STATE OF MAINE
WASHINGTON, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: WAS-24-231

STATE OF MAINE,
Appellee

v.

KAILIE BRACKETT,
Appellant

ON APPEAL FROM THE SUPERIOR COURT

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

I. Dr. Nirenberg's testimony was admissible because it was reliable and assisted the jury in determining a fact in issue.

II. The photographs that assisted the medical examiner in explaining the nature of Kim's injuries were not unfairly prejudicial.

III. The prosecutor committed no error in her closing argument and any perceived errors were harmless.

IV. Because no reversible error occurred in the admission of evidence and closing arguments, there is no cumulative error.

V. The evidence was sufficient to sustain Brackett's murder conviction.

VI. The sentencing court did not obviously err in imposing Brackett's sentence, and any perceived errors were harmless.

SUMMARY OF ARGUMENT

1. The trial court did not err by concluding that the expert testimony of Dr. Michael Nirenberg was relevant, reliable, and would assist the jury. Dr. Nirenberg's testimony contained nearly all the indicia of reliability previously identified by the Law Court, specifically, his underlying hypothesis was peer reviewed, his conclusion was tailored to the facts of this case, and his conclusion was peer reviewed and determined to be reliable. Any perceived issue about Dr. Nirenberg's methodology and uncertainty of opinion goes to the weight of his testimony, not its admissibility.

2. The trial court did not abuse its discretion by admitting six representative photographs of Kimberly Neptune's 484 individual injuries. The photographs were necessary to assist the medical examiner in explaining the nature of the injuries. The photographs were also probative of establishing essential elements the State was required to prove beyond a reasonable doubt; namely, whether the conduct amounted to a depraved indifference to the value of human life, and whether the conduct was intentional or knowing. The State had no less prejudicial means to present this critical evidence. The fact that the photographs depicted the injuries accurately does not amount to unfair prejudice, and the trial court took several steps to lessen any potential prejudice.

3. The prosecutor did not misstate material facts during her closing argument. The prosecutor's statements regarding Dr. Nirenberg's testimony and the cell tower evidence were both fairly based on facts in evidence. Any perceived error in the prosecutor's statements was nothing more than a verbal misstep that was not sufficient to draw an objection and did not affect the jury's verdict.

4. Because the trial court did not err in its evidentiary rulings and no prosecutorial error occurred, there is no cumulative error.

5. The evidence was sufficient to sustain the murder conviction. Viewing the evidence in the light most favorable to the State, the video evidence and observations of Brackett in the days leading up to Kimberly Neptune's death; the evidence contradicting her explanation for her whereabouts on the night Kim was murdered and her conduct on April 21; her message to Kim's brother Samuel coupled with a suspicious attempt to access Kim's camera system; and the physical evidence at the scene, including the bloody handprints on the wall and through the dresser drawers, all combined support the jury's rational determination that Brackett caused Kim's death beyond a reasonable doubt.

6. The trial court committed no obvious error in imposing sentence on Brackett. The court articulated the most appropriate sentencing goal being addressed in setting the basic sentence. Though the court did not specifically articulate a specific sentencing goal in setting the maximum and final sentence, the context of the proceeding sufficiently demonstrates the goals that were being served by the sentence. Any perceived error in the court's sentencing analysis was harmless.

PROCEDURAL HISTORY

On April 29, 2022, the State filed a criminal complaint in the Superior Court at Washington County charging the defendant Kailie Brackett (Brackett) with one count of intentional or knowing or depraved indifference murder for the death of Kimberly Neptune.[1] *State of Maine v. Kailie Brackett,* Superior Court, Washington County, Docket No. WASCD-CR-2022-20121; (Appendix 3, 60 [A. ___]). Brackett's initial appearance was held on May 2, 2022. (A. 3).

On May 18, 2022, the Washington County Grand Jury returned an indictment charging Brackett with the same count of intentional or knowing or depraved indifference murder charged in the complaint. (A. 4, 61). Brackett entered a plea of not guilty at her arraignment on July 19, 2022. (A. 5).

On September 7, 2023, the State filed a motion in limine to allow expert testimony at trial from Dr. Michael Nirenberg. (A. 7, 62-104). On December 1, the court held a hearing on the State's motion and the parties subsequently filed memoranda in support of their positions. (A. 9). On December 6, the trial court issued a written decision granting the State's motion. (A. 9, 19-23). The court's order allowed the admission of both Dr. Nirenberg's testimony and the testimony of Brackett's expert, Alicia McCarthy, PhD. (A. 19-23).

[1] 17-A M.R.S. § 201(1)(A) & (B) (2021).

On December 5-7, 2023, a jury was selected for Brackett's trial (*R. Murray, J., presiding*). (A. 9). The jury began receiving evidence on December 8, 2023. (Trial Transcript, volume I, page 74 [T._. __]). On December 20, 2023, the jury returned its verdict that the State had proven beyond a reasonable doubt that Brackett was guilty of murder. (A. 11; T.IX. 23-26).

On May 10, 2024, the Superior Court (*R. Murray, J.*) adjudged Brackett guilty as charged and convicted. (A. 13, 16-18). The court then imposed a 55-year term of imprisonment to the custody of the Department of Corrections. (A. 13; Sentencing Transcript 90-91 (S. Tr. __)). The court also ordered Brackett to pay $952.50 in restitution to the Victims Compensation Fund. (A. 13; S. Tr. 90-91).

On May 17, 2024, Brackett filed a notice of direct appeal pursuant to M.R. App. P. 2(a)(1) and 15 M.R.S. § 2115. (A. 14); *State of Maine v. Kailie Brackett,* WAS-24-231. On May 29, Brackett filed a separate application for leave to appeal her sentence pursuant to M.R. App. 20 and 15 M.R.S. § 2151. (A. 15); *State of Maine v. Kailie Brackett,* SRP-24-254.[2] On July 29, 2024, the Sentence Review Panel issued an order granting the application for leave to appeal sentence.

[2] On July 8, 2024, with leave from this Court, Brackett filed a supplemental application for leave to appeal her sentence.

STATEMENT OF FACTS

In April 2022, Kimberly Neptune (Kim) lived in a third-floor, one-bedroom apartment in Pleasant Point, Maine, directly above her neighbor Mellisa Martin (Martin). (T.I. 79; T.IV. 7-8). Kim had a close relationship with her brother Samuel. (T.I. 85-86). They spoke daily, visited each other's residences multiple times a week, and lived only a short distance from each other. (T.I. 85-86, 100). Kim also had a close relationship with Brackett, whom she had known since childhood. (T.I. 92; T.VI. 92). Brackett lived "practically right around the corner" from Kim, and an ATV trail provided a quick route between their apartments. (T.I. 92, 94-95, 100; T.IV. 10). Kim and Brackett had been close friends for so long that Brackett named Samuel the godfather of her child. (T.I. 90, 92).

Like many Pleasant Point residents at this time, Kim and Martin each had surveillance cameras in their apartments. (T.I. 83-84; T.IV. 11). Kim's camera was in her bedroom window facing the front of her apartment where she parked her ATV. (T.I. 83-84). Martin's camera was above her back door on the same side as the entrance to Kim's apartment. (T.IV. 11-12). Both camera systems were activated by motion, and recorded audio and video that Kim and Martin accessed through applications on their cellphones. (T.I. 83; T.IV. 12). Kim was also illegally using and selling Xanax that she received from a local

source. (T.I. 84, 98). Brackett was also illegally using Xanax, and because of their close friendship, Brackett knew that Kim kept her Xanax pills tucked between her bed and the wall of her bedroom almost under her mattress. (T.VI. 93). Brackett also knew that around April 18, 2022, Kim had purchased 200 Xanax pills. (T.VI. 92).

On April 18, 2022, Brackett's neighbor, Melissa Dana (Dana), saw Brackett parked on the side of the road. (T.III. 226-227). Bracket was wearing a dark jacket and face mask with a "joker" smile on it. (T.III. 227-228). Dana thought Brackett's manner of dress was odd given the warm weather outside. (T.III. 227-228). That evening, around 5:10 p.m., Brackett, wearing the same jacket and mask, approached Martin's door but quickly walked away. (T.III 229; T.IV. 15, 17, 171; State's Exhibit 170-A).

On April 20, 2022, around 4:00 p.m., Hailie Levesque (Hailie), also a resident of Pleasant Point, ran into Brackett at the Famer's Union in Perry. (T.IV 153-154, 195-196). Brackett was fumbling with her jacket, slurring her words, and "kind of nodding off." (T.IV 154-156). While checking out, Hailie overheard Brackett say that Kim was going to "pay" for stealing money from her. (T.IV. 156). Around 11:00 p.m., Martin received a notification on her cellphone from her surveillance camera while she was at work. (T.IV. 13, 19). She checked the

notification and heard her dogs "barking, going crazy, [and] whining" inside her apartment, which was unusual. (T.IV. 19).

On April 21, 2022, just after 12:00 a.m., Martin's camera captured someone coming down the stairs and then returning up the stairs to Kim's apartment. (T.IV. 20). At 12:17 a.m., Martin's camera captured the shadows of one or two people moving around in front of Kim's apartment door. (T.IV. 170-171; State's Exhibit 170-C). At 12:19 a.m., Kim asked her Echo Show device "what's the weather outside?" (T.IV. 265). Around 1:00 a.m., Martin's dogs finally stopped barking. (T.IV. 19). At 8:07 a.m., Martin's camera captured Brackett, wearing the same jacket from April 18, walking from the area of Kim's apartment door and proceeding up the ATV trial in the direction of her residence. (T.IV. 171-172; State's Exhibit 170-D).

Around 10:00 or 11:00 a.m., Samuel messaged Kim to see if she was home but, unusually, she did not respond. (T.I. 102). Shortly after 11:00 a.m., Samuel went to Kim's apartment to drop off the batteries she needed for her smoke detectors. (T.I. 102-103). Kim's door was locked, and she did not answer when Samuel knocked. (T.I. 103). Samuel messaged Kim that he had dropped off the batteries, but Kim never responded. (T.I. 104-105).

After not hearing from Kim all day, Samuel became increasingly worried and went to her apartment around 8:30 p.m. (T.I. 106). Her door was still

locked, and Samuel used his key to enter. (T.I. 107). Her apartment, which she regularly kept clean and neat, was a mess. (T.I. 87, 108-109, 176). Blood was on the entry way doorknob and deadbolt, and the wall and handrail leading up the stairs. (T.V. 141-145). Bloody footprints also led up and down the stairs. (T.V. 142-145). The blood was later determined to be Kim's. (T.V. 142-145).

Samuel could tell someone had searched through Kim's bedroom (T.I. 109, 176). Items were strewn on the floor, items on top of her dresser had been moved, and bloody hands had gone through her dresser drawers and a plastic storage bin. (T.I. 109, 176; T.II. 70, 91-94). Samuel later found a notebook containing the username and password to Kim's camera system account in one of the dresser drawers. (T.I. 123; St. Ex. 87).

Footprints in Kim's blood crisscrossed all over her bedroom floor. (T.II. 95-96, 99, 186; T.V. 99; St. Ex. 64, 70). Pillows on her bed were splattered with her blood, and one pillow had the pattern of a knife blade in her blood. (T.II. 69, 78, 82-83; T.V. 145; St. Ex. 36, 52-53). Hands, covered in Kim's blood, had reached down between her mattress and the wall. (T.II. 78; St. Ex. 63). Her mattress was saturated in her blood. (T.II. 86-88; St. Ex. 88).

Samuel found Kim on the floor between her bed and dresser in a pool of blood; her feet sticking out just beyond her bed. (T.I. 109; T.II. 69). She was wrapped in a wearable blanket saturated in her blood, her face covered in blood

and cuts, and clothing from her dresser was dumped on top of her. (T.I. 109, 115-116; T.II. 74-75, 89-90; St. Ex. 59, 62). Bloody hands had turned her pockets inside out. (T.II. 75-76). Samuel peeled the blanket slightly back searching for Kim's pulse, he grabbed her hand, but he found no pulse and her hand was cold and stiff. (T.I. 109-110). Samuel then fled Kim's apartment to get help. (T.I. 115-116).

During Kim's autopsy, Deputy Chief Medical Examiner Liam Funte documented 484 sharp force injuries all over her body, the majority of which were to her head and neck. (T.III 45, 48-49, 57). Stab wounds had penetrated Kim's right carotid artery, lungs, and abdominal cavity, and she had defensive wounds on her hands. (T.III. 62, 70, 72, 77, 79-80, 82). Dr. Funte determined that Kim had died within the previous 24 hours, and that her cause of death was homicide by exsanguination due to sharp force injuries – Kim had bled to death from the hundreds of wounds. (T.III. 52, 83).

Kim's camera, cellphone, and bank cards were missing from her apartment. (T.I. 122; T.IV. 198-199). Late that night, Brackett messaged Samuel asking, "Why didn't her cameras catch anything though?!?" (T.I. 127; T.VI. 110-111; St. Ex. 187). Samuel responded in the early morning hours of April 22 that, "We don't know if her cameras are there or not." (T.I. 127; St. Ex. 187). On April 27, someone attempted to gain access to Kim's camera system by correctly

entering her username and password; however, Kim's phone number was now associated with a cellphone in the possession of the State Police who received the verification code. (T.IV. 98-100, 104-105).

On April 25, Brackett and Donnell Dana (Donnell) were seen loading three to four trash bags into Brackett's car even though Pleasant Point's trash service collected bags weekly. (T.IV. 63-65, 265-266). Brackett and Donnell then left, arriving at a hotel in Brewer around 9:55 p.m. with no plastic bags. (Id.). Brackett and Donnell stayed at the hotel until April 27. (Id.).

The investigation into Kim's death revealed that on April 21, 2022, at 11:55 a.m.,[3] Brackett used Kim's debit card to withdraw $500 from an ATM in Eastport. (T.IV. 201-204). A few minutes later, Brackett withdrew $200, plus a $3.50 fee, from Kim's account at a different ATM less than a half a mile away. (T.IV. 204-207). At 1:24 p.m., Brackett attempted to use Kim's card at Family Dollar in Eastport, but the transaction was declined. (T.IV. 171-173, 189, 207-208). Brackett was wearing the same jacket as the person captured walking from Kim's apart and up the ATV trail earlier that morning. (T.IV. 171-172).

Brackett later admitted to previously having the mask seen by her neighbor and on Martin's video a few days before Kim's death. (T.VI. 128).

[3] Dr. Funte determined that Kim had died "within the 24-hour period prior to coming to [the Medical Examiner's] office." (T.III. 54).

Despite Samuel not hearing from Kim on April 21, which was very unusual, Brackett stated that while she was in Eastport that day she was communicating with Kim through a "secret" FaceBook account that automatically deletes messages. (T.VI. 122-124). She also stated that she was using Kim's debit card that day because she was running errands for Kim, and Kim had given her $20 to purchase a Red Bull and cigarettes. (T.VI. 57-61, 117-118). Brackett said she had a receipt for the Red Bull and cigarette purchase because "[she] always would when [she] ran errands for [Kim]." (T.VI. 117-118). In the days after Kim's death, Brackett never thought to return Kim's card or money to her family, and she assumed both items were still at her house. (T.VI. 114-120).

During the execution of a search warrant at Brackett's residence and vehicle, the State Police recovered $1,004.53 in cash, and a receipt from the Family Dollar in Eastport in Brackett's car. (T.III. 135-141). Neither Kim's debit card, her money, nor a receipt reflecting a purchase of Red Bull and cigarettes were located. (Id.). A subsequent forensic comparison identified Brackett as the person who made the bloody footprints at scene of Kim's murder. (T.II. 56, 95-96, 99, 186; T.V. 99, 142-144; St. Ex. 64, 70).

ARGUMENT

I. Dr. Nirenberg's testimony was admissible because it was reliable and assisted the jury in determining a fact in issue.

Brackett first contends that the trial court abused its discretion by admitting the testimony of Dr. Michael Nirenberg. (Blue Brief 29-40 (Bl. Br. ___)). She argues that the testimony was unreliable, did not assist the jury in making factual determinations, and that the Law Court should expressly adopt the federal standard for admission of expert testimony as espoused by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993) (Bl. Br. 29-40).

"For expert testimony to be admissible under Rule 702, the trial court must determine that the testimony (1) is relevant in accordance with M.R. Evid. 401, and (2) will assist the trier of fact in understanding the evidence of determining a fact at issue." *State v. Burbank,* 2019 ME 37, ¶ 8, 204 A.3d 851 (quotation marks and citation omitted).[4] To determine whether the proffered testimony is relevant, "the court must make a preliminary determination that the proponent has presented a sufficient demonstration of reliability." *Id.*

[4] Maine Rule of Evidence 702 provides: "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if such testimony will help the trier of fact to understand the evidence or to determine a fact in issue."

"[The Law Court] review[s] a court's foundational finding that expert testimony is sufficiently reliable for clear error, and review[s] for an abuse of discretion a court's decision to admit an expert's opinion after finding it reliable." *State v. Maine,* 2017 ME 25, ¶ 16, 155 A.3d 871 (citation omitted).

In this case, Dr. Nirenberg's testimony contained nearly all the hallmarks of reliability.[5] He considered 48 studies in forming his conclusion. (A. 68-70, 83-87). Of particular importance were John Vanderkolk's textbook on forensic comparative science; the "esteemed professor of forensic podiatry" Wesley Vernon's book on forensic podiatry's underlying scientific principles; research by R.B. Kennedy and Gregory Laskowski on the individuality of footprints; and research by Owen C. Lovejoy, William Bodziak, and himself on the individuality of sock-clad footprints. (A. 68-70, 84-87; Motion Transcript, 10-12 (Mot. Tr. ___)).[6]

Dr. Nirenberg's hypothesis of identifying a person from sock-clad footprints was previously peer-reviewed. (Mot. Tr. 14).[7] He tailored his opinion

[5] Brackett has not challenged the trial court's finding that Dr. Nirenberg was qualified as an expert in forensic podiatry. *See State v. Erickson,* 2011 ME 28, ¶ 12, 13 A.3d 777 (indicia of reliability includes "the nature of the expert's qualifications." (citation omitted).

[6] Indicia of reliability includes "whether the studies tendered in support of the testimony are based on similar facts." *Id.*

[7] Indicia of reliability includes "whether the hypothesis of the testimony has been subject to peer review." *Id.*

to the facts of this case by comparing Brackett's known footprints to those at the murder scene. (Mot. Tr. 19-29).[8] His comparison followed generally accepted scientific principles of both forensic podiatry and forensic comparison. (A. 71; Mot. Tr. 10-11, 15-16). The generally accepted scientific principles that Dr. Nirenberg followed were "grounded in reliable, peer-reviewed research and articles." (A. 71, 79, 83-87; Mot. Tr. 10). He used a more rigorous rubric for his conclusion by comparing 57 more features than other peer-reviewed research on the same issue. (Mot. Tr. 12, 16). And Dr. Christine Miller, "a forensic podiatrist and podiatrist," through her peer review of his report, attested to the reliability of [Dr. Nirenberg's] opinions" in this case. (A. 78; Mot. Tr. 14).[9]

Contrary to Brackett's argument, the foregoing supports the trial court's finding that Dr. Nirenberg's testimony was reliable. General acceptance in the scientific community of a specific discipline or of an expert's methods "is not a prerequisite for admission." *Searles v. Fleetwood Homes of Pennsylvania, Inc.* 2005 ME 94, ¶ 22, 878 A.2d 509; *Erickson,* 2011 ME at ¶ 12, 13 A.3d 777. Also, forensic podiatry's status as a "small" discipline does not render Dr. Nirenberg's

[8] Indicia of reliability includes "whether an expert's conclusion has been tailored to the facts of the case." *Id.*

[9] Indicia of reliability includes "whether any other experts attest to the reliability of the testimony." *Id.*

testimony unreliable. Forensic podiatry is a "small" discipline because the "need for footprint analysis" in criminal cases is "small." (Mot. Tr. 12-13). Despite the limited demand for forensic podiatry, it is accepted by a wide array of "forensic organizations, educational institutions, government entities, legal/attorney organizations, textbooks, periodicals, and scientific journals." (A. 79), most notably the International Association for Identification. (A. 79-80; Mot. Tr. 7-8). Even the Organization of Scientific Area Committees recognizes forensic podiatry's move towards general acceptance through its establishment of a task group on gait analysis – a group that Dr. Nirenberg chairs. (Mot. Tr. 7).

Any perceived lack of a definitive statement of proof in Dr. Nirenberg's opinion does not render it irrelevant to determining a fact of consequence. (Bl. Br. 37-40). The Law Court has consistently held that a special degree of certainty is not required for the admission of expert testimony. *State v. Boobar,* 637 A.2d 1162 (Me. 1994); *State v. Woodburn,* 559 A.2d 343 (Me. 1989); *State v. Hebert,* 480 A.2d 742 (Me. 1984); *State v. Anderson,* 434 A.2d 6 (Me. 1981); *State v. Mitchell,* 390 A.2d 495 (Me. 1978). Certainty, or lack thereof, goes to the weight of an expert's opinion, not its admissibility. *State v. Dwyer,* 2009 ME 127, ¶¶ 31-33, 985 A.2d 469; *Boobar,* 637 A.2d at 1167 (Me. 1994); *Anderson,* 434 A.2d 6 (Me. 1981).

As found by the trial court, Dr. Nirenberg's opinion was "based on a recognized scientific method of identification from [a] footprint … tailored … to the facts of [this] case," and provided highly relevant and probative evidence of a significant issue – who made the bloody, sock-clad footprints at the murder scene. (A. 24). His opinion was subject to rigorous cross-examination and the presentation of a competing opinion to undermine its weight. (Mot. Tr. 44-94; T.II. 214-278). The fact that the jury gave more weight to Dr. Nirenberg's testimony over defense expert Alicia McCarthy, PhD (who is not a forensic podiatrist) does not establish that the admission of Dr. Nirenberg's testimony was an abuse of discretion. Consequently, the trial court did not err by admitting this testimony.[10]

[10] For the same reasons, this Court should decline Brackett's invitation to explicitly adopt *Daubert.* (Bl. Br. 40-43). As the Law Court noted in *Bickart,* Maine's current test for expert testimony "provide[s] sufficient guidance." 2009 ME 7, ¶ 19 n.4, 963 A.2d 183. Specifically, Maine requires that when "a causal relationship is asserted," the trial court must determine "whether there is a scientific basis for determining that such a relationship exists." *Id.* at ¶ 15. This requirement is virtually identical to *Daubert's* requirement of a "preliminary assessment of [the scientific] reasoning or methodology underlying the testimony." 509 U.S. at 592-593 (1993). In any event, the trial court here conducted a "preliminary assessment" and concluded that the "reasoning [and] methodology" used by Dr. Nirenberg were "scientifically valid" (e.g. recognized) and "properly … applied to the facts in issue" (e.g. "tailored … to the facts of this case"). *Id.;* (A. 24).

II. The photographs that assisted the medical examiner in explaining the nature of Kim's injuries were not unfairly prejudicial.

Brackett contends next that the trial court abused its discretion by admitting six representative photographs depicting some of Kim's injuries. (Bl. Br. 43-46). She argues that, under M.R. Evid. 403, the photographs were cumulative, and unfairly prejudicial because they were not probative of an issue in the case and "caused the jurors to act on emotion rather than evidence." (Id.).

"[P]hotographs are admissible if they are (1) accurate depictions; (2) relevant; and (3) if their probative value is not outweighed by any tendency toward unfair prejudice." *State v. Allen,* 2006 ME 21, ¶ 10, 892 A.2d 456 (citation omitted).[11] "To sustain a Rule 403 objection, the prejudice must be more than simply damage to the opponent's cause." *Id.* at ¶ 13 (citation omitted). The evidence must be *so* prejudicial that the danger of the jury rendering a verdict on an improper basis is "*substantially* outweigh[ed] [by] the probative value of the evidence." *Boobar,* 637 A.2d at 1168 (Me. 1994) (emphasis original).

[11] "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." M.R. Evid. 401.

Relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of … unfair prejudice … or needlessly presenting cumulative evidence." M.R. Evid. 403.

The Law Court reviews the admission of evidence over a M.R. Evid. 403 objection for an abuse of discretion. *State v. Thomas,* 2022 ME 27, ¶ 23, 274 A.3d 356. Because a trial court has "wide discretion to determine the admissibility of evidence" *Maine,* 2017 ME at ¶ 24, 155 A.3d 871, the Law Court will not conclude that a trial court abused its discretion unless the evidentiary "ruling [arose] from a failure to apply principles of law applicable to the situation, resulting in prejudice." *Thomas,* 2022 ME at ¶ 23, 274 A.3d 356.

Brackett did not challenge the accuracy or relevancy of the autopsy photographs in the trial court (T.III. 11; A. 114-119 (sealed)) and has not done so on appeal. (Bl. Br. 43-46). "Indeed, the inference from [Brackett's] argument is that the photograph[s] depicted [some of the hundreds of Kim's injuries] too accurately" thus making them unfairly prejudicial. *Allen,* 2006 ME at ¶ 11, 892 A.2d 456.

"A gruesome photograph of a victim's body may be admitted provided that its probative value outweighs the danger of unfair prejudice." *State v. Lockhart,* 2003 ME 108, ¶ 46, 830 A.2d 433. While the photographs here can fairly be characterized as gruesome, they are not bloody, and Kim's face is not visible. (T.III. 20; State's Exhibits 111, 113, 114, 117, 128, 131); *compare with State v. Connor,* 434 A.2d 509, 511 (Me. 1981) (error to admit a photograph

wherein "[t]he victim's face is plainly visible and appears contorted by the agonies of a violent death [and] [t]he body is bloody.").

The photographs had essential evidentiary value "because they illustrated the medical examiner's explanation" of the nature of Kim's 484 sharp force injuries. *Lockhart,* 2003 ME at ¶ 46, 830 A.2d 433; (T. I. 4-5; T. III. 3-4, 19-20). The nature of Kim's injuries was necessary to establish that Brackett's "[c]onduct manifest[ed] a depraved indifference to the value of human life [because] it [was] highly charged with death-inducing potential and demonstrate[d] a total lack of concern that [Kim] may die or suffer as a result of [Brackett's] conduct." *State v. Thongsavanh,* 2007 ME 20, ¶ 39, 915 A.2d 421; (T.I. 8; T.III. 3-4, 19-20). The nature of her injuries also "shed light on" whether Brackett acted intentionally or knowingly in causing Kim's death. *State v. Joy,* 452 A.2d 408, 413 (Me. 1982); (T.I. 8; T.III. 3-4, 19-20). Establishing that Brackett's conduct amounted to depraved indifference, or that she acted intentionally or knowingly were essential elements of the charge the State was required to prove beyond a reasonable doubt.

Importantly, the State did not have a less prejudicial means to present this critical evidence. The autopsy diagrams were inadequate due to the hundreds of injuries Kim sustained. (T.I. 4-5; T.III. 3-4, 19-20). Even Dr. Funte advised that the diagrams would not assist him in explaining the nature of Kim's

injuries to the jury. (T.I. 4-5; T.III. 3-4, 19-20). Under these circumstances, the Law Court has repeatedly upheld the admission of autopsy-like photographs to assist a medical examiner in explaining his or her testimony.[12] Court's need not go so far to hide the truth of events from juries simply because the defendant alleges prejudice.

The trial court, recognizing that 484 individual injuries was a fact that could not be ignored, "took steps to mitigate the [potential] prejudicial effect of the photographs." *Lockhart,* 2003 ME at ¶ 46, 830 A.2d 433. The jurors were warned during the selection process and reminded before the photographs were show of their graphic nature. (T.I. 12, 27, 39).[13] The trial court limited the State, which had proffered around 30 photographs, to only six photographs as representative of Kim's injuries. (T.III. 24-26, 30-31).

[12] *State v. Michaud,* 2017 ME 170, ¶¶ 9-10, 168 A.3d 802 (no abuse of discretion in admitting "some evidence to illustrate the nature and extent of the injuries," despite Michaud's stipulation because probative of an element of the charged crime); *Allen,* 2006 ME at ¶ 10-17, 892 A.2d 456 (no abuse of discretion in admitting a full body photograph depicting a young child, with head bandage and medical apparatus, because relevant to charge and parental discipline defense; *Lockhart,* 2003 ME at ¶ 46, 830 A.2d 433; *State v. Condon,* 468 A.2d 1348, 1350-1351 (Me.), cert. denied, 467 U.S. 1204 (1983) (photographs depicting the bodies admissible to clarify and to corroborate medical testimony and to assist jury in its determination of whether killings were depraved); *State v. Woodbury,* 403 A.2d 1166, 1169 (Me. 1979) (no abuse of discretion in admitting a photograph depicting gruesome head wounds of a victim because the photograph was used to illustrate the chief medical examiner's testimony; *State v. Conwell,* 392 A.2d 542, 544 (Me. 1978) (photographs depicting child's facial wounds admissible to illustrate testimony).

[13] Brackett agreed to the trial court's reminder approach prior to Dr. Funte's testimony. (T.I. 13).

During the charging phase, the trial court also instructed the jury that emotion, prejudice, and sympathy were to play no part in their verdict. (T.VII. 129). Brackett has raised no issue regarding the court's instructions, and nothing in the record overcomes the presumption that the jury followed this instruction and applied the facts to the law in an unemotional, unbiased, "businesslike and analytical way." *State v. Dolloff,* 2012 ME 130, ¶ 55, 58 A.3d 1032; (T.VII. 129).

Brackett's reliance on the State's closing to support her argument is misplaced. (Bl. Br. 45). The State's closing argument was not evidence and thus could not establish any of the essential elements beyond a reasonable doubt. Even if the only dispute at trial was "who perpetrated the crime," (Id.), an "it wasn't me" defense neither alleviates the State of its burden to prove every single element beyond a reasonable doubt, nor requires the trial court to disallow the State an opportunity to "present its entire case." *Michaud,* 2017 ME at ¶ 9, 168 A.3d 802. Furthermore, the fact the jury returned a verdict on Brackett but remained deadlocked on her co-defendant demonstrates that the jury was not inappropriately swayed by the photographs. (T.IX. 7, 12-16).

Accordingly, the trial court neither committed clear error, nor abused its discretion by admitting six representative photographs to assist Dr. Funte in explaining the nature of Kim's 484 sharp force injuries to the jury.[14]

III. The prosecutor committed no error in her closing argument and any perceived errors were harmless.

Brackett next contends that the prosecutor committed error in her closing argument, arguing that two of the prosecutor's statements misstated material facts. (Bl. Br. 47-53). Because Brackett did not object to either of the prosecutor's statements, the Law Court reviews for obvious error. *State v. Penley,* 2023 ME 7, ¶ 22, 288 A.3d 1183.

"To show obvious error, there must be (1) an error, (2) that is plain, and (3) that affects substantial rights." *Id.* (citation omitted). "If these three conditions are met, [the Law Court] will set aside a jury's verdict only if [it] conclude[s] that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* (citation and alteration omitted). "When a prosecutor's statement is not sufficient to draw an objection, particularly when viewed in the overall context of the trial, that statement will

[14] Brackett also asserts that the photographs were unduly cumulative; however, she fails to identify how. (Bl. Br. 43-45). Even assuming Brackett is contending that the photographs were cumulative evidence with respect to Kim's cause of death, the record does not support that contention. The photographs cannot be cumulative because they were admitted before Dr. Funte opined as to her cause of death. (T.III. 73-79, 83); *see Joy,* 452 A.2d at 413 (Me. 1982) (photograph of a murder victim was "[a]t best … cumulative evidence of the cause of death" because the "pathologist had [already] opined as to the cause of death.).

rarely be found to have created a reasonable probability that it affected the outcome of the proceeding." *Id.* (citation omitted).

The Law Court first reviews "whether the conduct was in error." *Id.* at ¶ 23. "If it was in error, [the Law Court then] review[s] each of the State's comments individually but also consider[s] all comments as a whole in determining whether to vacate the conviction." *Id.* A judgment of conviction will be affirmed "if it is highly probable that the jury's determination of guilt was unaffected by the prosecutor's comments." *Id.* (quotation marks and citation omitted).

The Law Court has previously "noted that a prosecutor may present an analysis of the evidence in summation with vigor and zeal [and has] repeatedly upheld the prosecutor's ability to argue vigorously for any position, conclusion, or inference supported by the evidence." *State v. Hunt,* 2023 ME 26, ¶ 36, 293 A.3d 423 (quotation marks and citation omitted). "[A] prosecutor is [also] free to comment on the consistency of a witness's testimony—just as the defense is free to comment on the inconsistency of a witness's testimony." *Id.* (quotation marks and citation omitted). "[T]he central question is whether the comment is fairly based on facts in evidence." *State v. Tripp,* 2024 ME 12, ¶ 24, 314 A.3d 101 (quoting *Dolloff,* 2012 ME at ¶ 43, 58 A.3d 1032). "The mere existence of a misstatement by a prosecutor at trial, or the occasional verbal misstep, will not

necessarily constitute [error] when viewed in the context of the proceedings." *Dolloff,* 2012 ME at ¶ 44, 58 A.3d 1032.

Here, the State did not materially misstate Dr. Nirenberg's testimony. Dr. Nirenberg testified that his comparison found "significant dissimilarities" with Donnell's footprint and those at the murder scene; so many that he did not opine on a total. (T.II. 187). Conversely, he found 50 out of 60 similar features between Brackett's known footprint and the bloody footprints at the murder scene. (T.II. 185-187). He also found no features that *excluded* Brackett as the person who made the bloody footprints. (T.II. 186-187).

In closing, prosecutor stated:

> *50 out of 60 features [Dr. Nirenberg] compared were similar to Defendant Brackett's known footprint.* Dr. Nirenberg concluded that there was a moderate level of evidence to support the proposition that Kailie Bracket made the footprints. And just as there was a moderate level of evidence that Kailie Bracket made the footprints, he ruled out Donnell Dana as the creator of the footprint."

(T.VII. 27 (emphasis added). Thus, the crux of the prosecutor's closing argument – Brackett made the bloody footprints – was "fairly based on facts in evidence." *Tripp,* 2024 ME at ¶ 24, 314 A.3d 101. Consequently, even if the State misstated the difference between a moderately strong level of support and a moderate level of support, it was not a misstatement of such a magnitude to constitute obvious error.

The State's argument that "[w]e know that [Brackett and Kim were] not together at the Farmer's Union" also did not mischaracterize the evidence. (T.VII. 24). A receipt from the Farmer's Union in Perry placed Brackett there at 4:13 p.m. on April 20, 2022. (T.IV. 195-196). Hailie testified to seeing Brackett at the Farmer's Union and not Kim. (T.IV. 153-156). Even Brackett agrees that she and Kim were not together until "*precisely* at 4:22:42 p.m." nearly ten minutes after the Farmer's Union purchase. (Bl. Br. 53 (emphasis added)). Thus, the State's argument that Brackett and Kim were not together at the Farmer's Union was a "position, conclusion, or inference supported by the evidence." *Hunt,* 2023 ME at ¶ 36, 293 A.3d 423.

Brackett's assertion that the State's brief argument on the cell tower evidence was designed to encourage the jury to disbelieve her testimony, and render a verdict not based on the evidence, is unsupported by the record. (Bl. Br. 52-53).[15] First, "[t]he State is free … to forcefully argue to the jury that the evidence does not support or is not consistent with the defendant's theory of

[15] Brackett assigns error to the prosecutor's argument that, "[w]e know that Kailie Brackett was at the Farmer's Union making a purchase for 25 dollars and some off cents at 4:13 because we have the receipt. At that time, at 4:20, Kimberly Neptune's phone was hitting on towers in Eastport; and Kailie Brackett's cell phone was in Perry hitting on a cell tower there. And once her cell phone is in Eastport, then her – so, if Kim's cell phone is in Eastport and Kailie Brackett's cell phone is in Perry, they are not together at the Farmer's Union." (T.VII. 24).

the case." *State v. Cheney,* 2012 ME 119, ¶ 35, 55 A.3d 473. In addition to the cell tower evidence, the State referenced Brackett's testimony regarding her:

(1) Financial status around the time of Kim's murder;

(2) Excuse for not returning the bank card and money she withdrew to Kim's family;

(3) Denial of ever being on the ATV trail, which provided the quickest route to her best friend Kim's home;

(4) Purchasing a Red Bull and cigarettes at Family Dollar on April 21; and

(5) Whereabouts on the night Kim was murdered.

(T.VII. 20-21, 28-29, 33-34). Yet, Brackett takes no issue with these, undoubtfully more impactful, arguments that the evidence was not consistent with her testimony or theory.

Second, Brackett overstates the evidentiary value of the cell tower evidence to both her defense and the State. The State's cell tower argument was one page of a 24-page closing argument. (T.VII. 24). Brackett's cell tower argument comprised a mere two pages of a 36-page closing argument, as her primary argument regarding this evidence was centered on discrediting Hailie's testimony that Brackett said Kim was going to "pay" for stealing money. (T.VII. 65-67, 76-77).[16] In rebuttal, the State never addressed the cell tower

[16] Prior to mentioning the cell tower evidence, Brackett argued: "Hailie Levesque … doesn't come into this whole equation clean as a whistle … she is the wife of Kim's supplier … Now, Kim had been buying

evidence. (T.VII. 104-110). Based on this record, and in addition to the prosecutor having a factual basis to argue that from the cell tower evidence they jury could infer that Kim and Brackett were not together at the Farmer's Union, the cell tower evidence was not as "significant" to Brackett's defense as she now asserts. (Bl. Br. 53).

Even if the Court were to conclude that the prosecutor's statements were error, "it is highly probable that the jury's determination of guilt was unaffected by the prosecutor's comments." *Penley,* 2023 ME at ¶ 22, 288 A.3d 1183. Neither statement drew an objection (T.VII. 24, 27), and the trial court's cautionary instructions to the jury that the arguments of counsel were not evidence were sufficient to alleviate whatever prejudice might have inured to Brackett from the statements. (T.I. 24; T.VII. 112). Additionally, the trial court instructed the jury that Brackett had no burden of proof, and that the burden was entirely on the State. (T.I. 22; T.VII. 118-119). Accordingly, this Court can

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Xanax before that from Mildred Mitchell. That is Hailie's grandmother. So, Hailie is connected here somehow … maybe it's not trustworthy." Brackett went on to point out that the clerk at the Famer's Union did not hear what she said, arguing that "Hailie Levesque comes with some baggage and she comes with some credibility issues. I don't know what her actual goal was at the time she made these statements, but she's suspect and it's not very good." (T.VII. 66-67).

After her brief reference to the cell tower evidence, Brackett did not argue that because she and Kim were together she never made those statements; rather, she argued that if she had then the statements "should have been heard by [the clerk too] and [the clerk] didn't ever hear it?" (T.VII. 77).

confidently conclude that no obvious error occurred and that Brackett's right to a fair trial was not violated because of these two statements.

IV. Because no reversible error occurred in the admission of evidence and closing arguments, there is no cumulative error.

Brackett's fourth "argument is that if none of her three other arguments alone justifies vacating her conviction, then collectively they should under the 'cumulative-error doctrine.'" *State v. Williams,* 2024 ME 37, ¶ 45, 315 A.3d 714. However, "[t]he Law Court has not adopted the federal cumulative error analysis." *Id.* (quotation marks, alteration, and citation omitted). "[I]nstead [the Law Court] review[s] allegations of multiple errors cumulatively and in context to determine whether the defendant received an unfair trial that deprived him or her of due process." *Id.* (quotation marks and citation omitted).

For the reasons articulated above, even when considered cumulatively, the record establishes that Brackett received a fair trial. *Supra,* pp. 18-34.

V. The evidence was sufficient to sustain Brackett's murder conviction.

Brackett next claims that the evidence was insufficient for the jury to find her guilty of murder. (Bl. Br. 55-60). "When reviewing a judgment for sufficiency of the evidence, [the Law Court] view[s] the evidence in the light most favorable to the State to determine whether the fact-finder could

rationally have found each element of the offense beyond a reasonable doubt." *State v. Cummings,* 2017 ME 143, ¶12, 166 A.3d 996.

Assessing the evidence in the light most favorable to the State, the jury rationally determined that the State had proven beyond a reasonable doubt that Brackett caused Kim's death. That evidence established that on April 18, 2022, Brackett was observed wearing a dark jacket and a distinctive mask. (T.III. 226-228). Later that evening, Brackett, wearing a dark jacket and the same mask, approached the door of Kim's neighbor before quickly walking away. (T.III. 229-230; T4, 15, 17, 169-171; St. Ex. 170-A). On April 20, Hailie overheard Brackett muttering that Kim was going to pay for stealing money. (T.IV. 153-157). On the night of April 20 and 21, Martin's cameras captured someone moving up and down Kim's stairs and outside her apartment. (T.IV. 20, 170-171; St. Ex. 170-C).

On the morning of April 21, Martin's camera captured someone, dressed eerily like Brackett three days before, walking from the area of Kim's apartment door. (T.IV. 171; St. Ex. 170-D). The person then walked up the ATV trail, a quick and covert route to Brackett's residence. (Id.). Several hours later, Brackett withdrew a total of $703.50 from Kim's bank accounts. (T.IV. 201-202, 204-207). An hour and a half later, Brackett, wearing the dark jacket captured by

Martin's camera that morning, attempted to use Kim's bank card at Family Dollar. (T.IV. 172-173, 207-208).

Late on the night of April 21, Brackett asked Samuel "Why didn't her camera's catch anything though?!?" (T.I. 127; T.VI. 110-111; St. Ex. 187). Brackett apparently did know "why," unlike Samuel, who responded that no one knew yet what Kim's camera had captured. (T.I. 127; St. Ex. 187). Then, a few days later, someone attempted to gain access to the archives of Kim's camera system. (T.IV. 98-100, 104-105).

Samuel found Kim on her bedroom floor between her bed and dresser. (T.I. 115-123). Bloody hands had gone through the dresser's drawers. (T.I. 109, 176; T.II. 70, 91-94). A notebook containing the username and password to Kim's camera was later located in the same dresser. (T.I. 123; St. Ex. 87)).

At the time of Kim's murder, Brackett knew that Kim had just purchased 200 Xanax pills, and that Kim hid the pills between her bedroom wall and mattress. (T.VI. 92, 93, 95). After Kim's body was discovered, detectives documented transfer stains showing that bloody hands had reached down and searched the exact spot where Brackett knew Kim usually kept her pills. (T.II. 78; St. Ex. 163).[17] Detectives also documented bloody footprints crisscrossing

[17] Samuel later discovered a bottle containing approximately 70 Xanax pills hidden inside Kim's couch in an area only accessible after he removed the couch's backrest. (T.I. 139-141).

Kim's bedroom floor and stairs; footprints that had 50 out of 60 similar features to Brackett's known footprint. (T.II. 56, 95-96, 99, 186; T.III. 135-136, 139-140; T.V. 99, 142-144; St. Exs. 64, 70).

Brackett claims that this evidence is insufficient because it is "junk science," circumstantial, and "significant other evidence" established that she "was home at the time of the murder." (Bl. Br. 55-60). However, the State is not required to "present direct evidence as to the defendant's *exact* actions in committing the crime" *State v. Brown,* 2017 ME 59, ¶ 9, 158 A.3d 501, and "[c]ircumstantial evidence alone is sufficient to support a conviction." *Cheney,* 2012 ME at ¶ 42, 55 A.3d 473; *see also State v. Reed,* 2013 ME 5, ¶ 13, 58 A.3d 1130 ("The law is well established that circumstantial evidence is no less conclusive than direct evidence in supporting a conviction.").

On appeal, the Law Court does "not substitute [its] judgment for that of the jury in resolving the credibility of the various witnesses and the weight to be given their testimony." *State v. Harding,* 2024 ME 67, ¶ 16, 322 A.3d 1175 (citation omitted); "all credibility determinations and reasonable inferences drawn … even if those inferences are contradicted by parts of the direct evidence" are deferred to the fact-finder. *State v. Edwards,* 2024 ME 55, ¶ 17, 320 A.3d 387 (citation omitted); and "[a]ny conflicts in the evidence are to be resolved in favor of the State." *State v. Mazerolle,* 614 A.2d 68, 74 (Me. 1992).

Viewing the evidence in the proper light, the video evidence and observations of Brackett in the days leading up to Kim's death; the evidence contradicting her explanation for her whereabouts on the night Kim was murdered and her conduct on April 21; her message to Samuel coupled with a suspicious attempt to access Kim's camera system; and the physical evidence at the scene including the bloody handprints on the wall and through the dresser drawers, all combined to support the jury's rational inference that Brackett caused Kim's death.

VI. The sentencing court did not obviously err in imposing Brackett's sentence, and any perceived errors were harmless.

Lastly, Brackett challenges the propriety of her sentence, arguing that the sentencing court misapplied sentencing principles by failing to properly consider sentencing goals and mitigating factors. (Bl. Br. 60-64). When sentencing on a conviction for murder, the court must follow a two-step process. 17-A M.R.S. § 1602(1)-(2) (2021). First, "the court determines the basic term of imprisonment based on an objective consideration of the particular nature and seriousness of the crime." *State v. Bentley,* 2021 ME 39, ¶ 10, 254 A.3d 1171 (internal quotation marks and citations omitted). Second, "the court determines the maximum period of incarceration based on all other

relevant sentencing factors, both aggravating and mitigating, appropriate to that case." *Id.*

As part of its sentence review, this Court "must consider (1) 'the propriety of the sentence, having regard to the nature of the offense, the character of the offender, the protection of the public interest, the effect of the offense on the victim and any other relevant sentencing factors recognized under law,' and (2) 'the manner in which the sentence was imposed, including the sufficiency and accuracy of the information on which it was based.'" *State v. Watson,* 2024 ME 24, ¶ 20, 319 A.3d 430. (citing 15 M.R.S. § 2155(1)-(2)). "In determining whether the sentencing court … abused its sentencing power … or acted irrationally or unjustly in fashioning a sentence, [this Court] afford[s] the [sentencing] court considerable discretion." *Id.* (citation omitted).

In a discretionary sentencing appeal, this Court generally reviews the trial court's "determination of the basic sentence de novo for misapplication of legal principles and its determination of the maximum period of incarceration for abuse of discretion." *State v. Sweeney,* 2019 ME 164, ¶ 17, 221 A.3d 130 (quotation marks and citation omitted). However, because Brackett did not raise any issues "to the sentencing court, [this Court] review[s] for obvious error." *Watson,* 2024 ME at ¶ 18, 319 A.3d 430.

The court committed no error in setting Brackett's basic sentence at 45 years. The "eliminat[ion] [of] inequalities that are unrelated to legitimate criminological goals" was the most poignant sentencing goal in this case. 17-A M.R.S. § 1501(5) (2021). The State had requested the court to impose life as a basic sentence. (S. Tr. 4). The court's analysis appropriately focused on why, despite the infliction of 484 sharp force injuries, Brackett's case was distinguishable from others that justified a step one life sentence based on extreme cruelty alone. (S. Tr. 80-86). Thus, the court correctly "articulated which sentencing goals [were] served by the [basic] sentence." *State v. Ketchum,* 2024 ME 80, ¶ 35, 327 A.3d 1103 (quotation marks and citation omitted).

The court also committed no error in setting Brackett's maximum and final sentence at 55 years. The court cited as aggravating factors: the subjective victim impact of Brackett's crime on Kim's family, the duration of conscious suffering Kim endured, and Brackett's prior criminal history. (S. Tr. 89). The sentencing goals addressed by these factors are:

(1) The prevention of crime "through the deterrent effect of sentences … and the restraint of individuals when required in the interest of public safety;

(2) Providing "fair warning of the nature of the sentences that may be imposed on the conviction of" murder; and

(3) The individualization of Brackett's sentence.

Title 17-A M.R.S. § 1501(1), (4), (6), (8) (2021). While the court did not specifically state that these were goals being served in step two of its analysis, the overall context of the record demonstrates that these indeed were the "sentencing goals [being] served by the sentence." *Ketchum,* 2024 ME at ¶ 35, 327 A.3d 1103.

Brackett's contention that her sentence must be vacated pursuant to *Watson* is misplaced. (Bl. Br. 63-64). First, the "final sentence" in *Watson* involved a step three analysis inapplicable to convictions for murder. 17-A M.R.S. § 1602(2) (2021); *Watson,* at ¶ 17. Second, the Law Court held that the sentencing court abused its discretion because its "primary reliance on the 'interconnection of drugs with homicides' ha[d] no basis in the record." *Id.* ¶ 26. "There was no evidence that Watson had ever been violent [or] presented any threat to the public." *Id.* "Rather, the court's rationale … derived from its own prior experience as a homicide prosecutor and an apparent belief that incarcerating … drug users – is necessary to reduce violent crime." *Id.* at ¶ 27. The Law Court determined that "[t]his type of generalization" unsupported by record evidence "undermines the sentencing goal of 'differentiation among persons with a view to a just individualization of sentences.'" *Id.* (quoting 17-A M.R.S. § 1501(6)).

Here, the court did not base its analysis, or give primary consideration to, facts not in evidence. Indeed, this case is rife with evidence of the "interconnection with drugs and homicides." *Id.* at ¶ 26. However, assuming *arguendo,* that Brackett's reliance on *Watson* is for the proposition that her sentence should be vacated because the court articulated only one sentencing goal in step one, and none in step two, any perceived error was harmless rather than obvious.

"[E]rrors in sentencing are subject to a harmless error analysis." *State v. Bean,* 2018 ME 58, ¶ 30, 184 A.3d 373. An error is harmless if it does not affect "the substantial rights of the defendant." *State v. Judkins,* 2024 ME 45, ¶ 20, 319 A.3d 443 (citation omitted); *see* M.R.U. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights shall be disregarded.").

Regarding step one of the sentencing analysis, Brackett has failed to articulate what "other factors" the court "made no attempt to address." (Bl. Br. 63). Even if she had, "a sentencing court is not required to consider or discuss every argument or factor the defendant raises." *Ketcham,* 2024 at 80, ¶ 35, 327 A.3d 1103 (citation omitted). Regarding step two, the court did "not disregard" Brackett's family support. *Id.* Rather, in its "significant leeway in determining … the weight a factor is assigned," *id.,* the court found that the "only *persuasive*

mitigating factor [was] limited to her status as the mother of her minor child, whom I am sure she loves." (S. Tr. 90 (emphasis added)). And, as argued above, the record demonstrates which goals were served by Brackett's final sentence.

Accordingly, the court neither misapplied sentencing principles, abused its sentencing power, abused its discretion, nor committed any error in imposing sentence, and this Court need not consider obvious error.

CONCLUSION

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

Respectfully submitted

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_____

Dated: April 14, 2025

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CERTIFICATE OF SERVICE

I, Katie Sibley, Assistant Attorney General, certify that I have emailed two copies of the foregoing "BRIEF OF APPELLEE" to Brackett's attorney of record, Michelle R. King, Esq.

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