SUPREME JUDICIAL COURT OF THE STATE OF MAINE

Sitting as the Law Court

Law Court Docket Number: KEN-24-412

STATE OF MAINE

v.

DEREK TAYLOR

On Appeal from Unified Criminal Court sitting in Kennebec County.

Brief for Appellee – The State of Maine

Maeghan Maloney
District Attorney
Bar Number: 8792
Prosecutorial District IV

Jacob Demosthenes
Assistant District Attorney
Bar Number: 10247
Prosecutorial District IV

Attorneys for the State
Office of the District Attorney
95 State St.
Augusta, Maine 04330

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF THE FACTS

Procedural History:

The first jury trial in this matter occurred on April 22, 2024 and resulted in an acquittal on one count (domestic violence assault, 17-A M.R.S. § 207-A(1)(B)) and a conviction on another (domestic violence criminal threatening, 17-A M.R.S. § 209-A(1)(B)).

The second jury trial occurred on June 12-13, 2024. This trial resulted in the defendant being found guilty of all counts: domestic violence aggravated assault, 17-A M.R.S. § 208-D(D); domestic violence assault, 17-A M.R.S. § 207-A(1)(B); and violation of conditions of release, 15 M.R.S. 1092(1)(B).

The trial court (Lipez, J.) sentenced the defendant to twenty-five years all but twenty-two years suspended on the domestic violence aggravated assault, with concurrent straight time on the other counts in that docket. On the other docket, the trial court sentenced the defendant to four years all suspended with four years of probation consecutive to the aggravated assault.

Factual background:

The first trial:

The defendant was married to [redacted] the victim in this case. (1Tr. Trans 28.) They lived together in a camper in Benton. *Id.* On the evening on January 23, 2023, the defendant was outside shoveling the driveway. (1Tr. Trans 29.) While the defendant was out shoveling, [redacted] made a steak stir fry dinner. (1Tr. Trans 30.) While dinner was done around 9:45 pm, the defendant did not come inside until around 11:00 pm. *Id.* The defendant woke [redacted] up and demanded that she make him eggs. *Id.* The defendant was slurring his speech and appeared intoxicated. *Id.* Eventually, [redacted] got up and started to make him the eggs which he requested. (1Tr. Trans 31.) The defendant was upset and frustrated at [redacted]. *Id.* The defendant then came up behind [redacted] and, according to her, grabbed her by the hair, pulled her backwards, and lifted a hand in the air as if he was about to strike her. (1Tr. Trans 32.) In response, before she could be hit, [redacted] hit the defendant with a spatula in the face. (1Tr. Trans 32-33.) [redacted] then left the residence and headed to a church down the road. (1Tr. Trans 33.)

Two law enforcement officers testified that they spoke with [redacted] and the defendant that night. (1Tr. Trans 51, 66.) They noted that the defendant appeared

intoxicated and told them that he was hit with a pipe but was unable to give other details. (1Tr. Trans 50, 52.)

The second trial:

At the same residence in Benton, after the defendant had been granted bail, the defendant was intoxicated once again. (2Tr. Trans 36.) [redacted] had just put her developmentally disabled daughter to bed. (2Tr. 37, 40.) The defendant was arguing with [redacted] and [redacted] asked him to take it outside so that they would not wake her daughter. (2Tr. 38.) They went outside and the defendant punched [redacted] in the head. *Id.* [redacted] then went back inside to get some of her things so that she could leave the residence. (2Tr. 39.). The defendant would not let her leave and when she attempted to go around him he took her to the ground. (2Tr. 39.) Once on the ground, the defendant strangled [redacted] with two hands. (2Tr. 40.) It was painful, her vision became blurry, and she "blacked out." (2Tr. 40.) Eventually, [redacted] got the defendant off of her and her daughter called 911. (2Tr. 40-41.)

In the 911 call, the child can be heard yelling that "dad is hurting mommy." The child sounds highly emotional and upset, some yelling can be heard in the background. Eventually, [redacted] herself speaks to the dispatcher and tells them that the defendant "choked her" among other details consistent with her testimony. As

[redacted] was fleeing to safety, the defendant threw bolt cutters at her car, breaking the windshield. He also threw a beer can at her car. (2Tr. 41.)

Deputy Elijah Curtis of the Kennebec Sherriff's Office responded to the call and met with [redacted] at the same church as in the first trial. (2Tr. 67.) He observed [redacted]'s car with bolt cutters sitting on top of the car and beer on the side of the car. (2Tr. 68.) Deputy Curtis also testified that [redacted] told him that she was punched in the face multiple times and that the defendant strangled her. (2Tr. 70-71.) He observed a red mark on her forehead and her nose from the punches. (2Tr. 70.) He also noticed red marks on both sides of her neck, also known as petechia. (2Tr. 70.) Deputy Curtis also spoke with the defendant that evening, who appeared intoxicated, and the defendant told the deputy that he had been jumped by two males down the road. (2Tr. 76.) He then said that he had heard [redacted] yelling, went over to her camper, and that is when the two males "jumped" him. (2Tr. 76.) The defendant stated he had a broken rib but was changing which side of his body was hurting throughout the interaction. (2Tr. 76.) While at the hospital, the defendant changed his story once again, now saying that he hadn't seen [redacted] in months, that he did not remember what happened that night, and that demons had taken possession of his body. (2Tr. 80.)

The State also called an expert witness who testified relating to the signs and symptoms of strangulation, as well as other information. (2Tr. 105.) The expert

testified about what petechiae are and why they are a sign of a strangulation. (2Tr. 105-06.)

ISSUES PRESENTED

I. Did the trial court commit obvious error by not giving a self-defense instruction, despite there being no evidence that the defendant used force as a result of being in fear of force being used against him?

II. Did the trial court err when it allowed evidence that the defendant was subject to a court order prohibiting him from having contact with the victim after he opened the door to the evidence on both direct and cross-examination?

ARGUMENT

I. A self-defense jury instruction was not generated by the evidence and the failure to give such an instruction was not obvious error.

When a jury instruction is not requested at trial but is subsequently an assignment of error in an appeal, this Court reviews for obvious error. *State v. Lester*, 2025 ME 21, ¶ 14, 331 A.3d 426. Obvious error requires "(1) an error, (2) that is plain, and (3) that affects substantial rights." *Id.* ¶ 15. If those conditions are met, this Court will "notice an unpreserved error only if we also conclude that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id.* "The burden is on the defendant to demonstrate obvious error to this Court." *Id.*

The defendant notes there was a sidebar conference after the reading of the jury instructions which, for some unknown reason, was determined to be off the record by the court reporter. Obviously, this conversation should have been on the record and all parties surely anticipated that discussion being included in the trial transcript. Nonetheless, it cannot be said that we do not know whether the defendant had any objection to the jury instructions. The trial court held a charging conference with both parties to review the jury instructions and note any objections. (1st Trial Tr., 111). Defense counsel clearly stated "I have no objections at all" to the proposed instructions which were subsequently provided to the jury. *Id.* Therefore, this Court should review the issue of the self-defense jury instruction for obvious error.

In order for jury instructions on self-defense to be warranted, "there must be sufficient evidence of record to generate that issue for the jury's consideration." *State v. O'Brien*, 434 A.2d 9, 13 (Me. 1981). "The trial court should not give instructions on the law of self-defense . . . unless and until there is substantial evidence, which, when viewed in the light most favorable to the defendant, would, if believed, permit the jury to entertain a reasonable doubt of guilt based upon a claim of self-defense." *State v. Woodard*, 2025 ME 32, ¶ 11, n.2, __ A.3d __. (citing *O'Brien*, 434 A.2d 9, 13 (Me. 1981)). This Court's precedent shows there must be some cohesive narrative, presented by the evidence, that would generate the issue of self-defense to warrant a jury instruction. A person is justified in using a reasonable degree of nondeadly force upon another person in order to defend themselves from what the person reasonably believes to be the imminent use of unlawful, nondeadly force by the other person. 17-A M.R.S. § 108(1). The force may be used to the degree that the person reasonably believes to be necessary to defend against it. *Id.*

In *State v. Sullivan*, 1997 ME 71, ¶ 1, 695 A.2d 115, the Court held that the issue of self-defense was generated. In that case, the defendant testified he was scared after being pushed down by the victim and being surrounded by a group of people at a bar. *Id.* ¶ 3. There was additional testimony from the defendant's physician who stated the defendant had post-traumatic stress disorder and that the defendant believed that his life and his wife's life were in danger at the time of the

incident. *Id.* ¶ 4. Further, it was "undisputed that Sullivan . . . pulled out a gun and fired into the crowd, injuring three people." *Id.* ¶ 2. The defendant requested the trial court to give a self defense instruction but that request was denied. *Id.* ¶ 5. This Court reasoned that, given the evidence, it could have been reasonable for the jury to find that Sullivan's use of deadly force was justified as self-defense, therefore, it gave the self-defense instruction. *Id.* ¶ 12.

In *State v. Glassman*, this Court held that a self-defense instruction was generated when a defendant points a gun at a person who is lunging at them during a physical altercation. 2001 ME 91, ¶ 14, 772 A.2d 863. There, it was undisputed that the defendant pointed a gun at the victim. *Id.* ¶ 4. The evidence also showed there had been a verbal and physical altercation which precipitated the defendant's threatening the use of deadly force. *Id.* ¶ 3. Again, to emphasize, the defense's theory was that the reason for the defendant pointing the gun was to defend himself. *Id.* ¶¶ 4-5. The defense requested a self-defense instruction which was denied by the trial court. *Id.* ¶ 5. This Court reversed and remanded with its reasoning largely focusing on the fact that the threatened use of deadly force is equivalent to non-deadly force. *Id.* ¶¶ 8-9, 14.

In *State v. Ouellette*, this Court also held that a self-defense instruction was generated as to a reckless conduct charge when a defendant testified that "he acted only in self-defense." 2012 ME 11, ¶¶ 1-3, 37 A.3d 921. There, the basic facts

presented at trial were that the victim had threatened to beat up the defendant due to a disagreement relating to a female riding in the defendant's vehicle. *Id.* ¶ 4. The victim followed the defendant in his vehicle after the threats were made. *Id.* At a red light, the defendant got out of the vehicle with a baseball bat and hit the victim multiple times. *Id.* The defendant testified that he "felt scared and threatened because they were two guys against one coming to jump me. They had already made threats over the phone." *Id.* Ultimately, the event was reported to the police by the defendant who stated he struck the victim out of self-defense. *Id.* The trial court declined to give a self-defense instruction on the reckless conduct charge, despite it being requested by the defendant. *Id.* ¶ 5. The Court held that that decision was erroneous and the evidence had generated the instruction on self-defense on both counts. *Id.* ¶ 23.

Turning to the evidence in this case, there is simply no evidence to generate a self-defense instruction. The defense, nor the defendant himself, ever asserted that he raised his hand toward the victim due to the imminent use of unlawful force against him – in fact, he never even acknowledges that he ever rose his hand toward her nor that he was ever afraid. His testimony was that the victim struck him in the head with a spatula and the next thing he remembered was being woken up. (1st Trial Tr., 93). He also testified that he did not know where she went after she struck him but that she apparently left. *Id.* The defendant never testified that he was placed in

fear of the imminent use of unlawful nondeadly or deadly force, as would be required to generate a self-defense instruction. 17-A M.R.S. § 108(1). There is no evidence to support that the defendant used force in a way which was justified by self-defense. Given this lack of evidence, the trial court was under no obligation to *sua sponte* give instructions which no one requested nor matched the defense's theory of the case.

The evidence in this case is highly distinguishable from prior cases where this Court has required a self-defense instruction. In *Sullivan*, *Glassman*, and *Ouellette*, evidence had been presented which explicitly supported the contention that the defendant used force against another person when they were in fear of that person using force against them. This Court has never required that a self-defense instruction be given when the defendant does not acknowledge both using or threatening to use force and being in fear of force being used against them.

If this Court were to accept the defendant's argument, all trials where the victim and defendant both point the proverbial finger at each other, would require a self-defense instruction. This would be despite the defendant never asserting that they used any force under any circumstances which would make it legally justified. Further, it would incentivize a defendant to make no request for a self-defense instruction, not object to any of the instructions given, and then wait for this Court

to step in if they are unsuccessful at trial. That result is inconsistent with judicial efficiency, with a fundamentally fair trial process, and with common sense.

There is no need to get lost in the weeds of this case: the defense's clear strategy and theory of the case was that the defendant never used nor threatened force against the victim. The defense never asserted that he was in fear of force being used against him. The defense never requested a self-defense instruction for this exact reason. Self-defense instructions are not required when self-defense is plainly not an issue in the case. The trial court did not err – let alone obviously err -- in not giving an unrequested self-defense instruction in a case where it was not at issue.

II. The trial court did not err when it allowed the very brief questioning relating to a court order prohibiting the defendant from having contact with the victim.

A trial court's determination that the defendant has opened the door to otherwise excludable evidence is reviewed under the abuse of discretion standard. *State v. Hall*, 2017 ME 210, ¶ 18, 172 A.3d 467.

a. The defendant opened the door to questioning relating to the court order prohibiting him from having contact with the victim on both direct-examination and cross-examination.

> When a defendant elicits testimony related to previously excluded evidence . . . through presentation of the defense case and the testimony, as delivered, is inconsistent with the excluded evidence or affects the credibility of the State's case, a court does not abuse its discretion in finding that the defendant has 'opened the door' to the excluded evidence and permitting the State to conduct limited questioning . . .

Hall, 2017 ME 210, ¶ 19, 172 A.3d 467.

The State is allowed to "clear up any false impression created" by the evidence which opened the door. *Id.* ¶ 20. The prosecution's questions themselves cannot open the door. *State v. Terrio*, 442 A.2d 537, 541 (Me. 1982) (citing *State v. O'Neal*, 432 A.2d 1278, 1282 (Me. 1981)). However, this Court has never held that there are no circumstances in which a defendant's non-responsive answer to a prosecutor's questioning can open the door to otherwise excludable evidence. *Cf., O'Neal,* 432 A.2d 1278, 1282 (Me. 1981). The opening of the door doctrine is also often intertwined with M.R. Evid. 403 analysis. *Terrio*, 442 A.2d 537, 541 (Me. 1982) ("[T]he probative value of this evidence might be more compelling if the defendant brought the matter into issue. . . . a precondition to the evidence having sufficient probative value to be admissible was the defendant raising [the issue].")

In *State v. O'Neal*, this Court held that the State cannot open the door to otherwise excludable evidence by asking a question on the topic. 432 A.2d 1278, 1282 (Me. 1981). In that case, where the charge was murder, a prosecutor argued the door was opened to allow into evidence testimony of prior sexual assaults of the victim by the defendant. *Id.* at 1278, 1282. The prosecutor's question, which they argued opened the door was: "Now, Mr. O'Neal, isn't it true that on at least two occasions during the time you lived in this apartment that you went to [the child's] bedroom when she was asleep and pulled down her training pants and pinched her in her privates or genital area. Is that true?" *Id.* at 1282. The Court reasoned that "we

simply will not permit the State to gain the benefit of that unfair prejudice through the subterfuge technique of itself raising the unfair prejudicial, and collateral, matter of sexual abuse . . . ." *Id.*

Turning to the case at hand, it is worth noting this case differs from most caselaw on this issue because there was no prior, explicit holding by the trial court that evidence regarding the no contact order is inadmissible. Nonetheless, the fact the prosecutor requested a sidebar conference and immediately makes reference to the opening the door doctrine shows that all parties understood the existence of the bail conditions would not be admissible barring the opening of the door. After looking at the actual questions and answers resulting in the opening of the door, two observations can be clearly made: first, the defendant himself opened the door to the topic of the existence of a court order prohibiting the defendant from having contact with the victim – just as the trial court found; second, the prosecutor's question was not an attempt to broach the topic but, nonetheless, the defendant further opened the door in his response.

The trial court held that the defendant opened the door on direct examination. (2Tr. 147.) The relevant questions and responses on direct examination were:

> Q: "Do you recall the evening of August 16th, 2023?"
>
> A: "I do. I remember [redacted], she was very upset, she was very upset that day and I could see like a far away, I probably could understand she was."

Q: “Okay.”

A: “As our anniversary we wasn’t allowed to be around each other.”

(2Tr. 131.)

The defendant further brought the court order relating to having no contact with [redacted] into the case on cross-examination. The relevant questions and responses were:

Q: “Did you speak to her that night, sir?”

A: “No, I did not.”

Q: “So you never spoke with her?”

A: “I screamed at her telling her to get off me.”

Q: “So you screamed at her, but up until that point you didn’t say a single word to her, is that what you’re telling us?’

A: “No, I am not supposed to.”

Q: “Can we go to sidebar, Your Honor?”

(2Tr. 145.)

The State’s request for a sidebar was granted where the defense explicitly noted that “twice my client has made statements that allude to this case or explicitly state he is not supposed to do something.” (2Tr. 146.) The defense proceeded to argue that the defendant’s testimony was “skirting the line as to opening the door” and that the defendant’s lack of “the highest verbal acumen” should cause the trial court to

not allow further clarification by the State. *Id*. The trial court went on to rule that the defendant opened the door to further clarification "at least twice" and specifically referenced the defendant's statement on direct examination, as well as the statements made on cross examination. (2Tr. 147.)

Turning first to the opening of the door on direct examination, the defendant's testimony was misleading, despite the defendant's assertions otherwise. (Blue Br., 14). The defendant stated "we wasn't allowed to be around each other." (2Tr. 131.) That was misleading in that a jury could very reasonably infer that [redacted] was not allowed to have contact with the defendant. That mistaken inference would have "affected the credibility of the State's case." *Hall*, 2017 ME 210, ¶ 19, 172 A.3d 467. It would affect the credibility of the State's case by causing the jury to question why the victim was prohibited from having contact with the defendant. Therefore, the State was entitled to "clear up [the] false impression left" by the misleading statement. *Id.* ¶ 20. Even if the defendant had made no further statements about the topic in cross-examination, the door had already been opened – just as the trial court found.

Turning next to cross-examination by the State, the defendant's response which further opened the door was not directly responsive to the prosecutor's question. Therefore, this Court finds itself in an entirely different situation than it found itself in in *O'Neal*. In the case at hand, the prosecutor was simply asking

whether the defendant was sticking to his prior testimony that he had not spoken to [redacted] that night. The prosecutor did not ask a question such as, "you weren't supposed to be having contact with [redacted], were you?" Although that question likely would have been permitted in this case – since the defendant had already opened the door – the answer alone would not have opened the door to any additional evidence.

Common sense and fundamental fairness supports the notion that a defendant can open the door to evidence through a response to the State's cross-examination. If this Court were to hold that, under no circumstances whatsoever, a defendant's response to a prosecutor's questioning can open the door, absurd results would follow. Just as is the case here, a defendant could answer a question in a non-responsive manner and misleadingly introduce a topic that would otherwise not be admissible. It would violate fundamental fairness to allow for a defendant to misleadingly inject a topic, to their benefit, and not allow the State to probe further for clarification. This rule would benefit both the prosecution and the defense in future cases. If a victim, under cross-examination by the defendant, volunteers misleading information which would otherwise have been excluded, the defendant should have the opportunity to clarify the issue. When a witness volunteers information that is not directly responsive to the question, the questioning attorney should be allowed to probe further if the probative value is not substantially outweighed by risk of unfair prejudice. M.R. Evid. 403. The defendant's raising of

the issue itself substantially increases the probative value of the evidence. *State v. Terrio*, 442 A.2d 537, 541 (Me. 1982).

The defendant also asserts that the State must object to testimony which opens the door. (Blue Br., 15). The defendant only cites to a single case out of Maryland. *Id.* A holding of this Court enforcing rules created by another state's court is not necessary nor appropriate. That holding would also implicitly overturn all precedent on this issue where the party benefiting from the opening of the door did not object to the testimony. Further, in this case, the State functionally objected to the defendant's testimony on cross-examination. The State immediately requested a sidebar and raised the issue to the trial court, prior to asking the next question. (2Tr. 145.)

In sum, the defendant, on both direct and cross-examination, opened the door to the clarifying evidence that it was the defendant who was prohibited from having contact with the victim, not the other way around.

b. <u>The trial court did not abuse its discretion in refusing to exclude the evidence under Rule 403 after the defendant opened the door.</u>

A trial court's decision to admit evidence under M.R. Evid. 403 is reviewed by this Court for an abuse of discretion. *State v. Hussein*, 2019 ME 74, ¶ 10, 208 A.3d 752. A court abuses its discretion when it makes a decision "without a rational explanation, inexplicably depart from established policies, or rest on an

impermissible basis." *Hussein*, 2019 ME 74, ¶ 10, 208 A.3d 752 (citing *Saka v. Holder*, 741 F.3d 244, 250 (1st Cir. 2013); *State v. Ruest*, 506 A.2d 576, 577 (Me. 1986) ("We have repeatedly noted that our review of a ruling on the admissibility of evidence challenged as unfairly prejudicial focuses on whether there was an abuse of discretion by the trial court.").

Relevant evidence is admissible unless prohibited by the rules of evidence, a relevant statute, or another rule applicable to state courts. M.R. Evid. 402. "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice." M.R. Evid. 403. When a defendant opens the door to otherwise excludable evidence, the probative value increases. *State v. Terrio*, 442 A.2d 537, 541 (Me. 1982).

Turning to the case at hand, the probative value of this evidence was surely not substantially outweighed by the risk of unfair prejudice. The risk of unfair prejudice was low. The State did not ask whether the defendant was on bail conditions. The State did not ask whether he was subject to a protection from abuse order. The State did not ask what the reason was for the court order prohibiting contact. At no point did the State argue that the existence of the court order went to the defendant's propensity of violating the law. Instead, the State asked as narrow of a question that it could to clarify the defendant's misleading testimony. Further, any prejudice was surely not "unfair" in that, again, the defendant himself opened the

door to the evidence being admitted. The probative value of the evidence had been increased by the defendant's misleading testimony. It was probative to cut against the defendant's implicit assertion that the victim had been the subject of a court order prohibiting contact. It was also probative to push back against the defendant's assertion that the victim simply made all of this up; It would make little sense for [redacted] to come up with such a detailed story when all she needed to do was report that the defendant was having contact with her.

According to the transcript from the trial, the trial judge misspoke when making her ruling. The transcript indicates that the justice stated that she did not find that the probative value substantially outweighed the risk of prejudice. (2Tr. 148.) It is, obviously, highly unlikely that the trial judge actually misunderstood Rule 403 given how regularly this rule is invoked at trial. Further, it is certainly odd that neither the prosecution nor defense made any note of this misstatement of the Rule 403 test. Regardless, though, the evidence was admissible under Rule 403 and, therefore, the judge possibly misspeaking had no impact on the case.

c. Even if the brief testimony regarding the existence of a court order prohibiting the defendant from contacting the victim was admitted in error, the error was harmless.

Evidentiary errors are analyzed under the general harmless error standard. *State v. Judkins*, 2024 ME 45, ¶ 20, 319 A.3d 443. Any error that does not affect substantial rights shall be disregarded. Me. R. Crim. P. 51(a). An error is harmless

when it is "highly probable that the error did not affect the judgment." *State v. Guyette*, 2012 ME 9, ¶ 19, 36 A.3d 916 (citing *State v. Mangos*, 2008 ME 150, 957 A.2d 89). Said another way, an "error is harmless if it was not sufficiently prejudicial to have affected the outcome of the proceeding." *State v. Dobbins*, 2019 ME 116, ¶ 38, 215 A.3d 769 (citing *State v. Dolloff*, 2012 ME 130, 58 A.3d 1032) (internal quotations omitted).

In *State v. Dobbins*, 2019 ME 116, 215 A.3d 769, this Court found that the erroneous exclusion of a codefendant's guilty plea was harmless error. In that case, Dobbins's codefendant had previously pled guilty to murdering the same victim Dobbins was accused of murdering. *Id.* ¶ 1. Both defendants asserted that the other was the true perpetrator of the crime. *Id.* ¶ 4. However, before trial, Dobbins's codefendant pled guilty to the murder. *Id.* The defense's theory of the case was that Dobbins stood back in shock and watched as his codefendant murdered the victim. *Id.* ¶ 5. After the codefendant invoked his Fifth Amendment rights when called to the stand, the defense attempted to admit the docket record of the codefendant's guilty plea. *Id.* ¶ 6. That evidence was erroneously excluded. *Id.* ¶¶ 6, 37. Nonetheless, this Court held that the error was harmless due to the other evidence presented at trial. *Id.* ¶ 39. This Court noted the defendant's inconsistent version of events given to the police, weapons found in his home, blood on his shoes, and

inculpatory statements made to a fellow inmate while in custody, as significant evidence which showed the defendant's guilt. *Id.* ¶ 40.

Turning again to this case, the fact the defendant was subject to a court order prohibiting him from having contact with the victim was a miniscule portion of the State's case against the defendant. The State presented the testimony of a law enforcement officer who observed injuries consistent with strangulation on the victim. (2Tr. 66.) There was a 911 call of a developmentally disabled child yelling that "dad was hurting mommy." There was the victim's testimony on the stand clearly describing that she had been strangled. (2Tr. 39-40.) There was a second 911 call where the victim gives a recitation of the events which occurred that night which was entirely consistent with her testimony on the stand. There was testimony of the defendant's nonsensical version of events that he gave on the night in question. (2Tr. 74, 76.) There was the testimony of the defendant, himself, admitting to lying to the police on the night of the events. (2Tr. 140).

If the fact that another person has pled guilty to the same crime was harmless error, as it was in *Dobbins*, then, surely, the existence of a court order prohibiting the defendant from contacting the victim is similarly harmless. It is worth noting that, in *Dobbins*, the wrongfully excluded evidence went directly to the defense's theory of the case – that the other defendant was the true perpetrator. Again, in this case, the State never argued that the existence of the court order showed the defendant's

propensity to violate the law nor that he had ever faced any other criminal cases. The State only noted that it was the defendant who was prohibited from having contact with the victim, not the other way around, which was both relevant and accurate.

This case rose and fell on the jury's view on how credible the victim and the State's other evidence was, not on the existence of any court order. It is unreasonable to assert that the fact that the defendant was subject to a court order – not bail conditions, not a protection from abuse order – impacted the jury's verdict in this case. For that reason, even if this Court were to hold that the trial court did err, any error was harmless.

CONCLUSION

For the aforementioned reasons, this Court must affirm the jury's verdict.

DATED:

_____

Jacob Demosthenes
Assistant District Attorney
Bar No.: 10247

Certificate of Service

I, Jacob Demosthenes, Assistant District Attorney, hereby certify that one (1) copies of the within Brief for Appellee were mailed to Appellant's Attorney addressed as follows:

The State has sent a native .pdf file for submission to the court (at lawcourt.clerk@courts.maine.gov).

Dated: _____

_____
Jacob Demosthenes
Attorney for the State
Bar Number: 10247