STATE OF MAINE
WALDO, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: WAL-24-181

STATE OF MAINE,
Appellee

v.

MATTHEW PENDLETON,
Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

AARON M. FREY
Attorney General

ROBERT L. ELLIS, JR.
JEFFREY BAROODY
Assistant Attorneys General
State's Attorneys Below

KATIE SIBLEY
Assistant Attorney General
State's Attorney on Appeal
6 State House Station
Augusta, Maine 04333
(207) 626 - 8834

LISA J. MARCHESE
Deputy Attorney General
LAURA YUSTAK
Assistant Attorney General
Of Counsel

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STATEMENT OF THE ISSUES

I. Whether the trial court abused its discretion in denying, in part, Matthew Pendleton's motion in limine, and ruling that screen shots of several text messages were admissible as evidence at his trial.

II. Whether the trial court abused its discretion in denying Matthew Pendleton's motion in limine to exclude the testimony of Claudia Pendleton.

III. Whether the trial court abused its discretion by allowing Derek Pearson to testify at his trial.

IV. Whether the trial court abused its discretion in denying Matthew Pendleton's motion for a mistrial.

V. Whether the trial court abused its discretion by excluding the affidavit of a seated juror from consideration at sentencing.

SUMMARY OF ARGUMENT

1. The trial court did not abuse its discretion by denying Matthew Pendleton's (Pendleton) motion in limine, in part, and admitting into evidence screen shots of text messages sent by Pendleton. The trial court properly concluded that the screen shots were sufficiently authenticated, relevant to an issue at trial, not unfairly prejudicial, and constituted the best evidence of the electronic communications.

2. Although he filed a motion in limine on the issue of Claudia Pendleton (Claudia)'s testimony, Pendleton has not properly preserved this issue for appellate review, and admission of the testimony does not meet the obvious error standard. Even if properly preserved, the trial court neither committed error nor abused its discretion, as it correctly ruled that her testimony was relevant and not unfairly prejudicial.

3. The trial court did not abuse its discretion in allowing Derek Pearson to testify. The trial court's ruling appropriately balanced the highly probative nature of the testimony against the potential prejudice of the jury being exposed to Pendleton's custodial status. It strictly limited the State's direct examination and did not curtail Pendleton's potential cross-examination to test the witness' motivation and credibility.

4. The trial court did not abuse its discretion in determining that a curative instruction would sufficiently cure the jury's exposure to inadmissible evidence and by denying Pendleton's motion for mistrial. The jury's exposure was brief, and the trial court properly instructed the jury multiple times on the presumption of innocence, and properly instructed the jury that if the trial court had ordered that certain testimony be disregarded the jury was to give it no weight during their deliberations. There is nothing in the record to overcome the presumption that the jury followed the court's instructions.

5. The affidavit of a seated juror that Pendleton argued the trial court should consider at sentencing contained information related only to the jury's deliberations. This Court has long held that the parties and the trial court are prohibited from inquiring into the jury's deliberations absent two specific exceptions. Because the affidavit raised no issues related to either exception, the trial court did not abuse its discretion by excluding this affidavit from consideration at the sentencing hearing.

PROCEDURAL HISTORY

On March 22, 2023, the Waldo County Grand Jury returned a single count indictment charging Pendleton with intentional or knowing or depraved indifference murder, in violation of 17-A M.R.S. §201(1)(A) & (B) (2022). (*State of Maine v. Matthew Pendleton,* WALCDCR-2023-00018, Appendix 3, 53 (A. ___)). On April 3, 2023, Pendleton was arraigned on the indictment and entered a plea of not guilty. (A. 4).

Following selection of the jury on February 5 and 6, 2024, the trial court addressed several evidentiary motions filed by the parties. (A. 13; Motion in Limine Transcript, (Feb. 6, 2024)). On February 8, 2024, prior to the start of the trial, the trial court denied in part Pendleton's motion in limine to exclude screen shots of several text messages. (A. 54-58; Trial Transcript I, 5-33 (T. Tr. _, ___)). The jury trial was held on February 8-9 and 12-14, 2024. (A. 10-13). On February 14, 2024, the jury returned a verdict of guilty on the lesser-included charge of manslaughter in violation of 17-A M.R.S. §203(1)(A) (2022). (A. 13-14). On April 8, 2024, the trial court sentenced Pendleton to twenty years to the Department of Corrections, with all but fourteen years suspended, followed by four years of probation. (A. 14-15, 18-20). Pendleton timely appealed his conviction and filed an application to appeal his sentence, which was granted by the Sentence Review Panel. (A. 17).

STATEMENT OF FACTS

At the end of 2019, Pendleton was often intoxicated, and when intoxicated he was "very narcissistic," "very selfish," louder, and sometimes mean. (T. Tr. I, 73, 90). Pendleton was so "unpleasant to be around" when intoxicated that he "drove a lot of people away" from the family, including his daughter Claudia, who distanced herself from him, and his wife Sara, who separated from him at this time and moved out of the marital home with their two children. (Id. at 90-91, 109-110, 180).

After the separation, Pendleton and Sara continued to communicate amicably, primarily via text messages, regarding their children. (Id. at 109). However, when drunk, Pendleton sent her "incoherent" and irrelevant text messages. (Id. at 110). Sara was so concerned about Pendleton's drinking that she made a rule that on Friday nights he should come to her house to visit with their children, so that she did not have to worry about him driving under the influence. (Id. at 109).

In July or August 2019, Kevin Curit (Curit), Pendleton's best friend since childhood, moved into Pendleton's home in Lincolnville. (Id. at 123, 131-132). Sara had significant concerns about Pendleton and Curit living together, despite their long-term friendship. (Id. at 145). Both men were struggling with their respective physical health and severe alcoholism, creating an unhealthy

living situation. (Id. at 56-57, 61, 123-124 132, 145; T. Tr. III, 38-39). During the five to six months Curit lived in his home, Pendleton spoke to Sara three or four times expressing his concern about going to prison. (T. Tr. I, 146).

On January 5, 2023, at 5:55 p.m., Pendleton purchased three bottles of liquor – a "nip," a pint, and a fifth. (Id. at 67-71). Though his daughter Claudia rarely responded to his text messages, Pendleton texted her around 11:00 p.m. that evening: "I hit hard, fucker. My hand hurts from destroying something half your size." (Id. at 96; State's Exhibit 9E (St. Ex. ___)). As part of this conversation, Pendleton texted Claudia two photographs. (T. Tr. I, 96; St. Ex. 9G). The first depicted Pendleton's kitchen; the second was of Curit. (T. Tr. I, 97; St. Ex. 9G). Pendleton then texted her: "I have broken knuckles" and "I have a broken hand." (T. Tr. I, 99; St. Ex. 9L). On this same evening, Sara returned to Maine from a business trip to Dallas, Texas. (T. Tr. I, 111). When she turned her phone on after landing in Portland, she received several text messages from Claudia expressing concern about the text messages she had received from Pendleton. (Id. at 111). Sara advised Claudia to keep her posted and drove home as quickly as possible. (Id. at 112).

On January 6, 2023, at 6:08 a.m., Pendleton texted Sara: "Kevin is gone. I just found him dead. I am sad, I think he hit his head. I pulled him inside after I asked him to leave. He is dead. It hurts me my friend is gone." (Id. at 116; St.

Ex. 9A). Sara saw the message at 8:42 a.m. and responded, asking Pendleton if he had called 911. (T. Tr. I, 116; St. Ex. 9A). Sara and Pendleton then spoke twice on the phone. (T. Tr. I, 117-118). During these calls, Pendleton advised Sara that he located Curit face down in the camper, Curit's face was flat, and that he and Curit had been "getting on each other's nerves," "bickering, [and] fighting for a couple of days." (Id. at 120).

In between his phone calls with Sara, Pendleton finally called 911 around 9:39 a.m. to report Curit deceased in the camper on his property. (Id. at 149). Three Waldo County Sheriff's deputies responded to Pendleton's residence at 54 Thorndike Road in Lincolnville. (Id. at 165). The officers noted lots of foot tracks in the snow and what appeared to be blood between the house and the camper. (Id. at 167). They saw the door to the camper was open and what appeared to be blood on the door, awning arm, and back of the camper. (Id.). Based on Pendleton's report, officers peered into the camper and saw a deceased male on the floor, under a sleeping bag, with his feet sticking out. (Id. at 170-172).

Deputy Jackson approached Pendleton's residence and saw what he suspected was blood on the side of the home and on a paper towel next to the front door. (Id. at 175-176, 183). Pendleton was seated on a couch, appeared visibly intoxicated, smelled of alcohol, and was slurring his speech. (Id. at

183). Dep. Jackson and Pendleton had a brief conversation during which Pendleton, on his own initiative, stood up and placed his hands behind his back. (St. Ex. 4). Dep. Jackson told Pendleton he was not under arrest and asked him to sit back down. (St. Ex. 4). Pendleton was then escorted from the residence and placed in Dep. Jackson's cruiser to preserve the scene. (T. Tr. I, 176, 186).

Shortly after 12:00 p.m., members of the State Police Evidence Response Team arrived at Pendleton's residence and received permission from the Medical Examiner's Office to enter the camper. (T. Tr. II, 22, 25). Detective Landry saw Curit lying on his back between two bench seats on the floor of the camper. (Id. at 26). A sleeping bag was draped over Curit. (Id.). His feet were sticking out; one foot was bare, the other covered by a sock. (Id.). Curit was shirtless, his pants were wet, and both his pants and boxers were slightly pulled down. (Id. at 27). Detective Landry also saw that Curit's body was covered in bruises, red marks, and scrapes. (Id.).

Dr. Margaret Greenwald, a forensic pathologist contracted with the Medical Examiner's Office, performed an autopsy on Curit. (T. Tr. III, 52-53). She documented numerous irregular abrasions and contusions on Curit's head, face, chest, shoulders, legs, and back. (Id. at 58-97). Specifically, Curit had multiple abrasions on the sides of his neck, and "a band-like abrasion …

around the curves of his neck." (Id. at 58-59). All the abrasions and contusions occurred within hours of Curit's death. (Id. at 58-90). Curit also had petechial hemorrhaging, hemorrhaging under the skin and muscles of his neck, and a fracture and hemorrhage on his thyroid cartilage. (Id. at 67-68, 75). Based on these injuries, Dr. Greenwald concluded Curit was killed by ligature strangulation. (Id. at 68, 96).

On the evening of January 6, 2023, the State Police executed a search warrant at Pendleton's residence. (T. Tr. II, 35, 75). Human blood stains on a blue shirt, sweatshirt, and bandana attached to a dog collar found in the living room matched Curit's DNA. (T. Tr. II, 37-39, 180-182; State's Exhibits 8, 13, 17). A human blood stain on a belt found on the kitchen counter matched Curit's DNA. (T. Tr. II, 41-42, 182; State's Exhibit 19). In the bathroom, human blood stains on a sweatshirt, the sink, and paper towels in two trash cans matched Curit's DNA. (T. Tr. II, 43-48, 182-185; State's Exhibits 24-27). Outside the residence, a trash bag, which appeared to have been recently removed from the kitchen, also contained paper towels with human blood stains that matched Curit's DNA. (T. Tr. II, 43-48, 182-185; State's Exhibit 29).

Around 8:00 p.m., Maine State Police Detectives Crawford and Ferreira met with Pendleton in the driveway of his father's residence in Camden. (T. Tr. II, 75-77). Pendleton was visibly intoxicated and had an open bottle of alcohol

and a bag containing another bottle of alcohol in his hands. (Id. at 77-78). When the detectives informed Pendleton that they were there to collect his boots pursuant to a search warrant, Pendleton became extremely agitated and began hollering obscenities at the detectives. (Id. at 77-78). Human blood stains on both boots matched Curit's DNA. (Id. at 178-179; State's Exhibit 1).

On January 7, 2023, around 6:00 p.m., Det. Crawford received a phone call from Pendleton's sister, who was aware that the State Police were trying to locate her brother. (T. Tr. II, 82-83). Based on her call, Det. Crawford went to her residence. (Id.). After parking in the driveway, Det. Crawford began walking down the side of the road and heard someone start running through the woods. (Id. at 84-85). After an approximate 150-foot chase, Det. Crawford located Pendleton on the ground behind a tree. (Id. at 86). Det. Crawford took Pendleton into custody and transported him to the Waldo County Jail. (Id. at 87).

ARGUMENT

I. The trial court properly denied Pendleton's motion in limine, in part, and properly determined the screen shots of several text messages were admissible.

Pendleton contends that the trial court erred by denying his motion in limine to exclude screenshots of text messages received by Claudia. (Blue Brief 8-15 (Bl. Br. ___); State's Exhibits 9E, 9G, 9L (St. Ex., ___)). He argues that the screen shots lacked the proper authentication for admission, were not relevant, were unfairly prejudicial, and were admitted in violation of the best evidence rule. (Id.).

This Court reviews "a trial court's denial of a motion in limine for an abuse of discretion and its legal conclusions de novo." *State v. Dube,* 2014 ME 43, ¶ 8, 87 A.3d 1219. A trial court's rulings on the admissibility of evidence are reviewed for an abuse of discretion. *State v. Thomas,* 2022 ME 27, ¶ 23, 274 A.3d 356.[1] "A court abuses its discretion in ruling on evidentiary issues if the ruling arises from a failure to apply principles of law applicable to the situation, resulting in prejudice." *Thomas,* 2022 ME at ¶ 23, 274 A.3d 356.

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[1] *See State v. Tieman,* 2019 ME 60, ¶¶ 12-13, 207 A.3d 618 (ruling on authentication reviewed for abuse of discretion); *State v. Bethea,* 2019 ME 169, ¶ 22, 221 A.3d 563 (ruling on relevancy reviewed for clear error); *State v. Osborn,* 2023 ME 19, ¶ 19, 290 A.3d 558 (trial court's M.R. Evid. 403 analysis reviewed for an abuse of discretion); *State v. Legassie,* 2017 ME 202, ¶ 29, 171 A.3d 589 ("application of the best evidence rule [reviewed] for an abuse of discretion.").

A. The trial court properly determined that the screen shots were sufficiently authenticated.

"Maine's standard for authenticating evidence pursuant to Rule 901 is identical to that set forth in the Federal Rules of Evidence and embodies a flexible approach to authentication reflecting a low burden of proof." *Tieman,* 2019 ME at ¶ 13, 207 A.3d 618 (quotation marks and citation omitted). The proponent of an item of evidence meets this low burden simply by "produc[ing] evidence sufficient to support a finding that the item is what the proponent claims it is." M.R. Evid. 901(a).

"Testimony from a witness with knowledge that electronically stored information is what it is claimed to be is an adequate method of authentication." *Tieman,* 2019 ME at ¶ 13, 207 A.3d 618. "The hallmark of authentication pursuant to M.R. Evid. 901(b)(1) is assurance from the witness that the [screenshots] offered in evidence [are] a true and accurate representation of the chat as it occurred." *State v. Churchill,* 2011 ME 121, ¶ 8, 32 A.3d 1026. Ultimately, it is the jury that must "decide whether to believe the witness." *Tieman,* 2019 ME at ¶ 14, 207 A.3d 618 (quoting *Churchill,* 2011 ME at ¶ 8, 32 A.3d 1026).

Here, Claudia testified that: (1) she communicated with Pendleton on their cellphones; (2) they usually communicated via text messages; (3)

Pendleton's cellphone number was saved in her phone as a contact under the name "dad"; (4) she recognized Pendleton's kitchen in one of messages sent to her; and (5) the screen shots were an accurate representation of portions of the text messages she received from Pendleton on the night of January 5, 2023. (T. Tr. I, 89, 95-99).[2]

The foregoing sufficiently authenticated the screen shots under M.R. Evid. 901. (Bl. Br. 13-14). Direct proof that the text messages were sent by Pendleton is not required. Proper authentication "need not rest on direct observation of the authenticating facts," Field & Murray, *Maine Evidence,* § 901.2 (6th ed. 2007), and can be based on "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics of the [text messages], taken together with all the circumstances." M.R. Evid. 901(b)(4). While expert analysis can be helpful in some cases, it is not a prerequisite for authentication because "[q]uestions about the integrity of electronic data generally go to the weight of electronically based evidence, not its admissibility." Field & Murray, *Maine Evidence* § 1001.1 (6th ed. 2007); *see also Churchill,* 2011 ME at ¶ 8, 32 A.3d 1026 ("a particular storage process is not necessary to demonstrate that electronic evidence has not been tampered with."). Whether the screenshots

[2] The screen shots as admitted were redacted to exclude evidence of "threats" directed at Adam Tanner that were contained within the text message conversation, which the trial court ruled were inadmissible at Pendleton's request. (T. Tr. I, 8-19).

were “in fact a true and accurate representation of the” text messages Claudia received, and in fact sent to her by Pendleton, are “ultimately … question[s] for the jury.” *Churchill,* 2011 ME at ¶ 8, 32 A.3d 1026.

Therefore, the trial court did not abuse its discretion in denying Pendleton’s motion in limine and determining that the screen shots of the text messages were properly authenticated.

B. The trial court properly determined that the screen shots were relevant and not unfairly prejudicial.

Pendleton also contends that the court erred in determining that the screen shots were admissible pursuant to M.R. Evid. 403 and 404. (Bl. Br. 10-12). He argues that this evidence was not relevant to a material issue in his trial, had no nexus to any element of the charged offense, and constituted improper propensity evidence. (Id.).

“Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” M.R. Evid. 401. “This Court has held that evidence having any rational tendency to prove or disprove a factual issue is relevant, whether the evidence is immediate and direct or indirect and circumstantial.” *State v. Stack,* 441 A.2d 673, 676 (Me. 1982). Evidence of other acts to show “that the defendant was acting in conformity with a

character trait" is generally inadmissible. *State v. Ardolino,* 1997 ME 141, ¶ 9, 697 A.2d 73; M.R. Evid. 404(b). However, evidence of other acts, such as "events occurring after an alleged criminal act" may be admissible "to establish the defendant's state of mind." *State v. Hassan,* 2013 ME 98, ¶ 21, 82 A.3d 86 (citation omitted).

Even if relevant, evidence of other acts may be excluded if it is unfairly prejudicial, confuses the issues, or misleads the jury. M.R. Evid. 403. Unfair prejudice "means more than simply damage to the opponent's cause. A party's case is always damaged by evidence that the facts are contrary to his contention." *Ardolino,* 1997 ME at ¶ 10, 697 A.2d 73. Thus, "the mere fact that an inference contrary to a defendant's contentions can be drawn from the testimony does not suffice to render the testimony unfairly prejudicial." *Stack,* 441 A.2d at 676 (Me. 1982). The evidence must be so prejudicial that it creates a danger that the fact finder will "decide on an improper basis." *Ardolino,* 1997 ME at ¶ 10, 697 A.2d 73. However, "the danger of unfair prejudice must *substantially* outweigh the probative value of the evidence" for exclusion. *State v. Boobar,* 637 A.2d 1162, 1168 (Me. 1994) (emphasis original). The trial court has "wide discretion to determine the admissibility of evidence pursuant to M.R. Evid. 403." *State v. Maine,* 2017 ME 25, ¶ 24, 155 A.3d 871.

Pendleton's trial had two material issues – whether he caused Curit's death and whether he did so intentionally or knowingly. Thus, "the timing and the nature" of the text messages received by Claudia "about [Pendleton's] own condition" provided relevant and highly probative evidence of his conduct, state of mind, and intent on the evening of January 5, 2023. (T. Tr. I, 8-10, 94). Additionally, any risk of prejudice from the admission of this evidence did not "*substantially* outweigh [its] probative value." *Boobar,* 637 A.2d at 1168 (Me. 1994) (emphasis original). Pendleton's own words were the most probative means of establishing his state of mind. Pendleton also "was afforded the opportunity to impeach the witness through cross-examination, and the jury was properly left to assess the witness's credibility and weigh the importance of this evidence." *State v. Dilley,* 2008 ME 5, ¶ 31, 938 A.2d 804. The fact that the jury concluded, despite this highly probative evidence, that Pendleton *did not* act intentionally or knowingly belies his contention that the jury was confused, misled, or made an improper "character-based inference of guilt." (Bl. Br. 11).

Therefore, the trial court did not abuse its discretion in determining the screen shots were relevant and admissible pursuant to M.R. Evid. 403 and 404(b).

C. The trial court properly applied the best evidence rule.

M.R. Evid. 1002 provides that "an original writing, recording, or photograph is required in order to prove its content unless these rules or a statute provides otherwise." Text messages are "electronically stored information." *Legassie,* 2017 ME at ¶ 33, 171 A.3d 589. "For electronically stored information, "original" means any printout – or other output readable by sight – if it accurately reflects the information." M.R. Evid. 1001(d). In the context of written electronic communications, "once the messages [are] sent, two "originals" [are] generated simultaneously – one retrievable from the sender … and one retrievable from the recipient." *Legassie,* 2017 ME at ¶ 35, 171 A.3d 589.

Contrary to Pendleton's argument, the trial court properly applied the best evidence rule. (Bl. Br. 14; T. Tr. I, 93). The "original" text messages were "retriev[ed] from" Claudia's phone, and the screen shots of those messages while displayed on her phone constitute an "output readable by sight." *Legassie,* 2017 ME at ¶ 35, 171 A.3d 589; M.R. Evid. 1001(d). Though Pendleton attempts to call into question the accuracy and completeness of the screen shots, Claudia unequivocally testified that the screen shots accurately

reflected the admissible portions of the text message exchange she had with Pendleton on the night of January 5, 2023. (T. Tr. I, 91-99).[3]

Therefore, the trial court did not abuse its discretion in its application of the best evidence rule.

II. The trial court properly denied Pendleton's motion in limine to exclude the testimony of Claudia Pendleton.

Next, Pendleton contends that the trial court erred by denying his motion in limine to exclude Claudia's testimony, arguing that her testimony was irrelevant and unfairly prejudicial. (Bl. Br. 15-17). Assuming this Court treats this issue as properly preserved, the trial court neither committed an error nor abused its discretion by admitting her testimony.[4]

Though Pendleton made a generic reference to his "prior objections … in the motion in limine" (T. Tr. I, 84), the context indicates the objection was primarily directed at admission of the screen shots through Claudia's testimony, not the entirety of her tesimony. (Id. at 77-84). As argued above,

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[3] Pendleton's argument regarding completeness on appeal is unpersuasive. He specifically did not make this objection below, and as correctly pointed out by the trial court, such an objection was "contrary to the position taken [in his motion in limine] with regard to the desire not to have certain information" presented to the jury. (T. Tr. I, 93).

[4] The State is not conceding that this issue is properly preserved. Issues not properly preserved are reviewed for "obvious error." *State v. Asante,* 2023 ME 24, ¶ 18, 294 A.3d 131. "An error is obvious if there is (1) an error, (2) that is plain, and (3) that affects substantial rights." *Id.* at ¶ 19 (quotation marks and citation omitted). Even if these three requirements are met, this Court will "notice an unpreserved error only if … (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* (quotation marks and citation omitted).

this evidence was relevant and highly probative of Pendleton's state of mind on the night he killed Curit. (Id. at 87-99). Her description of her relationship with Pendleton as "complicated" due to his alcoholism directly related to the State's theory – Pendleton becomes angry and volatile when he is intoxicated, and he strangled Curit to death while intoxicated. (Id. at 88, 90-91; T. Tr. IV, 31-51). Though he now challenges this statement as unduly prejudicial, Pendleton did not object at trial and cross-examined Claudia himself on the "strained" nature of their relationship. (T. Tr. I, 88, 100).

The record also does not support his contention that Claudia's testimony influenced the jury to decide the case based on his character. (Bl. Br. 16-17). The jury heard testimony about Pendleton's aggressive behavior while intoxicated from two additional witness. (T. Tr. I, 67-71, 107-126). The jury also heard testimony about the "complicated" or "strained" family dynamics from his ex-wife Sara. (Id. at 107-126). Evidence that a marriage dissolved, in part due to alcoholism, is no more prejudicial than evidence that a daughter has a complicated relationship with her father. Yet, Pendleton takes no issue with Sara's testimony on appeal. (Bl. Br. 8-27).

Given that Claudia's testimony was relevant to an element of the crime charged, that the jury heard similar testimony from another witness, *and* that Pendleton found the nature of Claudia's relationship with him worthy of

cross-examination, the trial court's admission of her testimony was neither error nor an abuse of discretion.

III. The trial court properly balanced the probative value and potential prejudice of Derek Pearson's testimony.

Next, Pendleton contends that the trial court erred by allowing Derek Pearson (Pearson) to take the witness stand. (Bl. Br. 18-20). He argues that because he and Pearson were incarcerated together, Pearson's testimony should have been excluded as unduly prejudicial under M.R. Evid. 403, and that Pearson's testimony compromised his presumption of innocence. (Id.).

At trial, the State presented the trial court with a proffer regarding Pearson's testimony--specifically, that while incarcerated together, Pendleton made statements to Pearson regarding why he was incarcerated and about his conduct towards Curit on January 4 and 5, 2023. (T. Tr. III, 7-9). The trial court determined that Pearson's testimony was "directly relevant" and "probative" to the issues in the trial, but that references to the custodial status of either Pearson or Pendleton presented concerns "about the presumption of innocence." (Id. at 24-25). The trial court ruled that Pearson's testimony would only be allowed if the State conducted its direct examination "in such a manner where the leading questions are asked to avoid disclosure of Mr.

Pearson's custodial status" when the statements "were allegedly made to him by [Pendleton]." (Id. at 27).

Thereafter, the State advised Pearson on the leading question process, and "specifically instructed him not to talk at all about … jail or jailhouse settings." (Id. at 42). However, very quickly into Pearson's testimony, in response to the prosecutor's question: "what did he say," Pearson testified: "he said he was in jail for murdering somebody." (Id. at 41). A side bar immediately followed wherein the trial court ruled that Pearson's answer "was non-responsive to the question." (Id. at 43). The trial court further ruled that because Pearson had quickly testified in a way he had specifically been instructed not to, the risk of unfair prejudice now outweighed the probative value of his testimony. (Id. at 43-44). As a remedy, the trial court instructed the jury to disregard Pearson's testimony and excluded him from testifying further. (Id. at 44-46).

Pearson's custodial status, in and of itself, does not render his, or any other witness' testimony unfairly prejudicial or inherently unreliable. While there may be some credence to a criminal informant's motivation to lie, there may also be motivation to tell the truth. Indeed, a motive to be truthful and reliable could be inferred from the fact that Pearson was known to the police and had pending charges on which he hoped to receive some consideration in

return for his cooperation. Individuals in Pearson's position have no basis to expect consideration if the information provided is found to be fabricated; and Pendleton cites no case wherein a court has held that the custodial status of witness alone constitutes prejudice so unfair that it substantially outweighs the probative value of the witness' testimony. His challenge to Pearson's testimony goes directly to the heart of the factfinders function – the determination of "the weight to be given to the evidence and the credibility to be afforded to the witnesses," including whether there is any motivation to lie. *State v. Hodgdon,* 2017 ME 122, ¶ 21, 164 A.3d 959.

By excluding any reference to Pendleton and Pearson's custodial status and strictly limiting the State's direct examination, the trial court properly balanced any danger of prejudice against the "obviously" relevant and highly probative value of Pearson's testimony. (T. Tr. III, 8-9, 25-33). The court's ruling also did nothing to curtail Pendleton's ability to cross-examine Pearson about his motivation to testify and test his credibility before the jury without referring to his, or Pendleton's, custodial status.

Finally, the record does not support Pendleton's contention that his presumption of innocence was compromised, or that by calling a witness who is in custody, the State "implicitly" invites the jury to infer guilt on an improper basis. (Bl. Br. 19-20). First, the State wanted to avoid any mention of

custodial status and exercised the utmost diligence to avoid evidence of Pendleton's custodial status. (T. Tr. III, 28, 34, 42). Second, the jury was instructed on the presumption of innocence, and that the presumption could only be overcome with proof, *i.e.,* evidence, beyond a reasonable doubt. (T. Tr. I, 36; T. Tr. IV, 94-95). Third, and more fully discussed below, the trial court struck Pearson's testimony from the record, provided a curative instruction, and as part of its charge to the jury again instructed the jurors that if they had been ordered "to disregard particular testimony, that testimony is no longer evidence, and you can give it no weight at all." (T. Tr. III, 46; T. Tr., IV, 88, 94-95). Pendleton has raised no issues regarding the instructions given by the trial court, and nothing in the record overcomes the presumption that the jury followed the court's instructions to completely disregard Pearson's brief testimony. *State v. Dolloff,* 2012 ME 130, ¶ 55, 58 A.3d 1032.

Therefore, the trial court did not abuse its discretion by allowing, and then later striking from the record, Pearson's testimony from the record.

IV. The trial court properly denied Pendleton's motion for mistrial.

Pendleton also contends that the trial court erred by denying his motion for mistrial, arguing that the trial court's exclusion of Pearson's testimony and its curative instruction were insufficient to overcome the prejudicial impact of that testimony. (Bl. Br. 20-24). This Court "review[s] the denial of a motion for

a mistrial for an abuse of discretion and will overrule the denial of a mistrial only in the event of exceptionally prejudicial circumstances or prosecutorial bad faith." *State v. Williams,* 2020 ME 128, ¶ 34, 241 A.3d 835 (quotation marks and citations omitted). "A motion for a mistrial should be denied except in the rare circumstances that the trial is unable to continue with a fair result and only a new trial will satisfy the interests of justice." *Id.*

"The trial court's determination of whether exposure to potentially prejudicial extraneous evidence would incurably taint the jury verdict or whether a curative instruction would adequately protect against consideration of the matter stands unless clearly erroneous." *State v. Tarbox,* 2017 ME 71, ¶ 18, 158 A.3d 957 (citation omitted). "Generally, when a witness testifies to inadmissible evidence, a defendant is only entitled to a curative instruction, not a mistrial." *State v. Nobles,* 2018 ME 26, ¶ 18, 179 A.3d 910. A jury is presumed to follow the court's instruction, "including curative instructions." *Dolloff,* 2012 ME 130, ¶ 55, 58 A.3d 1032.

Here, the record reflects that, prior to taking the stand, the State advised Pearson of the court's ruling regarding statements about incarceration, the purpose of the leading question process, and "specifically instructed him not to talk at all about … jail or jailhouse setting." (T. Tr. III, 42). On direct examination, the State asked, "what did he say," to which Pearson responded,

"he said he was in jail for murdering somebody." (Id. at 41). Pendleton requested a side bar and moved for mistrial. (Id. at 41-42). At side bar, the trial court denied the motion but ruled that Pearson's answer was "nonresponsive to the question," and excluded him from testifying further. (Id. at 43-44). The trial court advised the jury that it needed to take a brief recess to further address witness issues, not only with Pearson, "but with some of the other witnesses … we're expecting." (Id. at 45). When the trial reconvened, the trial court immediately instructed the jury that Pearson's testimony was "stricken," and ordered them "to give his testimony *no weight whatsoever* in [their] ultimate deliberations." (Id. at 46 (emphasis added)).

The foregoing does not represent circumstances so "*exceptionally* prejudicial" warranting reversal. Pearson's reference to Pendleton saying he was "in jail" was a singular, brief, and isolated comment that the jury never heard again. (Id. at 41-46). This Court has previously held that such "*brief and inadvertent exposure* to jurors of a defendant's [custodial status], without more, is not so inherently prejudicial as to require a mistrial." *State v. Retamozzo,* 2016 ME 42, ¶ 8, 135 A.3d 98 (quotation marks and citation omitted) (emphasis added). The trial court instructed the jury twice to disregard Pearson's testimony entirely (T. Tr. III, 46; T. Tr. IV, 88), and nothing

in the record overcomes the presumption that the jury followed these instructions.

Therefore, the trial court did not abuse its discretion in denying Pendleton's motion for a mistrial and determining that a curative instruction was the appropriate remedy.

V. The trial court properly excluded the affidavit of a seated juror from consideration at Pendelton's sentencing.

Finally, Pendleton contends that the trial court erred by excluding the affidavit of a seated juror from consideration at his sentencing, arguing that the trial court improperly applied M.R. Evid. 606. (Bl. Br. 25-27). This Court will review the exclusion of the juror's affidavit for an abuse of discretion. *See State v. Bentley,* 2021 ME 39, ¶ 13, 254 A.3d 1171 ("trial courts have wide discretion in determining the sources and type of information to consider when imposing a sentence.").

"The law strongly disfavors inquiry into the deliberations of juries." *State v. Scott,* 2019 ME 105, ¶ 44, 211 A.3d 205 (quoting *State v. Watts,* 2006 ME 109, ¶ 15, 907 A.2d 147). Absent "a report that a juror has been improperly exposed to "extraneous prejudicial information" or an "outside influence … a court may not inquire into the jury deliberation process." *State v. Leon,* 2018 ME 70, ¶ 10, 186 A.3d 129; M.R. Evid. 606(b)(2). The

prohibition on inquiry into jury deliberations includes a prohibition "on court consideration of *any* post-discharge juror communications about such subjects." *Id.* at ¶ 11 (citation omitted) (emphasis original).

"Here, the juror's [affidavit] is a classic instance of a matter into which the parties and the court may not inquire." *Id.* at ¶ 12. The affidavit contained details about the jury deliberations that led to its verdict, "the nature of the deliberations among the [jurors]," the juror's perception of the deliberations, and the juror's "thoughts about what other jurors were thinking or concluding." (Sentencing Transcript, 2-3 (S. Tr., ___)). Despite this Court's long standing precedent, Pendleton asked the trial court, and is asking this Court, to do exactly what the rule prohibits.[5] His framing of his argument as not an "inquiry into the validity of the verdict" does not negate an important principle behind the general prohibition on inquiry into the jury's deliberations: "to allow evidence of communications between jurors made in the confidence of secrecy in the jury room would undermine the basis of free

[5] *See State v. Daly,* 2021 ME 37, ¶¶ 48-51, 254 A.3d 426 ("The law governing motions for a new trial based on newly discovered evidence clearly contemplates that evidence of jury deliberations is inadmissible."; *Scott,* 2019 ME 104, ¶ 44-49, 211 A.3d 205 (trial court did not abuse its discretion by denying the defendant's motion to voir dire a juror in support of a motion for new trial when the juror's misconduct "was not shown to have affected the jury's verdict."); *Leon,* 2018 ME 70, 186 A.3d 129 (juror's post-verdict statement to judicial marshal "about her own thought process" did not open the door to inquiry into the jury's deliberations and was insufficient to set aside the conviction); *State v. Hurd,* 2010 ME 118, ¶¶ 33, 42, 8 A.3d 651 ("the ban on juror testimony regarding the internal deliberation process of the jury … is a ban on court consideration of any post-discharge juror communications about [that] subject.); *State v. Coburn,* 1999 ME 28, ¶ 7 n. 3, 724 A.2d 1239 ("a court may not inquire into the substance of the jury's deliberations.").

discussion on which the success of the system depends." (S. Tr. 8 (quoting Field & Murray, *Maine Evidence* § 606.2 (6th ed. 2007)).

Therefore, because the juror's affidavit did not raise issues of "extraneous prejudicial information brought to the jury's attention, or an outside influence improperly brought to bear on any juror," the trial court did not abuse its discretion by excluding the affidavit from consideration at sentencing. M.R. Evid. 606(b)(2)(A)-(B).

CONCLUSION

For the foregoing reasons, Pendleton's conviction and sentence should be affirmed.

Respectfully submitted

AARON M. FREY
Attorney General

/s/ KATIE SIBLEY
____
Katie Sibley, Esq.
Assistant Attorney General
Criminal Division
Maine Bar No.: 4879
6 State House Station
Augusta, Maine 04333
(207) 626 – 8834

Dated: October 8, 2024

Lisa J. Marchese
Deputy Attorney General
Laura Yustak
Assistant Attorney General
Of Counsel

CERTIFICATE OF SERVICE

I, Katie Sibley, Assistant Attorney General, certify that I have mailed two copies of the foregoing "BRIEF OF APPELLEE" to Pendleton's attorneys of record, Christopher MacLean, Esq.

Dated: October 8, 2024

/s/ KATIE SIBLEY
____

Katie Sibley, Esq.
Assistant Attorney General
Criminal Division
Maine Bar No.: 4879
6 State House Station
Augusta, Maine 04333
(207) 626 – 8834