standards—are varied and rapidly changing, courts must look to the Legislature for broad-based policy judgments." *Asaad*, 2020 ME 11, ¶ 15, 224 A.3d 596.

Ultimately, the Legislature decided that an even *lower* mental state was appropriate: criminal negligence. L.D. 1903, P.L. 2021, c. 608. This Court should not disturb the "broad-based policy judgment" of the Legislature. *Asaad*, 2020 ME 11, ¶ 15, 224 A.3d 596.

II. The Trial Court Correctly Admitted Statements Made to Medical Providers for Purposes of Medical Diagnosis and Treatment.

A. Standard of Review

This Court reviews a trial court's evidentiary rulings for clear error or an abuse of discretion. *State v. Kimball*, 2015 ME 67, ¶ 14, 117 A.3d 585. Further, even when it is determined that the trial "court has abused its discretion in admitting evidence, the abuse of discretion will not require vacatur if it

constitutes harmless error, *State v. Penley*, 2023 ME 7, ¶ 9, 288 A.3d 1183, i.e., if 'it is highly probable the error did not affect the jury's verdict.' *State v. Donovan*, 1997 ME 181, ¶ 9, 698 A.2d 1045." *State v. Coleman*, 2024 ME 35, ¶ 18 n.6, 315 A.3d 698. A determination of relevance by the trial court is reviewed for clear error. *State v. Cookson,* 2003 ME 136, ¶ 24, 837 A.2d 101.

B. Law

Maine Rule of Evidence 802 provides that hearsay is not admissible at trial unless statute or other rules of evidence apply or as prescribed by this Court. One such exception provided by the Rules of Evidence is for statements made for medical diagnosis or treatment. M.R. Evid. 803(4). Statements that qualify for this exception are those that are "made for—and [] reasonably pertinent to—medical treatment, and; describe medical history, past or present symptoms or sensations, their inception, or their general cause." *Id.*

This Court has noted that "[p]ertinence, within the contemplation of Rule 803(4), is an objective consideration beyond the declarant's state of mind." *State v. Sickles,* 655 A.2d 1254, 1257 (Me. 1995) (quotation marks omitted). Although the Court has noted that there are cases where extraneous details of an assault might not be pertinent to medical treatment or diagnosis, there are also cases where "certain details that may not be relevant to treatment for physical injuries may be pertinent to treatment for emotional or psychological

trauma." *Walton v. Ireland*, 2014 ME 130, ¶ 19, 104 A.3d 883.[3] *See e.g. State v. Rosa*, 575 A.2d 727, 729 (Me. 1990) ("Obviously, the fact that the victim told the physician that the act was forced and that she had been choked during it are relevant to his diagnosis and treatment. Furthermore, the physician prefaced his remark by saying that the emotional ramifications of rape are a significant part of the victim's problem in relation to treatment. Accordingly, the recounting of the knife threat pertained to the emotional trauma that the physician was also addressing.")

In addition to the hearsay exception prescribed by Rule 803(4), Maine Revised Statute Title 16, section 357 also provides the following:

> Records kept by hospitals . . . and other medical facilities similarly conducted or operated or which, being incorporate, offer treatment free of charge, shall be admissible, as evidence in the courts of this State so far as such records relate to the treatment and medical history of such cases *and the* court shall admit copies of such records, if certified by the persons in custody thereof to be true and complete, but nothing therein contained shall be admissible as evidence which has reference to the question of liability.

16 M.R.S. § 357 (2024).

[3] *See also: State v. Cookson*, 2003 ME 136, ¶ 26, 837 A.2d 101 ("Gould's statements to the nurse about having a problem with Cookson and about Cookson following and stalking her were made to describe to the nurse the external source of her depression. Gould's statements were also pertinent to her treatment, including the provision of antidepressant drugs, given by the nurse practitioner. For these reasons, the court did not err in allowing the nurse practitioner to testify about the cause of Gould's depression or to recite Gould's statements to her.")

In analyzing the interplay between the Rules of Evidence and Section 357, this Court noted the following:

> "By its terms, section 357 provides a method of authenticating the hospital records and provides an exception to Rule 802 of the Maine Rules of Evidence, which, as a general matter, bars the admission of hearsay evidence. The statute's effect is similar to the hearsay exception provided in Rule 803(4) in that the statute creates an exception to the exclusion of the records as hearsay despite the fact that they contain statements made out of court, offered for the truth of the matter asserted related to treatment and medical history. Accordingly, Rule 803(4) need not be analyzed when the record meets the qualifications of section 357."

State v. Jones, 2019 ME 33, ¶ 12, 203 A.3d 816, 821.

C. Application

Although Idris now challenges the admission of the statements under Maine Rules of Evidence Rule 803(4), he raised no such claim below; to the contrary, he agreed to the admission of the medical records containing the statements that he now takes issue with. (Trial Tr. 157.) Therefore, this Court should review his unpreserved claim of error under an obvious error standard, requiring "either a determination or an assumption that an error was made, and then a determination as to whether the error was obvious and affected substantial rights." *State v. Roberts*, 2008 ME 112, ¶ 21, 951 A.2d 803 (quotation

marks omitted). If those "conditions are met, [this Court] must 'also conclude that . . . the error seriously affects the fairness and integrity or public reputation of judicial proceedings' before" vacating a judgment based on that error. *State v. Nichols*, 2013 ME 71, ¶ 23, 72 A.3d 503 (quoting *State v. Pabon*, 2011 ME 100, ¶ 29, 28 A.3d 1147).

Idris' claim that certain statements made to the medical providers were unfairly prejudicial is arguably preserved for appeal given his objection at trial that the doctor's recitation of triage notes was "rehashing the testimony from [redacted] and "duplicative." (Blue Br. 35; Trial Tr. 164.) Although preserved, however, this argument still fails because the trial court did not abuse its discretion in admitting this testimony. *Kimball*, 2015 ME 67, ¶ 14, 117 A.3d 585, *see also* *State v. Rancourt*, 435 A.2d 1095, 1103 (Me. 1981) (holding that the evidence was not unduly prejudicial where it was "at most cumulative").

Idris' suggestion that the testimony from medical providers was unfairly prejudicial is problematic for several reasons, including that the trial court specifically rejected this argument (Trial Tr. 165), [redacted] testimony was not unreliable or "suspect" as Idris suggests,[4] and that that the testimony was

[4] [redacted] was clear in her testimony that she had no jealousy towards her ex-boyfriend, and that she was only upset because he had canceled plans with her son. (Trial Tr. 56.) Similarly, [redacted] did recall getting a snack before going to bed, and noted that she did dishes every time she was in Lana's kitchen. (Trial Tr. 58.) Although she had been drinking, she was never to the level of intoxication where she was "blacked out" or could not remember what was happening. (Trial Tr. 454.)

corroborated by a wealth of evidence beyond the testimony of medical providers. (Blue Br. 37; Trial Tr. 27-46, 74-101, 140-146, 259-285, 305-324.)

Even if Idris' argument that the testimony exceeded the bounds of Rule 803(4) had been preserved, this argument also fails for several reasons. The nurse who conducted the sexual assault examination testified that, much like treatment discussed in *Cookson* and *Rosa*, the treatment provided to [redacted] was to address her "physical needs,[] emotional needs, [and] psychological" ones. (Trial Tr. 195.) Given that, the trial court could appropriately conclude the statements that Idris now objects to were pertinent to her comprehensive medical treatment and diagnosis. M.R. Evid. 803(4).

Finally, should this Court find error in the statements that were admitted, any error was harmless.[5] *See State v. Moore*, 2023 ME 18, 290 A.3d 533, 536 ("we conclude that the testimony was harmless because Moore admitted to being involved in the confrontation depicted in the videos; the jury viewed the videos numerous times during the trial and twice during deliberations,

[5] It is important to note that Idris did not object to the admission of the medical records as a whole, presumably based on his knowledge of section 357. (Trial Tr. 157.) Had he not, the State could have further inquired of the medical providers as to why these portions were relevant to their medical diagnosis and treatment. Additionally, the statements that Idris takes issue with were disputed facts, however, his own testimony established the location of the sexual act and that he was the other person involved. (Trial Tr. 404.)

suggesting that the jury decided for itself who was depicted in the videos; and the record contains overwhelming evidence in support of the jury's verdict.")

III. The State's Closing Argument was Proper and not Misconduct

A. Standard of Review

If a defendant does not timely object, this Court reviews for obvious error and will vacate the judgment "only if [this Court] determine[s] that the prosecution's conduct was improper." *State v. Clark*, 2008 ME 136, ¶ 7, 954 A.2d 1066. Instances of alleged prosecutorial misconduct will amount to obvious error when "a defendant . . . first demonstrate[s] that (1) there was prosecutorial misconduct that went unaddressed by the court and (2) the error was plain." *State v. Scott*, 2019 ME 105, ¶ 25, 211 A.3d 205 (quotation marks omitted). If the defendant meets this initial burden, they then "'must next demonstrate (3) that the error was sufficiently prejudicial to have affected the outcome of the proceeding.'" *Id.* (quoting *State v. Nobles*, 2018 ME 26, ¶ 21, 179 A.3d 910). Should a defendant prevail, this Court "will set aside a jury's verdict only if [it] conclude[s] that . . . the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* (quotation marks omitted).

B. Law

The Court has noted that "[w]hen a prosecutor's statement is not sufficient to draw an objection, particularly when viewed in the overall context of the trial, that statement will rarely be found to have created a reasonable probability that it affected the outcome of the proceeding." *Scott*, 2019 ME 105, ¶ 25, 211 A.3d 205; *see also Nobles*, 2018 ME 26, ¶ 28, 179 A.3d 910 (The context of the prosecutor's repeated statements regarding accountability were important particularly when the prosecutor "predicated the jury's duty to make that decision on its consideration of the evidence, stating, 'that's what you should decide this case on. Based upon the evidence.'").

C. Application

Idris' challenges to closing argument made by the State, discussing the medical testimony and quoting [redacted] testimony, were all proper and did not constitute obvious error. (Blue Br. 38.) Contrary to Idris' argument, the State is free to comment upon evidence to support that a victim did not have a motive to lie, such as subjecting oneself to difficult medical treatment like a sexual assault examination and follow-up medication. (Blue Br. 38). This Court has noted that "[a] prosecutor may present an analysis of the evidence in summation with vigor and zeal. . . . We have repeatedly upheld the prosecutor's ability to argue vigorously for any position, conclusion, or inference supported by the evidence." *Scott*, 2019 ME 105, ¶ 26, 211 A.3d 205.

Further, the statement made by the State about [redacted] being "poked and swabbed [in] every hole in [her] body" was an almost exact recitation of her own testimony. (Trial Tr. 45.) It was also made in the context of suggesting to the jury evidence they could consider in deciding credibility, something that the State also informed the jury was "solely in [their] province," and part of a closing argument where the State indicated it did not want the jury to "make decisions on anything other than the evidence that was before [it]." (Trial Tr. 490, 517.) The arguments relating to the medical treatment [redacted] received, and testimony that she gave regarding this treatment, were properly admitted; therefore, there is no "reasonable probability that it affected the outcome of the proceeding." *Scott*, 2019 ME 105, ¶ 25, 211 A.3d 205.

CONCLUSION

For the foregoing reasons, the State of Maine respectfully requests that the judgment of conviction be affirmed.

Respectfully submitted,

DATED: April 9, 2024

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CERTIFICATE OF SERVICE

I, Katherine E. Bozeman, Assistant District Attorney, hereby certify that I mailed two copies of the foregoing "BRIEF OF APPELLEE" to Idris' attorney of record, Timothy Zerillo, Esq.

DATED: April 9, 2024

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