STATE OF MAINE
CUMBERLAND, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. CUM-24-282

STATE OF MAINE,

Appellee

V.

DAMION BUTTERFIELD,

Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

AARON M. FREY
Attorney General

LISA R. BOGUE
LEANNE ROBBIN
Assistant Attorneys General
State's Attorneys Below

LEANNE ROBBIN
Assistant Attorney General
State's Attorney on Appeal
Office of Attorney General
6 State House Station
Augusta, Maine 04333
(207) 626-8581

KATIE SIBLEY
Assistant Attorney General
(Of Counsel)

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Factual Background

On April 26, 2022, during an attempted drug robbery on Woodford Street in Portland, Damion Butterfield shot and killed Derald Coffin and then attempted to murder Coffin's acquaintance, Annabelle Hartnett, to eliminate the eyewitness to his crime. This fact was established not only through the evidence presented over five days of testimony but also through Butterfield's plea of guilty made during jury deliberations to intentional or knowing murder, aggravated attempted murder, possession of a firearm by a prohibited person, and robbery, and his acknowledgement that he was pleading guilty because he was in fact guilty. (Trial Transcript ("Tr.T.") Vol. 6 at 110-111.)

On the day prior to the murder, Annabelle Hartnett, then a homeless drug addict, was driving around Portland with Derald Coffin in her Range Rover, looking for drugs. (Tr.T. Vol. 1 at 76-77, 79.) In the early afternoon, an acquaintance of Coffin's, Anthony "Bear" Osborne, flagged them down and they exchanged contact information. (*Id.* at 80-81.) Osborne later contacted Hartnett and Coffin at approximately 11:00 p.m., notifying them that he had the drugs that they were looking for. (*Id.* at 84.) Coffin and Hartnett arranged to pick Osborne up at the Burger King on Forest Avenue, which they did at around 12:33 a.m. on April 26, 2022. (*Id*. at 84-85.)

What Hartnett and Coffin did not know was that Osborne was conspiring with a third party to steal the drugs that Osborne believed Coffin had. When Osborne got into the Range Rover, it was apparent that, contrary to his prior statement to Coffin and Harnett, he had no drugs for them. (*Id.* at 86.) "And then [Osborne] asks us for drugs…he wants to get half a stick, which is 5 grams of heroin, off of us…" (*Id*.) Hartnett and Coffin told Osborne that they were driving to 112 Woodford Street (*Id*. at 87), an apartment known to the Portland Police Department for its "drug activity." (*Id*. at 224.) While Osborne was riding in the Range Rover, Hartnett received texts on her phone from him "that say like half a stick, bullshit, this is whack" and then the address of "112 Woodford Street." (*Id*. at 87). She showed the texts to Coffin, who commented to Osborne, "I think you are sending texts to the wrong person." (*Id.*) Osborne then made a voice call and relayed to the person on the other end that their destination was "112 Woodford Street." (*Id*.)

Osborne had been dropped off at Burger King by the third party, Jonathan "Jonny" Geisinger, who was driving a Honda Element rented by Thomas MacDonald, who was riding in the front passenger seat. (Tr.T. Vol. 3 at 41-42.)[1] In recent weeks, MacDonald had been spending time with Geisinger

[1] MacDonald was the only one of Butterfield's three co-defendants who testified at trial. After the trial, on February 4, 2024, Co-Defendant Anthony Osborne pled guilty to robbery and was sentenced to 22 years, all but 8 years suspended and 4 years of probation. (*State v. Osborne*,

"[d]rinking and drugging," with cocaine being the drug of choice. (*Id*. at 29-30, 31.) On the evening of April 25, 2022, MacDonald understood that he and Geisinger were going to South Portland, because "Jonny said he had some girls at a hotel room that we were going to meet." (*Id*. at 38.) While en route to South Portland, Geisinger received a phone call or a text indicating that "one of the girls was asking for drugs that we didn't have on us." (*Id.* at 38.) Instead of continuing to South Portland, Geisinger drove the Element to a building on Cumberland Avenue in Portland and went inside while MacDonald waited in the car. (*Id*. at 39-40.) When Geisinger emerged, he was accompanied by two other men: Anthony "Bear" Osborne, who MacDonald was acquainted with, and Damion Butterfield, who he had not met before that night. (*Id*. at 40.) Butterfield and Osborne got into the back seat, and there was discussion that "Bear [Osborne] was supposed to be the plug to get Jonny the drugs he wanted." (*Id*. at 40.) Geisinger dropped Osborne off at the Burger King at Osborne's request. (*Id*. at 41-42.) Osborne "said he was going to go meet the person and he was going to text Jonny when he had what he wanted." (*Id.* at 42.)

CUMCD-CR-2022-2190.) Co-Defendant Geisinger's case on the charge of felony murder remains pending. (*State v. Geisinger*, CUMCD-CR-2022-2319.)

Geisinger, MacDonald and Butterfield drove around Portland, returning briefly to MacDonald's apartment in Westbrook to retrieve some cocaine that they had forgotten. (*Id*. at 42-43.) As they headed back towards the Burger King on Forest Avenue, "Jonny got the text of the address that he wanted us to go to, which was Woodford Street." (*Id*. at 45.) They parked the Element on Woodford Street and walked along the sidewalk towards 112 Woodford Street. (*Id.* at 46-47.) MacDonald "thought there was some kind of a party or something going on." (*Id*.) As they approached the address, they noticed Osborne in the back seat of a Range Rover parked on the street. (*Id*. at 47.) There was a passenger, later identified as Coffin, in the front seat. (*Id*. at 47-48.)

MacDonald described what happened next. "It started off as a scuffle. Butterfield went up to the passenger side, was talking to the passenger…[T]hey were yelling at each other for a moment…Butterfield was yelling at the other passenger." (*Id*. at 48-49.) According to MacDonald,

> Jonny was standing with me, like kind of off to the side…And then the passenger gets out of the vehicle, Butterfield and the passenger get into like a physical kind of scuffle. And then the passenger tries to get away from him. He goes behind the car, he kind of comes around to the driver's side of the car and it's at that point he fell down. And then as he was getting up, Jonny kind of met him at the front and he kind of climbed up Jonny. And then Jonny swung back like he was going to hit him. I don't know if he actually did or not…I remember seeing [Geisinger] kind of cock

> back…Butterfield was in tow behind [Geisinger], [the passenger] kind of like landed where Jonny was standing and kind of climbed up him. …And at that point Jonny looked like he was going to hit him. And then within seconds of that happening Butterfield steps into the middle of the street, that's when I noticed that he's got a gun and he just starts shooting.

(*Id.* at 49-50.)

MacDonald "stood there frozen on the sidewalk." (*Id*. at 51.) He then saw "the girl" (later identified as Annabelle Hartnett) try "to run across the street." (*Id*. at 51.) Butterfield turned "the gun on her and shot her." (*Id*.) Geisinger, MacDonald, and Butterfield ran back to the Element, hid as the first responding officers arrived, and returned to MacDonald's apartment in Westbrook. (*Id.* at 51-52.) While in the car, Geisinger "was yelling at Butterfield, why did you do that." (*Id*. at 54, 57.) Butterfield threw the gun into the front seat and Geisinger in turn tossed it to MacDonald, directing him to put it under the seat. (*Id*. at 55.) Back at the apartment, Butterfield commented that "Bear should never have given him the gun because….he knew that [Butterfield] was crazy and that he would use it." (*Id*. at 58.) Far from being upset by what he had just done, Butterfield appeared "[p]roud," and boasted about "street cred, about getting a teardrop on his…it was really quite disgusting." (*Id.* at 58, 61.)

Annabelle Hartnett related that she emerged from the drug house at 112 Woodford Street to see Coffin being dragged out of the car and assaulted. (Tr.T. Vol. 1 at 88-89.) "I hear a voice say, give us your money and listen to what he says. And [Coffin] is screaming I don't have any money. I see him empty his pockets out…And then I see the three men drag him out of the car." (*Id*. at 88-89.) She did not recognize Coffin's assailants, but described one as significantly taller, wearing a black and red sweatshirt, with the other two men being shorter, "probably around [Coffin's] height, so maybe 5'5 to 5'7, 5'8." (*Id*. at 89).[2] She saw the "taller guy" pull out a gun and the two other smaller guys…run…back that way." (*Id*. at 91.) "And then I hear two gun shots and [Coffin] is on the ground." (*Id*.):

> Then the taller guy walks over to me and tells me to get on my knees. So I get on my knees…, he puts the gun to my head, and I'm wearing a baseball cap, so he shoots and it goes through my baseball cap and my scarf and I see a lot of ashes. And I lay down on the ground to the right and I play dead. And he starts running to the right, maybe…10, 12, feet and he stops. And I turn and look and I lift my right arm up and he shoots again and it goes through my arm and over my body…

(*Id*. at 92.) As the police arrived, she observed Osborne "running [Coffin's] pockets looking for money or drugs…He's asking me if I have anything on me

[2] The Chief Medical Examiner measured Coffin's height at five foot and six inches. (Tr.T. Vol. 2 at 27.)

that he can take off my hands." (*Id*. at 95; see also 235-236, State's Ex. 96 (Officer Grass's body worn camera video of initial response).)

Coffin and Hartnett were transported to the hospital, where Coffin succumbed to his injuries. (Tr.T. Vol. 1 at 97.) The Chief Medical Examiner identified two gunshot wounds and concluded that Coffin had died of a gunshot wound to the abdomen. The bullet that entered the right side of Coffin's abdomen was recovered from Coffin's heart. (Tr.T. Vol. 2 at 29-39.) Hartnett sustained a gunshot wound to her arm. (State's Ex. 36; Tr.T. Vol. 1 at 98.) There was a bullet defect in the brim of Hartnett's baseball cap, indicating that the shooter had barely missed her head. (Tr.T. Vol. 2 at 39-46.)

After fleeing the scene and returning to MacDonald's apartment, MacDonald, Geisinger and Butterfield eventually went to sleep. (Tr.T. 3 at 63-64.) When MacDonald awoke after daylight, he discovered the gun with ammunition on his kitchen table. (*Id*. at 6-65.) He recognized the gun as the same firearm he had purchased a month earlier with the intent to gift it to his adult son as a 21st-birthday present. (*Id*. at 67.) He related that he later changed his mind and a week after his purchase, he instead sold the gun to Geisinger. (*Id.* at 67-68, 184-188.) MacDonald had not seen the gun since selling it to Geisinger until the moment Butterfield pulled out the gun to shoot Derald Coffin. (*Id.* at 189, 199, 201.)

After discovering it on the table, MacDonald took the gun and attempted to hide it with an acquaintance. (*Id.* at 69.) When the acquaintance later texted him "to come get your dirty laundry," MacDonald retrieved the gun, stashing it in the back seat of his truck, where officers later recovered it. (*Id.* at 70-76, 202-205.) A firearms expert with the Maine State Police Crime Laboratory determined that the gun was the same weapon that was used in Coffin's murder. (Tr.T Vol. 3 at 228.) The Laboratory's DNA analyst found a DNA profile from the swab of the hammer of the gun that was "a mixture of four individuals." (Tr.T. Vol. 4 at 49.) The major contributor was Geisinger, but the other three individuals had left such low amounts of DNA that profiles could not be developed to compare to known samples. (*Id*. at 47-49, 65-69.) The swab of the entire gun "had a mixture of at least three individuals" but those mixtures were also "not suitable for comparison" to known DNA samples. (*Id*. at 51, 63.)

On the evening of April 26, 2022, Geisinger and MacDonald drove Butterfield to Saco and dropped him off at his request. (Tr.T. Vol. 3 at 77, 80, 81.) He turned himself into the Saco Police Department on unrelated warrants. (Tr.T. Vol. 4 at 83.) Officers later located and recovered the Honda Element in Bridgton, Maine, at the home of one of Geisinger's relatives. (Tr.T. Vol. 2 at 159-160.)

On May 4, 2022, Portland Police Detectives Andrew Hagerty and Daniel Townsend interviewed Butterfield at the York County Jail. (Tr.T. 4 at 140; State's Ex. 86 and 86A.) When confronted with photographs of Butterfield in the company of MacDonald and Geisinger on the night of the shooting, Butterfield responded, "[H]ypothetically, let's say I am the shooter, right? Is it going to change anything? No, it's not." (State's Ex. 86A at 25-26.) He went on to say, "First of all, let me tell you this, too. I gang bang. I'm Gangster Disciple. I'm GD. It's tattooed all over my face. You guys aren't getting nothing out of me…Respectfully." (*Id*. at 26-27.)[3] As they pressed him on specific details, he responded,

> I know how this goes. We're not inching towards it. I know how this goes. You feel me? You guys aren't going to get at me. I'm used to this. We're not going to inch towards it. Basically, you guys got everything you need. Respectfully -- I got nothing against you guys, you feel me? But I'm just never going to say anything. I was brought up different. I'm not going to fold under pressure.

(Id. at 27- 28.)

He went on to disclose: "[M]y Dad didn't teach me much except how to fight. Never fear no man and never rap. So that's just what I do. And either

[3] Gangster Disciples is the name of a criminal gang, and Butterfield's facial tattoos displayed insignias used by Gangster Disciples. (Tr.T. Vol. 4 at 139-140.)

way, if you guys got it, if I go to trial and I lose, I man up. I own that, you know?" (*Id*. at 28.)

Butterfield was more forthcoming about his involvement in the crime when speaking with corrections officials, other jail residents, and acquaintances. He told a corrections official escorting him to his interview with the detectives on May 4, 2022, that "he already knew what this was about. And I said to him, you do? And he said, yeah, it's about the guy I shot." (Tr.T. Vol. 4 at 91.) After the interview, he was "laughing" and showing other inmates the paperwork he had been given during the interview. (*Id*. at 92-93.)

Butterfield also made admissions in a series of jail calls from the York County Jail in April and May 2022, although those admissions were not heard by the jury due to the court's order dated Dec. 14, 2023, excluding the calls as a sanction. (See procedural history infra at pages 18-20.) The relevant transcripts of those calls were attached as Exhibit A to the State's Memorandum dated February 6, 2024, in Opposition to Motion to Withdraw Plea and for New Trial ("Ex. A"). During a call on May 9, 2022, he bragged that he was about to get "mad time." When asked why, he said, "You'll hear about it, I'm sure…It hasn't come out yet, but I'm sure you'll hear about it." (Ex. A at P3145-3144.) He explained that the investigators had come to the jail and seized his clothes as evidence, but "they don't have a gun." (Ex. A at P3166.)

When asked when he would be released from jail, he responded, "Never," asserting, "Do you not understand what I'm charged with? I'm charged with murder and attempted murder." (Ex. A at P3178.) He asked the caller to check her phone for news about the "Woodford Street shooting": "It should say that the nigga died, but the bitch lived." (Ex. A at P3176.) He later asked, "You want to know who was with me when that shit happened that I didn't do?" When the caller responded. "Who," Butterfield answered, "Bear" [Osborne]. (Ex. A at P3199.) He informed another friend that "They got me, I was charged with attempted and the body." (Ex. A at P3181-3182.) On May 23, 2022, he told a caller that "if they offer me 25 years right now, I'd take it….You know what's going to happen if I go to trial and lose." (Ex. A at P3199.) He then explained his strategy, "I'm a hold out anyway. Because you know what they do right before trial, before they have to spend all that money, they're going to give me some crazy deal. You feel me?" (*Id.*) On May 29, 2022, he joked that he would have released his clothes to the caller before they were seized by the officers. The caller responded that she would have "washed it ten times over" and then told the officers, "Sure, you can have them after I just washed them six times in a row." To which Butterfield affirmed, "Yeah, right? Fuck." (Ex. A at P3220.)

Procedural Background

On June 8, 2022, Damion Butterfield was arrested for murder and attempted murder with a firearm. (App. 3.) On July 8, 2022, the Cumberland County Grand Jury returned an indictment on murder, aggravated attempted murder, illegal possession of a firearm, and robbery, and the State filed a notice of joinder for trial with Jonathan Geisinger, Anthony Osborne and Thomas MacDonald. (App. at 5, 47-49.) On July 18, 2022, Butterfield entered a plea of not guilty. (App. at 5-6.) By the time of pre-trial motion hearings and trial, he had a team of three defense counsel to represent him. (App. at 3, 4, 5, 10-11.)

On September 20, 2023, following a hearing on the defendants' motions to sever and the State's memorandum in support of joinder, the court severed Butterfield's cases from that of Geisinger and Osborne for trial. (App. at 16.) MacDonald had pled guilty on April 25, 2023, to an information charging Hindering Apprehension under a plea agreement that required him to testify truthfully in the pending cases. *State v. MacDonald*, CUMCD-CR-2022-2189.

On May 4, 2023, Butterfield filed a motion to determine his competency to stand trial, but withdrew that motion by letter dated August 1, 2023, prior to pre-trial hearings. (App. at 8 and 12.) On June 1, 2023, he entered a plea of not criminally responsible by reason of insanity, which he later withdrew in

the Defendant's Reply to State's Motion In Limine to Exclude Expert Testimony dated November 30, 2023, at page 5.

The jury trial (Kennedy, J.) began on December 6, 2023. (Tr.T. Vol. 1.) On the fourth day of trial, the State intended to present Laurie Davies, a corporal at the Maine State Prison, to authenticate State's Exhibit 145, comprised of text messages between Butterfield and his girlfriend on Butterfield's prison issued tablet on February 5, 2023, including Butterfield's statement: "I KILLED DERALD COFFIN AND SHOT ANHEBLEEE HEARTNETTTT." (State's Ex. 145; Tr.T. Vol. 4 at 28-33.) Exhibit 145 was the same as Exhibit 3 that had previously been admitted at a suppression hearing in August 2023 on the issue of the voluntariness of his statements. (Tr.T. Vol. 4 at 30-31.) Butterfield raised for the first time at trial questions about the completeness of the text chain. (*Id*.) After meeting with Butterfield's girlfriend over the course of the morning, counsel for Butterfield notified the State that Butterfield's girlfriend had told them that there was more to the text chain than Butterfield's apparent admission. (*Id*. at 100-106.) After consulting with Corporal Davies and obtaining all the texts for the day of February 5, 2023, that had not been previously produced to the prosecution team, the State informed the court that it would not call Corporal Davies as a witness or presenting Exhibit 145. (*Id*. at 110.)

By evening emails on December 12, 2023, Butterfield notified the court that he would be filing two motions to dismiss the following morning based upon an alleged "outrageous discovery violation" and a "profound violation of Defendant's due process right." (See Defendant's Motion to Dismiss for Failure to Disclose Exculpatory Evidence dated December 12, 2023, and Defendant's Motion for Mistrial and Dismissal with Prejudice dated December 12, 2023.) He filed a third motion to dismiss on the morning of December 13, 2023, prior to the commencement of the scheduled trial proceedings, based upon the alleged "outrageous prosecutorial misconduct" by the undersigned in a Chambers conversation with a witness, Lisa Witham, while counsel and the court were both present. (Defendant's Motion to Dismiss due to Prosecutorial Misconduct dated Dec. 12, 2023.) As a result of the motions, the court "called off the jury" to give Butterfield an opportunity to fully litigate his three motions. (Tr.T. Vol. 5 at 4.)

Butterfield withdrew his motion for sanctions with respect to Lisa Witham when he could not in fact provide any support for it. (*Id*. at 18-28.) The court denied in Chambers the second motion requesting sanctions based on the prosecutors' decision not to call Michael Esposito, an inmate, in their case-in-chief. (*Id*. at 7-14.)

A testimonial hearing was held on the first filed motion, requesting dismissal because the State had not produced the entire text chain between Butterfield and his girlfriend on February 5, 2023, until the defense had brought to the State's attention evidence that the chain omitted exculpatory statements. (*Id*. at 4-6.) Corporal Laurie Davies of the Maine State Prison testified about the circumstances that led her to forward an incomplete text chain to the State investigators. She said that she monitors communications between residents at the prison and visitors and civilians on the outside. (*Id*. at 39.) Davies had been monitoring Butterfield's communications, including his texts on his assigned prison tablet, when she learned that the Portland Police Department had an interest in any statements he might make regarding the Woodford Street shooting. (*Id*. at 46-49.) Butterfield's text to his girlfriend on February 5, 2023, that "I KILLED DERALD COFFIN AND SHOT ANHEBLEEE HEARTNETTTT" caught Davies' attention. (*Id.* at 55-56, 59-60, 68; State's Ex. 145.) She scrolled back in time but noticed only texts in which Butterfield and his girlfriend appeared to be arguing about unrelated issues. (Tr.T. Vol. 5 at 68-69.) As a result, she made screen shots of the texts that she determined were relevant and forwarded them to Detective Hagerty. (*Id*. at 60.) She testified that, "It wasn't I intentionally was keeping some information…I went

back a few pages on my display and I made the decision I made." (*Id.*) She missed the earlier statement from Butterfield that "if you don't block this number, Ima falsely convict myself." (*Id.* at 72.) That text was located "at least 18 texts" prior to the excerpt that she had provided to investigators. (*Id*. at 72-73.)

The morning following the hearing, the court granted the motion for discovery sanctions, even though the texts from the Maine State Prison tablet had never been presented to the jury. (App. 23-24.) The sanction excluded the recorded jail calls during another time period (April and May 2022) and at an entirely different facility (York County Jail). (*Id*.) The court denied the State's request to reconsider exclusion of the unrelated jail calls. (Tr.T. Vol. 6 at 4-7.)

As a result of the ruling keeping out Butterfield's jail call admissions, and the defense theory that Butterfield was present at the robbery and the shooting but did not pull the trigger, the State requested an accomplice liability instruction. (Tr.T. Vol. 6 at 106-114.) The court instructed on accomplice liability over the defense's objection. (Tr.T. Vol. 7 at 9-10.)

While the jury was deliberating, Butterfield elected to plead guilty as charged in return for a 35-year sentence. (Tr.T. Vol. 9 at 35.) He proceeded

with the plea even after being informed that the jury had a verdict. (*Id*. at 47, 53-55.) The jury was dismissed without publicly announcing its verdict.

Two weeks later, on January 2, 2024, Butterfield moved to withdraw his plea and for a new trial. (App. at 25.) On April 26, 2024, the court held a hearing on the motions and on May 7, 2024, the court issued a decision denying both requests. (App. 27-28.) On June 13, 2024, the court adjudicated Butterfield guilty of murder, aggravated attempted murder, possession of a firearm by a prohibited person and robbery. (App. 28-30.) The court sentenced Butterfield to the agreed-upon sentence of 35 years. (*Id*.)

On June 15, 2024, Butterfield filed a timely notice of appeal and application to allow an appeal of sentence. On July 24, 2024, this Court granted the application to allow a sentence appeal, to be considered as part of this direct appeal. *State v. Butterfield*, Docket No. SRP-24-283 (Me. Sent. Rev. Panel July 31, 2024.) The State moved on August 8, 2024, to dismiss the appeal, based upon the Court's lack of subject matter jurisdiction to review sentences imposed in accordance with an agreed-upon sentence under 15 M.R.S. § 2151(2) and M.R. Crim. P. 11A. This Court denied the motion by Order dated August 21, 2024, but indicated that the State could argue in its brief that the sentence appeal was outside the Court's subject matter jurisdiction.

State v. Butterfield, Docket No. SRP-24-283 (Me. Sent. Rev. Panel August 21, 2024.)

STATEMENT OF THE ISSUES

I. Whether the court abused its discretion in denying Butterfield's motion to withdraw his plea of guilty made after trial and while the jury was deliberating.

II. Whether Butterfield has waived his sentence appeal and whether the Court lacks subject matter jurisdiction to review an agreed-upon sentence.

ARGUMENT

I. The court did not abuse its discretion in denying Butterfield's request to withdraw his guilty plea, after he had presented his defense at trial and had elected to plead guilty during the jury's deliberations, even after being notified that the jury had a verdict.

A. Procedural History.

From its opening argument, the defense team articulated a theory supporting an instruction on accomplice liability. While they did not dispute that Butterfield was present at the robbery and murder on Woodford Street, they claimed that another co-defendant, Jonathan Geisinger, fired the gun, even though the only eyewitnesses who testified at trial identified Butterfield, or someone consistent with Butterfield's physical description, as the shooter. (Tr.T. Vol. 1 at 62, 71.) During initial discussions with the court about the

instructions, the State recognized that the evidence generated the issue of accomplice liability but debated whether the complexity of the instructions used in *State v. Asante*[4] would unnecessarily complicate what should have been a simple case. (Tr.T. Vol. 4 at 117.) Once Butterfield's jail calls were excluded from evidence as a discovery sanction, the State proposed the accomplice instruction and the defense "strenuously object[ed] on numerous grounds," calling the proposal a "last minute surprise" prompted by "twisted logic." (Tr.T. Vol. 6 at 119-120.) The court concluded that the evidence had generated an accomplice instruction and included the instruction over Butterfield's objection. (Tr.T. Vol. 7 at 7-8, 124-128.)

The jury did not begin their deliberations until 1:44 p.m. on Friday, December 15, 2023, and were released for the weekend at 4:20 p.m. (Tr.T. Vol. 7 at 139.) Butterfield's team attempted the following Monday to terminate the jury's deliberations by filing a motion for stay of jury deliberations and a motion for mistrial and dismissal with prejudice. (App. at 24.) The court denied the motions, concluding that the "accomplice instructions …[were] generated." (Tr.T. Vol. 8 at 2, 4.) The jury was released before 3:00 p.m., due to that day's storm. (*Id.* at 69.)

[4] 2020 ME 90, 236 A.3d 464, ¶¶ 11-16; aff'd after remand, 2023 ME 24, 294 A.3d 131.

The following day, having been unsuccessful at derailing the jury deliberations, the defense team concluded, based upon their interpretation of the jury's notes to the court, that it was in their interests to explore a plea:

> [I]n light the pending note here, we've discussed among ourselves and with our client, we've analyzed it every which way, and the only possible logical explanation for this note, to us, is that the jury has …decided to convict on murder…And now…somewhere between one and 12 of them are wondering whether they can convict on…aggravated attempted murder and attempted murder, which …at that point becomes sort of academic to us…[I]t seemed pretty clear…even before this last note there was substantial exposure to conviction on murder under at least in part the accomplice liability theory…
>
> So, you know, we engaged in…a settlement conference before all of this came up and it's now come up, and we've received an offer. It was originally 40 years and we've got it down to 35 years. And, you know, I'm wildly, wildly opposed to my client pleading guilty and accepting a 35 year offer. …And I am like almost physically assaulting him out there to try to convince him not to do that. Dan has been working on him as well. But Damion is equally pushing back that he wants to take 35 years. And, you know, it's ultimately his choice.

(Tr.T. Vol. 9 at 34-35.)

The State's counsel raised the concern that Butterfield could change his mind and withdraw his plea before sentencing after the jury had "worked hard for two weeks." (*Id*. at 45-46.) Defense counsel's "solution" to that possibility was to have the court conduct two Rule 11 inquiries, one in Chambers and one in the courtroom. (*Id*. at 43, 46.)

The court conducted an initial Rule 11 colloquy in Chambers:

THE COURT: Damion, tell me what's going on right now.
THE DEFENDANT: I'm going to take the 35.
THE COURT: Why?
THE DEFENDANT: Because I don't want to get a guilty verdict and get 80.
THE COURT: Okay. Well, the 80 never –
THE DEFENDANT: Or 60 or life…
THE COURT: You understand the jury has reached a verdict?
THE DEFENDANT: Yes…
THE COURT: You understand it could be not guilty?
THE DEFENDANT: Yeah.
THE COURT: Are you sure you don't want to find out?
THE DEFENDANT: Yeah, I don't want to find out.
THE COURT: Why don't you want to find out?
THE DEFENDANT: Only because of this last note that came in. I just -- I'm thinking off of -- off of that and how it -- how it was worded and everything.
THE COURT: What about -- what about the note makes you want to change your plea -- your plea today?
THE DEFENDANT: Because they asked if attempted murder, if it applies to the accomplice liability or whatever. Which means they probably already found it on the murder.
THE COURT: Okay.
THE DEFENDANT: Which means if I take the 35, I won't go and get 45 or life.
THE COURT: Okay. And you understand that there is -- that the possible sentence is life in imprisonment with -- and I wouldn't be sentenced -- I wouldn't be giving you any probation obviously.
THE DEFENDANT: Yeah, yeah.
THE COURT: Okay. And you understand you're giving up all your rights? You're giving up your right to be presumed innocent? Your right to have the trial continued to its conclusion? Your right to have the jury announce their verdict?
THE DEFENDANT: Yeah.
THE COURT: You're giving up your right to confront and cross -- well, actually you haven't really given up your right, but, you know, we've gone through the whole trial.

THE DEFENDANT: Yeah.
THE COURT: You understand all the rights that you're giving up?
THE DEFENDANT: (Nodded head up and down.)

(*Id.* at 47, 53-55.)

While the jury was still waiting with its verdict, Butterfield reneged on his plea after being informed that there was no guarantee that the murder sentence would be served concurrently with the probation revocation that he was then serving: "I didn't think it was going to be like that. So at that point, that's only one year off the 40 year they already offered. So there's really no point to taking something like that." (*Id*. at 59.) The court responded, "Okay…So we'll let the jury come in and give their verdict." (*Id.*) Defense counsel, who had previously claimed to be "wildly wildly opposed" to Butterfield's pleading guilty, protested, "it just seems that…to turn this to chance over four years is pretty…arbitrary and capricious..." (*Id*. at 61.) After some more negotiations (*id*. at 62-75), the State indicated that it would not oppose the murder sentence being served concurrently with the probation revocation, and Butterfield decided once again it was in his interests to plead guilty. (*Id*. at 71-75.)

The following Rule 11 colloquy took place in open court (while the jury continued to wait with its verdict):

> THE COURT: And my understanding is you wish to change your plea…from not guilty to guilty.
> THE COURT: [The jury has] reached a verdict....And you do not wish to hear the jury's verdict at this point?
> THE DEFENDANT: No.

(*Id*. at 77.)

> THE COURT: And, counsel, are you satisfied that your client is thinking clearly, is wanting to go forward with this, and is making this decision voluntarily?
> MR. HOWANIEC: Yes, your honor.

(*Id.* at 84.)

Butterfield pled guilty to all four counts and the State recited the factual basis of the charges—facts that had already been presented through witness testimony to the jury over the preceding week and a half. (*Id*. at 84-96.) Defense counsel again interjected his opposition to the accomplice liability instruction and his alleged opposition to the plea. (*Id*. at 98-108.) He then made clear that Butterfield was only pleading because they believed the verdict would be guilty:

> MR. HOWANIEC: [T]he jury began deliberations Friday afternoon. They immediately came forward with three notes that were clearly related to the issue of accomplice liability. Those notes have continued into this week, yesterday and today…Culminating in a note this afternoon which can only be interpreted as the jury having reached a -- a guilty verdict on the charge of murder, not making it clear to us the extent to which they merged their individual decisions on the verdict into a murder conviction on Count 1, whether it was Damion as the shooter or Damion as the shoot -- as an accomplice who was not the shooter.

(*Id.* at 102-103.)

> So as we stand here we've got a jury that has filled out a hard copy of a …verdict form, that is in existence, and we don't know what it is. And we're entering into a plea for three and a half decades with a jury sitting there 20 feet away that has made a decision that at least---not theoretically, that could possibly be a not guilty verdict.

(*Id*. at 104.)

> Having said all that, I think you need to accept Damion's plea because he wants to do it…[A]fter that last note and with the instructions on accomplice liability, I almost think he has no choice.

(*Id.* at 106.)

Defense counsel having placed his alleged reservations on the record, the court again addressed Butterfield:

> THE COURT: Mr. Butterfield, you heard what your attorney just said.
> THE DEFENDANT: Yes.
> THE COURT: …I want to be very clear. You do not have to do this today.
> THE DEFENDANT: I know.
>
> THE COURT: Are you pleading guilty today…because you are guilty?
> THE DEFENDANT: Yes.
> THE COURT: Are you pleading guilty to murder, intentional or knowing murder, because you are guilty?
> THE DEFENDANT: Yes.
> THE COURT: Are you pleading guilty to aggravated attempted murder with a firearm because you are guilty?
> THE DEFENDANT: Yes.

> THE COURT: Knowing and having considered all of this, knowing that there is a jury out there with a verdict that could be different than what you are pleading guilty to, do you still wish to plead guilty?
> THE DEFENDANT: I'm absolutely positive.

(*Id*. at 108, 110, 112.)

In text messages to his girlfriend from Maine State Prison on the day after his plea, Butterfield explained his decision to plead guilty to the charges:

> Like idk what u dont get i can say it now i did the sht
>
> It wasnt how they said it but i did that sht im sorryyyy

(See Text messages from 12/20/23 at B-6 attached as Exhibit B to the State's Memorandum in Opposition to Motion to Withdraw Plea and for New Trial dated February 6, 2024.)

On January 2, 2024, defense counsel moved to withdraw Butterfield's plea and for new trial. (App. at 25.)

B. Legal Analysis.

This court should dismiss Butterfield's appeal after his tactical decision to plead guilty to obtain the benefit of a sentence that was likely lower than the sentence that would have been imposed after a guilty verdict. As counsel recognized below while purporting to oppose the plea:

> So, you know, obviously if it's a guilty verdict, 35 years makes all the sense in the world here. But I mean just imagine if it's a not

> guilty verdict and he pleads to 35 years. That's going to be a tragedy of Shakespearean proportions.

(Tr.T. Vol. 9 at 46.)

The Law Court has held that "[a]though relief should be granted liberally" in response to a motion to withdraw a plea prior to sentencing, "a defendant does not have an absolute right to withdraw a plea." *State v. Weyland*, 2020 ME 129, ¶ 17, 240 A.3d 841, citing *State v. Hillman*, 2000 ME 71, ¶ 7, 749 A.2d 758. The court must examine "the facts and circumstances of each particular case with the ultimate purpose of furthering justice." (*Id.*)

There are four factors in determining whether to grant a motion to withdraw plea:

> (1) The length of time between the defendant's entering the plea and seeking to withdraw it;
> (2) Any prejudice to the State that would result if the plea were withdrawn;
> (3) The defendant's assertion of innocence; and
> (4) Any deficiency in the Rule 11 proceeding.

Weyland at ¶ 18.

All four factors support the trial court's rejection of Butterfield's attempt to withdraw his plea.

Length of time between plea and withdrawal. While 14 days would not be a long time to renege if his motion to withdraw his plea had occurred *prior*

to trial, it is too long under the unique circumstances of this case. The jury spent nearly two weeks hearing the evidence and deliberating. It had its verdict *for hours* while Butterfield and his counsel debated their options and bargained with the State for a reduced sentence. The time to renege would have been while the jury was still available to return its verdict. By the time the jury was discharged, it was too late for Butterfield to withdraw his plea. The defense calculated that Butterfield could avoid a guilty verdict by pleading guilty, having the jury discharged, and withdrawing his plea after the verdict could no longer be read. To succeed in such manipulation would be a gross miscarriage of justice.

Prejudice to the State. The State would be extremely prejudiced by having to retry Butterfield to accommodate his whim, when he could have simply let the jury render its verdict. This matter had already been severed over the State's objection, requiring the witnesses, the surviving victim, and the family to relitigate the same facts as many as three times.[5] The State presented its witnesses and evidence against Butterfield at trial, compelling

[5] As the State argued below, "the general policy [is] in favor of joint trials." *State* v. *Williams,* 2012 ME 63, ¶ 21, 52 A.3d 911, *citing State v. Parsons,* 2005 ME 69, ¶ 13, 874 A.2d 875; *State v. Boucher,* 1998 ME 209, ¶ 9, 718 A.2d 1092. The United Supreme Court has recognized that: "Joint trials have long 'play[ed] a vital role in the criminal justice system,' preserving government resources and allowing victims to avoid repeatedly reliving trauma." *Samia v. United States*, 599 U.S. 635, 654 (2023) *citing Richardson v. Marsh*, 481 U.S. 200, 209 (1987). "[J]oint trials encourage consistent verdicts and enable more accurate assessments of relative culpability." *Id*.

the traumatized victim of his attempted murder to travel back from California and endure his repeated questions about her past drug addiction after she had finally achieved sobriety for several months. (See, Tr.T. Vol. 1 at 113, 148-150, 153, 156-157, 180, 207-208, 216.) It would be unconscionable to require her to relive her trauma yet another time to allow a second chance at acquittal for a man who has told the court that he is in fact guilty of attempting to kill her. See *State v. Weyland* at ¶ 23 ("trial courts may consider 'the impact of a plea withdrawal on vulnerable victims'" in determining prejudice to the State.)

The trial was also very difficult for Derald Coffin's family, especially his mother, and a second trial would be devastating. A retrial would further impose an undue burden on the cooperating witness, Tom MacDonald, while giving Butterfield a second bite at the apple that he does not deserve when the jury had in fact returned a verdict. Finally, retrial would prejudice the State because it would unnecessarily divert resources from the backlog of murder cases yet to be tried. Butterfield had his day in court and he now suffers from buyer's remorse. Allowing him a second trial would be a waste of judicial resources which could be better applied to attending to the trials of other incarcerated defendants in the queue.

No credible assertions of innocence. As the court noted in its order

denying the motion to withdraw, "Mr. Butterfield has not asserted his innocence." (App. at 38.) The evidence at trial established his guilt beyond a reasonable doubt. Tom MacDonald testified that Butterfield was the shooter, and Butterfield did not dispute that he was present at the crime scene. Butterfield has never in his many jail calls implicated anyone other than himself as the shooter. Annabelle Hartnett's description of the shooter excludes Geisinger and MacDonald, implicating Butterfield as the only member of the trio consistent with her description. (Tr.T. Vol. 1 at 99.)

No deficiencies in the Rule 11 proceeding. This court went to great lengths to ensure that Butterfield was making a rational choice in pleading guilty by conducting not just one, but two detailed Rule 11 inquiries. As the court noted in its order: "Mr. Butterfield had multiple opportunities over the course of several hours to discuss his options with counsel and an additional opportunity to reconsider and discuss with counsel after the jury reported it had received a verdict." (App. at 38.) The court's questions went well beyond the usual scope of a Rule 11 proceeding, inquiring about his desire to plead guilty when (1) the jury had reached a verdict, (2) the verdict could in fact be not guilty, and (3) he would be giving up his right to appeal any trial errors if the verdict were guilty. He insisted on going forward. He carefully considered

his options, reneging when he thought he would not get a sentence concurrent with his probation revocation, and pled guilty only when he had concluded after lengthy discussions with his counsel that the verdict was guilty and that he would not get the benefit of a highly discounted sentence after a guilty verdict. "Unlike at a trial, the defendant who enters a plea of guilty in a Rule 11 proceeding is cooperating in the creation of a record intended to instill confidence that the outcome is a reliable reflection of guilt." *Gordon v. State*, 2024 ME 7, ¶ 13, 308 A.3d 228. Butterfield has not, and cannot, point to any deficiency in the Rule 11 proceeding.

Butterfield's brief is devoid of any analysis of the four factors to be considered in determining whether the court abused its discretion in denying his motion to withdraw his plea of guilty. Rather, his brief persists in making specious claims and airing prior grievances about his perceived unfairness at a trial that accommodated his demands at almost every turn, including his complaint that his counsel could not watch "Emily in Paris" in peace on the evening prior to closing arguments due to the court's emailing proposed instructions after court hours. (Appellant's Brief at 11.)

He contends, for example, that this was a "rushed Rule 11 plea by a very mentally ill young man." (Appellant Brief at 34.) In fact, there is no evidence that Butterfield pled guilty due to mental illness rather than a calculated effort

to obtain a more favorable sentence. Butterfield's mental capacity was thoroughly litigated in pre-trial motions and the court found that his statements to investigators, friends and family had been knowing and voluntary. (See Order Denying Defendant's Motion to Suppress Statements dated September 20, 2023.) Indeed, Butterfield recognized prior to trial that his mental condition afforded him no defense to his crimes, withdrawing his earlier claims that he was not competent to stand trial and not guilty by reason of insanity. (See Procedural History, supra, at pages 16-17.)

His contention on appeal also contradicts his lawyer's representations to the court at the Rule 11 proceeding:

> THE COURT: And, counsel, are you satisfied that your client is thinking clearly, is wanting to go forward with this, and is making this decision voluntarily?
> MR. HOWANIEC: Yes, your honor.

(Tr.T. Vol. 9 at 84.)

Butterfield continues to vent about the text message from the prison that was never entered into evidence, asserting that "[t]he State is fortunate that a harsher sanction like dismissal was not imposed." (Appellant's Brief at 24.) His assertion is completely unmoored from any legal analysis about the appropriate sanction for a discovery violation. This Court reviews the trial court's response to a discovery violation "to determine whether the process

struck a balance between competing concerns that was fundamentally fair." *State v. Lowery*, 2025 ME 3, ¶ 25, ___A.3d_____. In determining the appropriateness of sanctions, this Court will look to whether the defendant "has demonstrated that he was in fact prejudiced by the discovery violation..." (*Id*.) In fact, there was no prejudice to Butterfield in this case, and no reason for the court to have imposed a sanction excluding the calls that he made from the York County Jail in April and May 2022. It is the State's position that by imposing a sanction for a discovery violation that resulted in no prejudice to the defendant, the court abused its discretion to the detriment of the State in preventing the jury from hearing material and highly relevant evidence--Butterfield's admissions during his jail calls.

As for the Motion for New Trial, it is simply inapplicable to this case. As the court noted in its order, "this Court could not grant Mr. Butterfield a new trial unless the Court allowed Mr. Butterfield to withdraw his guilty plea." (App. at 40, citing *State v. Bard*, 2018 ME 38, 181 A.3d 187.) As this Court has observed, "Obviously defendant cannot get a trial on the charges for which he has already been sentenced until he, with the court's approval, withdraws his plea of guilty." *State v. Cardosi*, 498 A.2d 599, 600 (Me. 1985).

Ultimately, Butterfield has no right to a direct appeal in this case on either his motion to withdraw his plea or for a new trial.

> A conviction after a guilty plea involves no decision by the court regarding the defendant's criminal guilt and therefore provides no source of decisional error by the court regarding criminal guilt. No *direct* appeal pursuant to 15 M.R.S.A. § 2115 (Supp.1995) asserting errors in the determination of criminal guilt may be taken from a conviction after a guilty plea (other than a conditional guilty plea entered pursuant to M.R.Crim.P. 11(a)(2)), except on grounds of jurisdiction or excessive, cruel or unusual punishment, because there is no decision by the court to appeal from. Challenges to a conviction after a guilty plea on grounds of involuntariness of the plea, lack of knowledgeability on the part of the defendant regarding the consequences of his plea, ineffective assistance of counsel, misrepresentation, coercion or duress in securing the plea, the insanity of the pleader, or noncompliance with the requirements of M.R.Crim.P. 11 are collateral and may be pursued only by post-conviction review pursuant to 15 M.R.S.A. §§ 2121–2132 (Supp.1995).

State v. Huntley, 676 A.2d 501, 503 (Me. 1996); followed by *State v. Adams*, 2018 ME 60, ¶ 11, 184 A.3d 875.

Butterfield lost his motion for mistrial and decided to plead guilty rather than roll the dice with the jury. The trial did not culminate in a verdict. There are no trial errors to review to determine whether the Law Court should affirm the verdict. None of the bases for a new trial under Rule 33 are present in this case: there is no newly discovered evidence and no errors resulting in a verdict. Butterfield cannot now complain about the instructions when he

short-circuited the process to avoid any verdict resulting from the allegedly flawed instructions. If he had allowed the jury to return the verdict, he could have appealed to the Law Court for a review of counsel's myriad complaints about the instructions. Apparently, he did not really believe he would prevail on appeal. Instead, he wants a do-over. Butterfield has shown no basis that the court abused its discretion in denying his request to withdraw his plea of guilty, making any review of his motions for mistrial or new trial moot.

II. Butterfield has waived his appeal of sentence by pleading guilty in return for a 35-year sentence and then failing to raise any argument in his brief challenging the sentence.

Butterfield's brief is silent on the appropriateness of his 35-year sentence. He has failed to make any argument identifying "a misapplication of the law or of sentencing principles, or an abuse of the court's sentencing power" at step one of the sentencing process or "an abuse of discretion" in imposing the maximum and final sentence at step two. *State v. Ketcham*, 2024 ME 80, ¶ 35, 327 A.3d 1103 (Discussing the standard of review in sentence appeals).

Having failed to raise any argument in his brief to challenge the term of years imposed by the court below in accepting the joint sentencing recommendation, the argument has been waived. See, e.g., *Armstrong v. State*,

2025 ME 3, ¶¶ 12-16, ___A.3d____ (discussing waiver of issue that was not presented at the trial level).

More importantly, since Butterfield agreed to the sentence, this Court does not have jurisdiction to review it. This Court has held that

> [i]n contrast to the defendant's appellate options following an open plea, a defendant *does not* have the right to file an application for discretionary review of an agreed-upon sentence when the court accepts the recommendation. *See* 15 M.R.S. § 2151(2) (excluding from our discretionary review sentences imposed as a result of the court accepting a plea with an agreed-upon sentence pursuant to M.R.U. Crim. P. 11A(a)(2) and (4)). A defendant's application for review of a sentence entered upon joint recommendation will therefore be dismissed.

State v. Bean, 2018 ME 58, ¶ 20, 184 A.3d 373.

Butterfield's brief is likely silent on the 35-year sentence because he recognizes that he had accomplished what he had not been able to obtain prior to trial and what he certainly would not have been able to get after verdict: an extremely favorable plea bargain. Butterfield's intent to cause two deaths arguably met the gateway factor for a life sentence under *State v. Shortsleeves*, 580 A.2d 145, 150 (Me. 1990): "Multiple deaths, including situations in which the offender in committing the murder knowingly created a substantial risk of death to several individuals." He used a firearm, when he was prohibited from possessing one, to murder one unarmed person and

attempt to murder another. Butterfield was only age 22 at the time of murder, but he had already accumulated a significant criminal record, including a felony assault for which he was on probation when he committed the murder and attempted murder in this case. (See State's Amended Sentencing Memorandum dated June 11, 2024, at 10.) He expressed allegiance to a criminal gang, the Gangster Disciples, proudly displaying the gang insignia in tattoos covering his face. Indeed, in statements during one jail call that the court ultimately deemed too prejudicial for the jury to hear, Butterfield bragged that "the dude that I allegedly shot, his name is Coffin, isn't that weird, yeah, Coffin" and "if they charge me with this and I get prison…I'm going to get a coffin tattoo on my back." (Motion in Limine Transcript Dec. 1, 2023 at 98.) He showed no respect for judicial authority, asserting to the presiding justice, "This is my fucking courtroom…Suck my dick." (*Id*. at 75.) Even his own defense team expressed safety concerns about sitting at the same table at trial with him: "I've been a little concerned being in his presence…I've dealt with…a lot of very serious criminals. This is a very volatile young man. He's not going to be handcuffed and I'm going to be …within 6 inches of him here." (*Id*. at 76-77.) Unless he can be substantially rehabilitated, he will likely continue to present a risk to public safety after completion of his 35-year sentence.

Conclusion

By reason of the foregoing, the State respectfully requests that this Court affirm the decision of the court below.

Dated: February 25, 2025.

/s/ Leanne Robbin

Leanne Robbin
Bar Number: 2838
Assistant Attorneys General
Criminal Division
6 State House Station
Augusta, ME 04333-0006
(207) 626-8581

Katie Sibley
Assistant Attorney General
Of Counsel

CERTIFICATE OF SERVICE

I, Leanne Robbin, Assistant Attorney General, certify that I have emailed one copy of the foregoing "BRIEF OF THE APPELLEE" to the Appellant's attorney of record, James P. Howaniec, Esq.

DATED: February 25, 2025

/s/ Leanne Robbin
LEANNE ROBBIN
Assistant Attorney General
Criminal Division
Maine Bar No. 2838