STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No.: SOM-24-392

STATE OF MAINE

V.

MICHAEL KILGORE

ON APPEAL FROM THE
SOMERSET COUNTY UNIFIED CRIMINAL DOCKET

APPELLANT'S REPLY BRIEF

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REPLY ARGUMENT

I. The Trial Court abused its discretion by admitting evidence of the Officer's ongoing pain a year and a half after the incident, because such testimony had minimal probative value, but maximum prejudicial effect.

The State argues that testimony related to the Officer's recovery, including her PTSD, convalescence, and pain a year and a half after the incident, was not unfairly prejudicial under Rule 403. However, as this Court articulated in *State v. Michaud*, 2017 ME 170, ¶ 8, 168 A.3d 802:

> If the evidence has "minimal significance," for instance if "it is probative only of uncontroverted facts" or "its value is merely cumulative of other less prejudicial evidence," the court must examine the evidence closely to determine whether to admit it.

(quotations in original)

All of the testimony challenged by Michael fits neatly into these descriptions. The Officer's testimony regarding the pain she experienced during the incident when her foot was run over and when her arms were in the window was sufficient to establish that she suffered bodily injury. She testified that she was in pain, and it seems like a matter of common sense that anyone would have experienced pain under those circumstances. Therefore, testimony

regarding her pain a year and a half later, a PTSD diagnosis, and her condolences had "minimal significance," was "probative only of uncontroverted facts," and its value was simply "cumulative of other less prejudicial evidence."

The probative value of the testimony was immeasurably small, yet it was extremely prejudicial. The testimony told the jury a story about the Officer's post-incident experience that had a direct tendency to generate sympathy and influence the jury to, at least, convict Michael of something. Accordingly, the Trial Court abused its discretion by allowing such testimony. The admission of this testimony warrants a new trial.

II. The jury instructions were confusing and contained numerous structural defects, and such errors were obvious.

The Appellant's brief outlines in detail why the instructions are inconsistent and otherwise flawed and cites numerus examples to support the argument. Therefore, this reply is limited to addressing the State's argument regarding the premature guilty instructions and obvious error review.

a. There were multiple premature guilty instructions.

The State asserts that the "sequence [of instructions], did not authorize a guilty verdict without considering defenses." (Red. Br. at 15.) The jury instructions say different. The last paragraph of the Assault instructions state, *inter alia*, "[i]f the State proves these elements of assault beyond a reasonable doubt, then the Defendant is guilty of that offense. If the State fails to prove any of these elements beyond a reasonable doubt, then he is not guilty of the offense." (A. at 92.) The language of the instruction on the charge of Assault on an Officer is similar. (A. at 96.) The instruction does not instruct that the jury must consider the justification defenses before determining guilt. The instruction mandates that the jury determine guilt at this step.

It is only after this mandate that the jury is instructed on self-defense, even though they have already been instructed that the Defendant is guilty if the State proves the elements of Assault/Assault on an Officer. (A. at 93, 96.) Therefore, the instruction does "authorize a guilty verdict without considering defenses."

Furthermore, the instructions contain a second premature guilty instruction. The self-defense instructions say that Michael can be found guilty if the State disproves the self-defense justification. (A. at 94, 97.) The self-defense instructions do not make any mention of the remaining justification defenses, leaving the jury with a clear directive to convict Michael if 1) the elements of Assault/Assault on an Officer were proven and 2) self defense was disproven. It is not until much later in the instructions that the remaining justification defenses are even presented for consideration. (A. at 101.) The separation between these justification instructions suggests that they do not apply to the same charges as the self-defense justifications, namely Assault and Assault on an Officer.

In summary, a proper instruction should not suggest to the jury they can determine guilt prior to consideration of the justification defenses. The instructions should guide the jury through the elements of each offense and any defenses, before instructing them to finally consider the verdict. This is a clear, bright line rule that should have been followed. Here it was not.

b. The multiple errors are obvious.

Jury instructions are the backbone of the administration of justice in a criminal case. They instruct laypeople as to what the law means and how to apply it. Given their critical importance and technical nature, this Court scrutinizes those instructions. The errors in this case are very similar to cases where this Court has reversed convictions under obvious error review. *See State v. Baker*, 2015 ME 39, ¶ 13, 114 A.3d 214, *State v. Villacci*, 2018 ME 80, ¶ 17, 187 A.2d 576. In fact, in *Villacci*, this Court noted that the defective instructions were especially prejudicial, "given that Vallacci's defense was focused in large part on the application of the statutory justifications." *Id.* at ¶ 20. Here, Michael's entire defense rested on these justification defenses as well. Accordingly, these errors were obvious, and the judgment should be vacated.

CONCLUSION

For the above reasons, the Appellant respectfully requests that this Honorable Court reverse the convictions and remand the matter to the Trial Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the Undersigned, do hereby certify that on May 1, 2025, I caused to be served upon all parties an electronic copy of the Reply Brief, by emailing the parties below.

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Dated: May 1, 2025

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