MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. Fra-24-276

State of Maine

v.

Raymond Buck

On Appeal from the Unified Criminal Docket (Franklin County)

Brief of Appellant
Raymond Buck

WALTER F. MCKEE
Maine Bar No. 7848
Attorney for Appellant
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
wmckee@mckeemorgan.com

KURT C. PETERSON
Maine Bar No. 6235
Attorney for Appellant
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
kpeterson@mckeemorgan.com

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STATEMENT OF FACTS

The following statement of facts derives from the evidence admitted at trial and the procedural record.

Raymond Buck ("Buck") is a seventy-five-year-old Navy veteran who lives in New Sharon, Maine, with his wife, Linda Buck. (I Tr. 202, 222, 231.[1]) Prior to living in New Sharon, Buck and his wife owned a farm in Chesterville, Maine, where they raised Black Angus Cattle. (I Tr. 229.) Buck and his wife ran this farming operation in Chesterville from 2005 to 2016, when Buck's health began to deteriorate and he was not able to keep up with the demands of the farming operation—which was officially shut down in 2020. (I Tr. 232.)

Back when Buck and his wife resided in Chesterville on their farm, Linda Buck's son, Rodney M[redacted], and his family would come to visit Buck's farm. (I Tr. 233.) Rodney had a wife, Natalie, and they had two sons and the youngest daughter—the named victim in the underlying matter—A.M. (I Tr. 28.) The M[redacted]s lived and grew up in [redacted] Ontario, Canada. (I Tr. 27-28.) Rodney, Natalie, and A.M. still reside in [redacted] to this day. (I Tr. 27-29.)

The M[redacted]s' visits to Buck's farm in Chesterville began in 2007 when A.M. was only four years old. (I Tr. 124.) Between 2007 and 2011, the M[redacted]s

[1] "I Tr." is used to refer to the transcript of the first day of trial and "II Tr." is used to refer to the transcript of the second day of trial.

visited the farm several times during the summer, once in March, and once around the Christmas season. (I Tr. 31-32.) Natalie M[redacted] testified that her children's relationship with the Bucks seemed normal and characterized Buck's relationship with her children as that of any normal grandparent. (I Tr. 36.) Buck was known as "Grandpa Ray." (I Tr. 36.) The M[redacted] children would go for rides on Buck's tractor, and on all-terrain vehicles, and would spend time in the Chesterville house—including upstairs where Buck's office and a computer were located. (I Tr. 38-40, 213-214.)

During the M[redacted]s' trip to the farm around the Christmas season in 2010 or 2011, a dialogue was started about the M[redacted]s moving to Maine, working on the farm, and becoming more-or-less business partners with the Bucks. (I Tr. 40-41.) This prospective venture and move to Maine were so serious that the M[redacted]s visited potential school placements for A.M. in Farmington. (I Tr. 44, 150.) The M[redacted]s ended up not moving forward with this move to Maine.

Approximately eleven years later, the Franklin County Sheriff's Office ("FCSO") received a report from A.M. of decades-old sexual assaults that she asserted were perpetrated by Buck on the Chesterville farm throughout the time she visited there as a child. (I Tr. 30, 32, 77, 175.) Detective David Davol ("Detective Davol") of the FCSO was the investigating law enforcement officer. (I Tr. 75-77.) Detective Davol had A.M. draft a written statement and he received the statement

from her on February 21, 2022. (I Tr. 79.) A.M. was never interviewed in person by Detective Davol, by a Child Advocacy Center, by any investigative authority in Canada, or by any other means. (I Tr. 94-95.) Detective Davol did not interview A.M.'s mother, father, or brothers.

Based on this telephonic report and written statement, Detective Davol visited Buck's home in New Sharon with another officer and interviewed Buck and his wife. (I Tr. 79-80.) Buck acknowledged that the M[redacted]s visited the Chesterville farm, acknowledged giving A.M. rides on his tractor, acknowledged being alone with A.M. a couple of times, and acknowledged that she would sit on his lap. (I Tr. 83.) However, notwithstanding Detective Davol's attempts to elicit a confession by telling him to be a "man" and tell the truth, Buck adamantly denied any inappropriate touching of A.M. (I Tr. 84, 96.)

Buck was not arrested or placed on bail conditions, (I Tr. 108), but was immediately issued a summons and was later charged by the Franklin County District Attorney's Office by criminal complaint with one count of Unlawful Sexual Contact (Class B), *see* 17-A M.R.S. § 255-A(1)(E-1), that was alleged to have occurred on or between January 1, 2006, and December 31, 2012. (A. 12.) The named victim in this matter, A.M., was under the age of 12 years old at the time of the alleged offense. (A. 12.) Buck waived indictment in this matter on December

7, 2023, which was approved by the Court and this matter proceeded to trial by way of the one-count Complaint that was originally filed. (A. 5, 12.)

A two-day jury trial was held on February 15, 2024, and February 16, 2024. (A. 7.) Natalie M[redacted], Detective Davol, A.M., Linda Buck, and Raymond Buck testified at trial. (*See generally* I-II Tr.) Neither Rodney M[redacted] nor A.M.'s older brothers testified at the trial. (*See generally* I-II Tr.) A.M. was 21 years old when she testified at trial and she testified that Buck would touch her vagina and/or chest area and he would have her touch his penis when she was alone with him in his office, his tractor, his truck, and in one instance in Buck and his wife's bedroom. (I Tr. 129, 144-149.) A.M. asserted that she believed her grandmother, Linda Buck, was involved with the sexual abuse, knew it was happening, and was present during times when it happened. (I Tr. 167-169.) A.M. testified that she never gave any indication to anyone that this was happening until after they stopped going to the Chesterville farm when she told her mother about the touching because of the conversations that the M[redacted]s and Bucks were having about going into business together on the farm. (I Tr. 150.)

At the conclusion of all of the evidence in this matter, trial counsel for Buck and the State engaged in a charge conference with the presiding trial judge. The point of contention at this charge conference revolved around the defense's request to have an instruction on the sufficiency of the law enforcement investigation—

which the State objected to—and the State's request to have a non-traditional missing witness instruction issued by the court—which defense counsel objected to:

> [MR. MCKEE][2]: I didn't think this was a missing witness case, Your Honor. That's why I pulled the Alexander, I knew he had something to say about that.
>
> THE COURT: So it's interesting. It's not a – a traditional missing witness case, but there certainly has been record as to the fact –
>
> [MR. ANDREWS]: Right.
>
> THE COURT: -- that Dad and the brothers aren't here and –
>
> [MR. ANDREWS]: Right.
>
> [MR. MCKEE]: No, no, no. So that's with respect to the investigation. So I'm allowed to comment that the evidence in this case, there – there is – and I often do that. There's no evidence of this; there's no evidence of that. So – or – or in – in this –
>
> MR. ANDREWS: Yeah.
>
> MR. MCKEE: -- particular file, that's not missing witness to me. Alexander is – I remember this because it said no records instructions – the missing witness, no inference instructions should be

[2] This bracket, and the subsequent brackets, reflect alterations of the transcript that incorrectly identifies the wrong trial attorney making these assertions and objections: it is the defense that objected to the missing witness instruction and made the request for the inadequacy of police investigation instruction. Counsel for the Appellant was granted a seven day enlargement of time to file the principal brief and appendix in this case to allow time to confirm that the above-bracketed alterations are correct with counsel for the State. However, counsel for the Appellant was not able to contact and confirm this with the attorney for the State because of his understandable unavailability due to his magical success in the Maine Moose Permit Lottery.

used; only when a missing witness issue has been improperly injected into a case. More significant corrective action by the Court may be needed if a witness claimed – missing witness claim is improperly used against the defendant in a criminal case. It goes on and on. There's a whole – there's a whole cite and everything.

. . . . .

THE COURT: It's definitely not one of those.

MR. MCKEE: So I think when it says – and he says something cited from some case – is should – should be used only when a missing witness issue has been improperly injected. So I'm going to object to missing witness. I understand the State wants to have it in there but I'm definitely going to object.

MR. ANDREWS: I do want to have it in there, Judge. And the reason is – down, halfway through that paragraph, the – I think the important – the most important language in that sentence – in that paragraph is "You must draw no inference unfavorable or favorable, by speculation about what else might have [been] presented to you." And that's based upon cross-examination of the police officer and the criticism of the investigation and the general tenor of the opening remarks, which was just a rush to judgment of some sort and that – that police should have done more.

THE COURT: Go ahead, Walt.

MR. MCKEE: Well, so I – I think that's a – that's a very different and very – when it comes to missing witnesses in particular, I'm entitled to

> certainly address the issue of the police investigation, their lack of investigation, post-jury instruction we discuss about that, but I don't think that is generated here. . . .

(A. 13-15.)

The trial court decided to include the non-traditional missing witness instruction defense and issue a version of the law enforcement instruction requested by the defense. The trial court reasoned:

> I am going to include the missing witness instruction. If the language of the standard instruction said something different, maybe I would agree that we shouldn't include it, but I like the fact that it is refocusing the jury as to what the -- the fact that they should be looking at the evidence that was presented and not -- and we tell them that a million times. Don't speculate. Don't speculate. The combination of the missing witness instruction with the proposed instruction, Walt, that you have about police investigation, I actually think ties together fairly nicely and takes away the concern that you're raising, Walt. That's my thinking on this, and so I am going to include the missing witness instruction. Let's talk about the police investigation instruction.

(A. 16.)

Prior to the trial attorney's closing arguments, the trial court instructed the jury as follows concerning those two points of contentions:

> You have heard testimony of witnesses regarding the police investigation in this case. The adequacy or inadequacy of any investigation is a factor that you may consider in deciding whether the State has met its burden of proof because the defendant may rely on relevant omissions in the police investigation to raise reasonable doubt. You may consider whether the police would normally take certain actions under the circumstances and whether, if those actions were taken, they could reasonably have been expected to lead to significant evidence of the defendant's guilt or innocence and whether there are

> reasonable explanations for the omission of those actions. If you find that any omissions in the investigation were significant and not reasonably explained, you may consider whether the omissions tend to affect the quality, reliability, or credibility of the evidence presented by the investigation to prove beyond a reasonable doubt that the defendant is guilty of the offenses with which he is charged. As with any evidence, it is up to you to decide the weight that you give these considerations.
>
> The ultimate issue for you to decide, however, is whether the State, in light of all the evidence before you, has proved to beyond a reasonable doubt that the defendant is guilty of the crimes with which he is charged. A case is not decided according to which side presents more witnesses. The testimony of a single witness is sufficient to prove any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses may have testified to the contrary, if, after such circumstances and consideration of all the evidence, you believe that the single witness is more accurate and more truthful. The test is not which side brings the greater number of witnesses or presents the greater quantity of evidence but which witness and which evidence you find is most accurate and otherwise trustworthy in determining whether the State's burden of proof has been met, considering all the evidence in the case.
>
> You must decide the case based upon the evidence presented to you. You must not speculate on what other witnesses might have been called or what other evidence or testimony might have been presented. And you must draw no inference, unfavorable or favorable, by speculation about what else might have been presented to you. You must decide, only from the evidence presented to you, whether the facts at issue have been proven beyond a reasonable doubt.

(A. 30-31.)

Following closing arguments and the jury's deliberations, they returned a verdict of guilty. (A. 5, 9.) Buck was later sentenced to eight years imprisonment, with all but 4 years unsuspended, followed by a term of probation. (A. 9-10.)

This timely appeal followed.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred in its jury instructions by including a non-traditional missing witness instruction over the objection of the defense where it was not generated by the evidence.

2. Whether the trial court's jury instructions fairly and correctly apprised the jury when it issued a misleading and/or confusing instruction which effectively nullified the adequacy of police investigation instruction.

STANDARD OF REVIEW

When a defendant properly preserves an objection to a trial court's jury instructions, this court will review the jury instructions of the trial court in their entirety to determine whether they fairly and correctly apprise the jury in all necessary respects of the governing law. Alexander, *Maine Appellate Practice* § 422 at 271 (6th ed. 2022). This Court's review considers "the total effect created by all of the instructions and the potential for juror misunderstanding." *Id*. (quotation marks omitted). "The appellant has the burden to demonstrate that an erroneous instruction affected the jury's verdict." *Id.* "When a party has requested a particular jury instruction, or particular wording in instruction that party waives its capacity to challenge the jury instruction or warning on appeal." *Id*.

> For the Law Court to vacate a judgment based on a denied request for a jury instruction, the appellant must demonstrate that the requested instruction (1) stated the law correctly; (2) was generated by the evidence; (3) was not misleading or confusing; (4) was not sufficiently covered in the instructions the court gave, and (5) the refusal to give the requested instruction was prejudicial to the requesting party.

Id. at 272.

SUMMARY OF ARGUMENT

Contrary to the trial court's assertions toward the end of the charge conference, the trial court's instructions did not "weave together in the right way"; rather, they undercut the police investigation instruction to a degree of meaninglessness by the inclusion of the State's requested "missing witness" instruction and subsequent language that invalidated the earlier instruction on the sufficiency of the police investigation in this case.

The "missing witness" instruction was not generated by the evidence and should not have been given in this case. In fact, the trial court never expressly found that it had been generated in this case. Instead, it stated on the record that it was "definitely not one of those" situations where the missing witness issue had been improperly injected into a case. The effect of the trial court's instructions, some of which were not generated by the evidence, was to nullify the police investigation instruction which, read in context with the subsequent instructions was misleading, confusing, and contradicted the adequacy of the police investigation instruction to such an extent that it had no meaning or effect.

ARGUMENT

A. The "Missing Witness" Instruction Was Not Generated By The Evidence.

The trial court ruled that it would include the missing witness instruction because it "like[d] the fact that it is refocusing the jury as to what the -- the fact that they should be looking at the evidence that was presented and not -- and we tell them that a million times. Don't speculate. Don't speculate" and that it "tie[d] together fairly nicely" with the adequacy of police investigation instruction. (A. 16.) However, this instruction was not generated by the evidence because a missing witness was never improperly injected into a case by trial counsel.

This Court has held that "in a criminal case, the failure of a party to call a witness does not permit the opposing party to argue, or the fact finder to draw, any inference as to whether the witness's testimony would be favorable or unfavorable to either party." *State v. Brewer,* 5050 A.2d 774, 777 (Me. 1985); *see also State v. Whitman,* 429 A.2d 203 (Me. 1981) (vacating a conviction because of an inference from failure to call a witness instruction given against a defendant). As articulated in the Maine Jury Instruction Manual, "[t]he missing witness, no inference instruction *should be used only when a missing witness issue has been improperly injected into a case.*" Alexander, *Maine Jury Instruction Manual* § 6-12 at 6-20 (2012 ed.).

The trial court pointed to nothing in the record that supported a finding that a missing witness issue was improperly injected in the case requiring an instruction. To the contrary, it agreed with defense counsel and stated on the record during the charge conference that it was "definitely not one of those." (A. 14.) The basis for providing this prejudicial instruction was that it flowed together nicely—in the trial court's view—with its other instructions. That is not a sufficient basis to issue a missing witness jury instruction. *Cf. State v. Mahmoud,* 2016 ME 135, ¶¶ 16-18, 147 A.3d 833 (holding that a trial court did not err by declining to issue a suggestive identification instruction where it was not generated by the evidence presented at trial).

The only reference to the "improper injection" of a missing witness, was the attorney for the State's arguments about the "cross-examination of the police officer and the criticism of the investigation and the general tenor of the opening remarks, which was just a rush to judgment of some sort and that – that police should have done more." (A. 14-15.) However, even assuming *arguendo* that this is an unstated basis for including this instruction—which is inconsistent with the trial court's expressed reasoning for including the instruction—it is still insufficient to generate the issue. The Supreme Court of the United States has long stated that it is a "common tactic of defense lawyers . . . to discredit the caliber of the investigation or the decision to charge the defendant." *Kyles v. Whitley,* 514 U.S. 419, 446 (1995)

(quotation marks omitted). Implementing this common tactic and defense strategy, by itself, does not improperly inject an issue of a missing witness.

In short, the missing instruction issue was not generated by the evidence, the trial court did not find that it was generated by the evidence, and Buck's trial counsel's advocacy of his client by implementing a common defense strategy and tactic did not generate this instruction on its own. For these reasons, the trial court prejudicially erred by instructing the jury on a missing witness issue that was simply not generated by the evidence.

B. The "Inadequacy Of Police Investigation" Instruction Is A Proper Instruction, In This Case, But It Was Rendered Meaningless By The Trial Court's Subsequent, Ungenerated Instructions.

To begin, the trial court correctly decided to issue an instruction, as requested by the defense, on the adequacy of the police investigation in this case.

As the Supreme Judicial Court of Massachusetts has long held and referred to as a "Bowden defense", "[t]he adequacy of a police investigation is a well-recognized ground on which to build a defense." *Commonwealth v. Osachuk,* 681 N.E.2d 292 (Mass. 1997). Further, the Supreme Judicial Court of Massachusetts has held: "the failure of the authorities to conduct certain tests or produce certain evidence was a permissible ground on which to build a defense in the circumstances of this case." *Commonwealth v. Bowden,* 399 N.E.2d 482, 485-486 (Mass. 1980).

In *Bowden*, the trial judge "instructed the jury that the nonexistence of certain scientific tests and other evidence was not to be considered in reaching a judgment." *Id*. at 491. Specifically, the trial judge instructed the jury as follows:

> You have here questions asked in cross-examination that point to the absence of a particular type of evidence. "Did you do this; isn't it a fact that," and if the answer is in the negative, it is not in evidence before you. In other words, the lack of evidence or the non-existence of a certain type of evidence is certainly not to be considered by you as any evidence in this case. And I will point out that to you right now and get into it in much more detail later on.
>
> The Commonwealth has the burden of proving the guilt of the defendant beyond a reasonable doubt, and . . . they try to prove it with the evidence they offer here to you; and if you are satisfied that they have proved that to you, then the fact that some other evidence is not in the case should obviously not be a consideration of yours.
>
> ….
>
> There was one example where the counsel for the defendant asked about the lack of fingerprint evidence, was there any fingerprints. What I am trying to suggest to you is this. A case, a criminal prosecution rises or falls, if you want to use that phrase, on the evidence that is before you, and the fact that something wasn't done or non-evidence is not, quite obviously, to be considered by you in connection with making your judgment. You make your judgment about the evidence that is in fact before you in the case, not something that wasn't done.
>
> So I hope I am clear on that. The fact that some evidence is not before you with respect to fingerprints or any other kind of scientific test obviously has no bearing on your judgment in connection with this case. Your judgment is on an affirmative basis. You decide whether or not the evidence before you is the evidence that persuades you to (sic) beyond a reasonable doubt the defendant is guilty, and nothing else, or his lack of guilt. So I wanted to make that clear and quite obviously it shouldn't be of any consideration for you people.

Id. at n. 7 (cleaned up). The Supreme Judicial Court of Massachusetts held that this was reversible error and reasoned:

> The fact that certain tests were not conducted or certain police procedures were not followed could raise a reasonable doubt as to the defendant's guilt in the minds of the jurors. The judge should not have removed this evidence from the jury's consideration, and in doing so invade the province of the jury to decide what inferences to draw from certain evidence.

Id. at 485-486; *see also Osachuk,* 681 N.E.2d 292 (issuing a jury instruction that informed the jury they could take into consideration the Commonwealth's failure to conduct certain tests in determining whether they have met their burden of proof beyond a reasonable doubt).

Connecticut has similarly supported a defendant's right to advance a defense upon the inadequacy of law enforcement's investigation into allegations forming the basis for a criminal charge. *See e.g., State v. Gomes,* 256 A.3d 131 (Conn. 2021). Most recently, The Appellate Court of Connecticut took up this issue in *State v. Prudhomme,* 269 A.3d 917 (Conn. 2022). In *Prudhomme*, the same Connecticut court held in *Gomes*, "the court failed to inform the jury of the defendant's right to rely on relevant deficiencies or lapses in the police investigation as possible bases for raising reasonable doubt as to his guilt" and the failure of the trial court to do so was an instructional error. *Id*. at 934. Further, as the *Gomes* decision reasoned:

> there was "a significant risk that the instruction given by the trial court misled the jury to believe that it could *not* consider the defendant's arguments concerning the adequacy of the police investigation.

> Although the first sentence of the instruction acknowledged that the defendant made arguments that the police had failed to investigate adequately the crime in question, in the very next sentence, the jury was instructed that the adequacy of the police investigation was *not* for it to decide. This admonishment was reinforced by the third and final sentence that the *only* issue for the jury to decide was whether the state had proven the defendant's guilt beyond a reasonable doubt. ... Thus, rather than apprising the jury that reasonable doubt could be found to exist if the jury conclude[d] that the investigation was careless, incomplete, or so focused on the defendant that it ignored leads that may have suggested other culprits ... there is a reasonable possibility that the instruction had the opposite effect and caused the jury to believe that it was *prohibited* from considering any such evidence.

Id. at 936 (emphasis in original).

Obviously, a criminal trial is not a referendum on how well police perform their jobs, but the trial court's instructions cannot remove the adequacy of the police investigation from the jury's consideration as it is a common tactic and a well-grounded defense against criminal charges. Furthermore, the trial court's jury instructions cannot mislead the jury into believing that it could not consider the defendant's arguments concerning the adequacy of a police investigation. *See e.g., id*. at 938; *Gomes*, 256 A.3d at 131.

In the present case, the trial court issued the requested adequacy of police investigation instruction, but then immediately followed that instruction with an instruction that rendered its earlier instruction meaningless:

> The ultimate issue for you to decide, however, is whether the State, in light of all the evidence before you, has proved to beyond a reasonable doubt that the defendant is guilty of the crimes with which he is charged. . . .

> You must decide the case based upon the evidence presented to you. You must not speculate on what other witnesses might have been called or what other evidence or testimony might have been presented. And you must draw no inference, unfavorable or favorable, by speculation about what else might have been presented to you. You must decide, only from the evidence presented to you, whether the facts at issue have been proven beyond a reasonable doubt.

(A. 31.) These are mutually exclusive instructions. You cannot, on the one hand, (properly) instruct the jury that it may give weight and take into account relevant omissions in a police investigation in determining whether there is reasonable doubt, and then, on the other hand, tell that jury that it may only decide the case on the evidence presented. Like in *Gomes* and *Prudhomme*, there is a significant risk that such a contradictory instruction would mislead the jury to believe that it could *not* consider the defendant's arguments concerning the adequacy of the police investigation. *See e.g., id*. at 938; *Gomes*, 256 A.3d at 131.

Accordingly, the trial court prejudicially erred in this case by failing to correctly and fairly inform the jury in all necessary respects of the governing law. Specifically, the "missing witness" instruction was not generated by the evidence and should not have been given in this case. Furthermore, the effect of issuing this instruction was a nullification of a proper police investigation instruction. Read in context with the subsequent instructions, the trial court's jury instructions were misleading, confusing, and contradicted the adequacy of police investigation

instruction to such an extent that it had no meaning or effect—resulting in prejudicial error to Buck.

1. *State v. Russell* does not prohibit an adequacy of police investigation instruction and is distinguishable to the present case.

This Court's decision in *State v. Russell,* 2023 ME 64, 303 A.3d 640, is not dispositive of this appeal but bears addressing.

In *Russell*, this Court held that vacating the judgment for failure to issue this instruction was unwarranted because "the substance of the proposed instruction as 'sufficiently covered in the instructions the court gave.'" *Id*. ¶ 19. This Court went on to address the merits of the particular instruction in that case:

> A fundamental problem with Russell's proposed instruction on the quality of the police investigation is that it invites the jury to focus on something other than the sufficiency of the State's evidence in determining guilt. Our standard jury instructions quite properly call upon the jury to not speculate on what other evidence might have been presented and what other witnesses might have been called. *See* Alexander, *Maine Jury Instruction Manual* § 6-12 at 6-23 (2023 ed.). Russell's proposed instruction calls for exactly the opposite. Moreover, if we were to agree with Russell that the "quality" of the police investigation has special significance in weighing proof of guilt, that would necessarily mean that the jury should consider a high-quality police investigation as heightened proof of guilt. A jury's focus should be equally directed to all of the evidence presented.

Id. ¶ 20.

Buck contends that the *Russell* opinion does not prohibit the adequacy of police investigation instruction in all cases, the opinion merely states, in dicta, some of this Court's fundamental issues with the proposed instruction in that case. The

basis for affirming the trial court's decision to not issue such an instruction was grounded upon the already-sufficient instructions and the lack of prejudice because the defense counsel in *Russell* was still able to argue at length the alleged deficiencies in the police investigation. *See id*. ¶¶ 18-21.

Contrary to that case, this is not a situation where "[a]ll that was lacking . . . was the court's emphasis on a specific portion of the evidence and its imprimatur on that component of the defense strategy." *Id*. ¶ 21. Here, the trial court's instructions immediately after issuing the adequacy of police investigation instruction undercut that very defense theory by emphasizing its irrelevance in their decision-making process. For this reason, *Russell* is neither dispositive nor analogous to the present appeal.

CONCLUSION

For the reasons articulated above, the Appellant, Raymond Buck, respectfully requests that the conviction in the underlying matter be vacated and the matter be remanded for a new trial.

Date: 09/30/2024

WALTER F. MCKEE
Maine Bar No. 7848
Attorney for Appellant
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
wmckee@mckeemorgan.com

Date: 09/30/2024

KURT C. PETERSON
Maine Bar No. 6235
Attorney for Appellant
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
kpeterson@mckeemorgan.com

CERTIFICATE OF SERVICE

I, Kurt C. Peterson, Attorney for the Appellant, Raymond Buck, hereby certify that this appellate brief was filed and that the service requirements were complied with by copying opposing counsel on the email and hand-delivered filing with the Court.

Date: 09/30/2024

KURT C. PETERSON
Attorney for Appellant
Maine Bar No. 6235
McKee Morgan, LLC, P.A.
133 State Street
Augusta, Maine 04330
(207) 620-8294
kpeterson@mckeemorgan.com