THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Cum-24-574

STATE OF MAINE
Appellee

v.

THOMAS G. COFFILL III
Appellant

ON APPEAL from the Cumberland County
Unified Criminal Docket

BRIEF OF APPELLANT

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INTRODUCTION

I. The court should have granted defendant's motion for judgment of acquittal on Count V, as the State's evidence of reckless conduct with a dangerous weapon fell short of the legal standard established by this Court's case-law. Specifically, the State omitted to offer proof of anything more than reckless driving; it offered no evidence that defendant "used" that vehicle as a weapon.

II. The conduct at issue in the felony-level counts of conviction occurred either entirely or in part within Sagadahoc County. On the facts of the case, therefore, the grand jury lacked authority to indict defendant for such acts. As a result, the court lacked jurisdiction to enter judgment against defendant, just as the State lacked jurisdiction to prosecute him.

STATEMENT OF THE CASE

After a two-day jury trial, the jury returned split verdicts: Defendant was acquitted of domestic violence assault, 17-A M.R.S. § 207-A(1)(B)(1) (Class C) (Count I), and aggravated criminal mischief, 17-A M.R.S. § 805(1)(A) (Class C) (Count III). However, the jury voted to convict defendant of obstructing report of a crime or injury, 17-A M.R.S. § 758(1)(A) (Class D) (Count I); eluding an officer, 29-A M.R.S. § 2414(3) (Class C) (Count IV); reckless conduct with a dangerous weapon, 17-A M.R.S. §§ 211(1), 1604(5)(A) (Class C) (Count V); driving to endanger, 17-A M.R.S. § 2413(1) (Class E) (Count VI); unauthorized use of property, 17-A M.R.S. § 360(1)(A) (Class D) (Count VII); violating conditions of release, 17-A M.R.S. § 1092(1)(A) (Class E) (Count VIII);[1] and refusing to submit to arrest, 17-A M.R.S. § 751-B(1)(B) (Class D) (Count IX). After trial, the Cumberland County Unified Criminal Docket (Cashman, J.) sentenced defendant to four years imprisonment, with all but two years suspended and two years of probation. This appeal follows.

I. Much of the conduct at issue occurred near the Sagadahoc-Cumberland County line, raising questions about venue and jurisdiction.

The State's indictment – returned from a Cumberland County grand jury – initially alleged conduct in Brunswick, which, naturally enough, lies in Cumberland County. (A62-A64). The day of jury selection, the State filed a motion to amend that indictment, candidly acknowledging it had mistakenly

[1] Count VIII was tried to the bench. (2Tr. 85).

believed that all of the conduct occurred in Brunswick, where, instead, some (or much) of it occurred in Sagadahoc County. (A46-A47, A76; JSTr. 6-7). Defendant opposed the motion to amend, (A49-A53; JSTr. 9-13). Even before the State filed that motion to amend, defendant had moved to transfer certain counts to Sagadahoc County for similar reasons. *See* Defendant's *Motion to Transfer* of Sept. 5, 2024.

The court ultimately granted the State's motion to amend and denied defendant's motion to transfer. (A53-A57; A59-A61, A76; JSTr. 13-18). Though defendant does not press on appeal any arguments strictly relating to the motions to amend or transfer, a couple points of the court's reasoning are relevant to the question of jurisdiction raised in this appeal. For one, the court noted that the conduct in question occurred *more* than 100 rods into Sagadahoc County – nearly 500 rods, in fact. (A55-56; JSTr. 15-16). Second, the court offered this statement about jurisdiction, generally:

> [L]ooking at the question of venue versus – versus jurisdiction, which is an ability for the grand jury to indict, that it's proper, that there is authority for this, and that this amendment does not change the grand jury's authority.

(A55; JSTr. 15). Defendant will address this reasoning and ruling below.

II. Evidence at trial

Defendant was acquitted of the alleged assault, (A78), so, suffice it to say for our purposes, he and his then-girlfriend had a disagreement on a December day in 2023. (*See* A46-48). After the alleged assault, the girlfriend testified, defendant took her phone, rendering her unable to call anyone. (A59-60). The record-evidence could support a finding that, several hours

later, defendant left their residence in Brunswick, taking his girlfriend's car even though she withheld her consent for him to do so. (1Tr. 54-56, 68-70). These portions of the State's case minimally supported the charges for Counts I and VII (obstructing a report and unauthorized use of property, respectively).

Not long after defendant left the home, Brunswick police were called to the scene. (1Tr. 128). An officer located defendant's vehicle on New Meadows Road in West Bath; he pursued defendant with the cruiser's blue-lights and siren activated. (1Tr. 130). The officer testified that defendant passed slower-moving cars, causing some to "slow down and swerve" out of the way. (1Tr. 132).

As other officers joined the pursuit, defendant continued onto Route 1, back into Brunswick. (1Tr. 101-02, 135). Defendant exited Route 1 at the Route 196 exit, making his way into Topsham. (1Tr. 135). On 196, defendant's driving was "erratic." (1Tr. 139). But the chase there "wasn't like a typical pursuit;" rather, defendant was driving more slowly, though still causing other drivers to "swerv[e] towards the shoulder" to avoid collisions. (1Tr. 139-40). At the I-295 junction, defendant took the exit and headed south, making a U-turn on the highway's crossover lane and reentering 196 in the opposite direction. (1Tr. 140).

The State explicitly referenced such "swerving" in electing the basis for Count V (reckless conduct with a dangerous weapon). (2Tr. 22-23). And, in closing, the State argued that defendant's driving, generally, supported its

charges in Count IV (eluding an officer) – which, it noted, "end[ed] in Topsham," (2Tr. 22) – and Count VI (driving to endanger). (2Tr. 23).

At the Circle K in Topsham, things came to a head. (1Tr. 140, 179, 225). Hemmed in by several law enforcement vehicles, defendant's vehicle and a Brunswick cruiser collided at low speeds. (1Tr. 141, 222; SX 2 ca. 20:00; SX 6 ca. 21:15; SX 2). After the collision, rather than complying with officers' commands, defendant stated that, and acted as if, he had a gun, threatening to shoot at the officers. (1Tr. 172-73, 184-86, 192). Once defendant was removed from his vehicle, they had to "use muscles and force" to make defendant submit to handcuffing. (1Tr. 109). In the State's view, this testimony justified a conviction for Count IX (refusing to submit). (2Tr. 21).

III. The court denied defendant's motion for a judgment of acquittal.

Defendant discusses his motion and renewed motion, below, but this Court can read them in their entirety at pages A27 through A43 and A68 through A75 of the Appendix.

ISSUES PRESENTED FOR REVIEW

I. Under this Court's precedents, was there sufficient evidence as a matter of law to convict defendant of reckless conduct with a dangerous weapon?

II. Did the grand jury lack jurisdiction to indict defendant for any conduct occurring in Sagadahoc County which resulted in convictions on Counts IV and V?

ARGUMENT

First Assignment of Error

I. Under this Court's precedents, there was insufficient evidence as a matter of law to convict defendant of reckless conduct with a dangerous weapon.

A. Summary of the argument

State v. Jones, 405 A.2d 149 (Me. 1979) does not permit the State to convict a defendant of reckless conduct with a dangerous weapon by proving merely that a defendant drove recklessly. Case-law and plain statutory language require the State to further prove that the driver actually "used" his vehicle as a weapon. A contrary holding would permit the felony enhancement in all instances where a defendant has utilized anything other than his physical body to commit the crime of reckless conduct, a proposition at odds with legislative intent. Here, as this Court's case-law demonstrates, defendant drove recklessly but at no point used his vehicle as a dangerous weapon. The evidence was therefore insufficient to convict him of reckless conduct with a dangerous weapon.

B. Preservation and standard of review

When reviewing a challenge to the sufficiency of the evidence supporting a conviction, this Court views trial evidence "in the light most favorable to the verdict to 'determine whether any trier of fact rationally could find beyond a reasonable doubt every element of the offense charged.'" *State v. DesRosiers*, 2024 ME 77, ¶ 21, 327 A.3d 64, quoting *State v. Pelletier*, 534 A.2d 970, 972 (Me. 1987). In so doing, the Court will interpret

any statutory terms – here, "use of a dangerous weapon" – de novo. *State v. Brown*, 2017 ME 59, ¶ 7, 158 A.3d 501.

C. Analysis

Under this Court's precedent, the evidence at trial was insufficient to convict defendant of reckless conduct with a dangerous weapon, under 17-A M.R.S. §§ 211 and 1604(5)(A). Because the State produced no evidence establishing that defendant used his vehicle as a "dangerous weapon" against the public, the Court must vacate the judgment of conviction and remand for entry of a judgment of acquittal. To hold otherwise would permit the State to elevate any instance of reckless driving to a felony offense. The Legislature could not have intended that result.

1. The legal standard: Mere reckless driving is not sufficient.

Reckless conduct is, without more, a misdemeanor offense. *See* 17-A M.R.S. § 211. Those who recklessly create "a substantial risk of serious bodily injury to another person" face conviction and punishment for a Class D misdemeanor. *See* § 211(1), (2). If, in addition, the State proves that such recklessness "was committed with the use of a dangerous weapon," the State may obtain an elevated, felony-level, conviction. 17-A M.R.S. § 1604(5)(A). "Use of a dangerous weapon" is defined by 17-A M.R.S. § 2(9)(A) as "the use of a firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which, in the manner it is used or threatened to be used is capable of producing death or serious bodily injury." Here, defendant was charged with a felony offense because the State alleged just

such an elevating circumstance – *i.e.*, that he "recklessly create[d] a substantial risk of serious bodily injury to the public with the use of a dangerous weapon, a motor vehicle." (A60).

This statutory scheme implies a corollary: Reckless operation of a motor vehicle, by itself, is insufficient to trigger § 1604(5)'s "use of a dangerous weapon" enhancement. Recognizing that fact, *Jones*, 405 A.2d at 151 holds, "evidence of reckless operation of a motor vehicle" is not "in itself sufficient to sustain a conviction for reckless conduct with the use of a dangerous weapon." Rather, there must *also* be evidence that the vehicle was "used as a weapon." *Id.* at 151.

For example, in *Jones*, the defendant had first driven by a parked car and yelled threats at the car's occupants. *Ibid.* at 150. When the victims attempted to drive away, Jones unsuccessfully attempted to block their car in. *Ibid.* He then caught up with the fleeing car, cut into its lane, purposely crashed into it, and forced the victims' car into a ditch. *Ibid.* On appeal, Jones challenged the sufficiency of the evidence and the prosecution's decision to charge him with the "use of a dangerous weapon" enhancement rather than mere reckless driving. *Ibid.*

While the *Jones* Court rejected the argument that a vehicle could *never* be used as a dangerous weapon, in so doing it clarified that mere proof of reckless driving was not enough to trigger the felony enhancement.

> We do not understand the [S]tate to argue that evidence of reckless operation of a motor vehicle would be in itself sufficient to sustain a conviction for reckless conduct with the use of a dangerous weapon, a Class C crime. In the present case, as in

> *Thurlow*, the evidence warranted a conclusion by the jury that the defendant intentionally used his automobile as a weapon.

Id. at 151, citing *State v. Thurlow*, 387 A.2d 22 (1978) (footnote omitted).

The Law Court cited two cases to bolster its conclusion that reckless operation of a motor vehicle, without more, does not warrant the felony enhancement: *State v. Thurlow*, and *State v. Reim*, 549 P.2d 1046, 1048 (Ariz. App. 1976). In *Thurlow*, the Court upheld a conviction for reckless conduct with a dangerous weapon after the defendant had attempted to drive forward though a police officer had fallen and was lying with his head and shoulders underneath the defendant's vehicle. 387 A.2d at 23. Thurlow had argued that this conviction was at odds with the jury concluding, on another count, that he had *not* used his vehicle as a dangerous weapon by striking the officer with his car door and causing him to fall down. *Ibid*. The distinction, according to the *Thurlow* Court, was that the jury could have rationally determined that the latter (hitting the officer with the car door) was merely accidental or "happenstance" yet also concluded that the former (driving forward with the officer under the vehicle) constituted "use" of the vehicle as a weapon. *Id*. at 23 n. 2. The case thus bolsters *Jones'* holding that only actual "use" of the vehicle as a weapon can enhance a criminal charge. *Id*. at 24.

So does *Reim*, which, although discussing Arizona law, states that "[i]n order to sustain a conviction of assault with a deadly weapon in which the alleged weapon is an automobile, there must be evidence that the vehicle was 'aimed' at the victim with the actual intent to use the automobile as a deadly

weapon." *Reim*, 549 P.2d at 1048. Two subsequent Maine cases, *State v. Grant*, 466 A.2d 27, 28 (Me. 1983) and *State v. Seymour,* 461 A.2d 1060, 1061 (Me. 1983), subsequently clarified that *Jones* did not establish an "intent" requirement.[2] But these cases did nothing to *Jones*' requirement that a vehicle must have been *used* as a weapon rather than merely driven recklessly – which, of course, is anyway the plain language of § 1604(5)(A). *See*, *e.g.*, *State v. York*, 2006 ME 65, ¶ 9 n. 3, 899 A.2d 780 (noting, in a sufficiency-of-the-evidence challenge, that the defendant appeared to have been experiencing "road rage" when he made eye-contact with the victim, declined the opportunity to pass the victim's car, and "forc[ed] the victim into oncoming northbound traffic").

Jones' (and § 1604(5)(A)'s) requirement that a driver actually use his vehicle as a weapon rather than just drive recklessly is a sensible limitation on § 211. The reckless conduct statute, the dangerous weapon enhancement statute, and the definition of "use of a dangerous weapon" in § 2(9)(A) need this limitation to work together. To see how, compare these statutes' language. To prove mere reckless conduct, the State must establish that the defendant "recklessly creates a substantial risk of serious bodily injury to

[2] Though the point is not necessary for this Court's decision-making here, defendant disagrees with the reasoning of *Seymour* and *Grant*. While, it is true, § 211 itself requires no proof of *mens rea* other than recklessness, the use-of language plainly added by § 1604(5)(A) cannot be read in any logical manner other than to require volition. For one to truly make "use of" a "dangerous weapon" to risk "serious bodily injury to another person," surely one must at least do so purposefully. *Cf. Borden v. United States*, 593 U.S. 420, 431 (2021) (plurality opinion). Certainly, one cannot "threaten" – part of the definition of "dangerous weapon" – without doing so purposefully.

another person." The enhancement under § 1604(5)(A) and § 2(9)(A), meanwhile, requires the State to further prove the defendant's use of "a firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which, in the manner it is used or threatened to be used is capable of producing death or serious bodily injury." Because both already require proof of the risk of "serious bodily injury," the *only* new fact the State must prove to obtain the enhancement is that the defendant *used* some sort of dangerous weapon.

Jones noted that the Legislature appears to have intended to have only the misdemeanor offense of § 211 apply to reckless drivers, absent proof of the additional, distinguishing element. It pointed to a legislative comment to § 211 stating that the bare reckless conduct section "'relates to the person who drops a brick from the roof of a crowded street, as well as to the reckless motor vehicle driver.'" *Jones*, 405 A.2d at 152, quoting 17-A M.R.S. § 211, Comment. More evidence in support of defendant's interpretation of sections 211, 1604, and 2(9)(A) comes from Title 29-A, where the Legislature has been careful to limit felony offenses only to instances where serious bodily injury has actually occurred. *See* 29-A M.R.S. §§ 2411(1-A), (5)(D-1) (elevating Class D criminal OUI to Class C); 29-A M.R.S. § 2413(1-A) (elevating Class E driving to endanger to a Class C). *See also* 29-A M.R.S. § 2252(5) (elevating Class D failure to stop and provide information and assistance to Class C where the accident resulted in "serious bodily injury"). It would be anomalous to permit the State to obtain Class C convictions

pursuant to sections 211 and 1604(5)(A), on the other hand, by mere reckless driving.

Motor vehicles are atypical because, although they are not weapons, they are inherently very dangerous. They are driven daily by everyone from teenagers to nonagenarians. Yet, they also contribute hundreds of deaths per year in Maine. The smallest mistakes, at the lowest speeds, can have deadly consequences. Yet, few believe they are "using" a "dangerous weapon," 17-A M.R.S. § 2(9)(A), when they start down the street. Only where a jury finds beyond a reasonable doubt that a driver *used* his car "as a weapon" may § 1604(5) elevate a misdemeanor to a felony. This enhancement does not apply to mere reckless driving.

2. Under the applicable legal standard, the State's evidence was insufficient.

Under *Jones,* the evidence was insufficient to saddle defendant with the felony enhancement because there was no evidence that his car was used as a weapon against "the public." As proof of this count, the State elected:

> [S]pecifically, yesterday in one of the videos, you saw that as [defendant] was using that emergency crossover, another vehicle had to swerve out of the way.
>
> As he was going through the intersection there were red lights and there were all cars at every – all of that four-way stop. He could have caused a car accident at any point during this chase. And every motorist on the road, on those roads that day, was at risk of serious bodily injury from a crash. That could have happened because of that fast chase.

(2Tr. 23). Where in this evidence is there proof akin to that in *Thurlow, Jones,* and *York* – *i.e.*, something approaching a volitional purpose to use his vehicle as a weapon? The State can only point to evidence of reckless conduct

while driving. And, without requiring something more, this Court would establish a categorical rule: Every case of reckless conduct while driving *ipso facto* constitutes felony reckless conduct with a dangerous weapon.

Examining the evidence closely shows, although he led police on a thirteen-minute chase, at no point did defendant use his car as anything other than a vehicle *to escape*. Certainly, in no instance did he "use" it as a weapon to inflict "serious bodily injury." Moreover, the majority of the chase unfolded at speeds close to that of the flow of traffic. Rather than using his vehicle as a weapon – something he clearly was in a position to do, had he wanted to – defendant actively sought to avoid collisions. Clearly, his goal was not to weaponize his vehicle; it was to use it to flee police.

In other words, defendant did not use his car as a weapon to physically force drivers off the road or into traffic, as in *Thurlow* and *York*. Nor did he attempt to drive over anyone, as in *Jones*. At trial, rather, the State broadly gestured to defendant's reckless driving against "the public" and was then able to convict him of the felony without establishing the requisite *use of* a dangerous weapon. Because no rational jury, acting in accordance with the plain legislative language and this Court's decisions interpreting it, could vote to convict based on this conduct, this Court must vacate and remand for entry of a judgment of acquittal.

Second Assignment of Error

I. The grand jury lacked jurisdiction to indict defendant for any conduct occurring in Sagadahoc County which resulted in convictions on Counts IV and V.

A. Summary of the argument

The grand jury that purported to indict defendant lacked legal authority to do so, at least as to any conduct that occurred in Sagadahoc County. As a result, the State lacked jurisdiction to prosecute defendant, and the court likewise lacked jurisdiction to convene a trial, let alone enter judgment or impose sentence against him.

B. Preservation and standard of review

"Jurisdictional questions are not hampered by … preservation principles … because jurisdiction is foundational." *State v. Sloboda*, 2020 ME 10, ¶ 19 n. 8, 237 A.3d 848. Moreover, in this specific context (*i.e.*, a grand jury's authority to indict), this Court has held, the lack of such authority "cannot be cured by waiver." *State v. True*, 330 A.2d 787, 790 (Me. 1975). Thus, the Court's review remains de novo. *State v. St. Onge*, 2011 ME 73, ¶ 13, 21 A.3d 1028.

Anyway, the court *did* make rulings regarding its jurisdiction and venue, albeit in slightly different contexts. Before trial, the State realized that, when it had originally charged the case, it had mistakenly believed that the alleged conduct occurred in Brunswick (Cumberland County), not in Topsham (Sagadahoc County). (A47; JSTr. 7). So, the State sought leave to amend the indictment. (A44-A48; JSTr. 4-8). Defendant not only objected to such an amendment, he asked the court to sever any counts that were

based on conduct alleged to have occurred in Sagadahoc County, contending the court was an inappropriate venue to handle them. (A44-A53; JSTr. 4-13). Defense counsel noted, "The bulk of this conduct occurs in Sagadahoc County." (A49; JSTr. 9).

Pertinent to our appeal, the court observed that much of the conduct occurred more than 100 rods from the Sagadahoc-Cumberland County border. (A55-A56; JSTr. 15-16). Overruling defendant's objections, the court also ruled,

> I also believe that based on the nature of this, looking at the question of venue versus – versus jurisdiction, which is an ability for the grand jury to indict, that it's proper, that there is authority for this, and that this amendment does not change the grand jury's authority.

(A55; JSTr. 15).

C. Analysis

Defendant separates his analysis into three subparts, contending: (1) an indictment returned by a grand jury without authority to indict presents a jurisdictional defect; (2) the grand jury in this case lacked jurisdiction to indict defendant for any conduct occurring in Sagadahoc County; and (3) the proper remedy is vacatur and dismissal of the indictment.

1. An indictment returned by a grand jury without authority to indict presents a jurisdictional defect.

There are multiple facets of subject matter jurisdiction that could be at issue in a criminal case. At least three such facets are *not* at issue in ours. This case is *not* about the traverse jury's jurisdiction to decide the case – *i.e.*, "by a jury of the vicinity." *See* ME. CONST. Art. I, § 6. Likewise, this case is

not about the State of Maine's sovereign jurisdiction to prosecute criminal offenses occurring within its borders. *See* 1 M.R.S. § 1; 17-A M.R.S. § 7. Finally, this case is *not* about the trial court's statutory jurisdiction to hear criminal matters. *See* 4 M.R.S. §§ 105, 165; 15 M.R.S. § 1.

Rather, this case is about the grand jury's authority to indict a defendant. This, too, is a jurisdictional requirement: "An indictment returned by a grand jury which has acted without authority gives the court no jurisdiction and cannot be cured by waiver." *State v. True*, 330 A.2d 787, 790 (Me. 1975). The jurisdictional nature of grand juries' authority has been the "law of the land" in Maine since at least prior to 1872. *State v. Doherty*, 60 Me. 504, 507 (1872) (when grand jury lacked authority to return indictment, that indictment was "therefore, *coram non judice*, and void"). Simply, an indictment handed down without authority leaves a Maine court with "no criminal jurisdiction." *Id.* at 511.

2. The grand jury lacked jurisdiction to indict defendant for any conduct in Sagadahoc County.

A grand jury's jurisdiction originates from ME. CONST. Art. I, § 7, as well as in the Law of the Land Clause of § 6. However, three statutes define jurisdiction more specifically. On the facts of our case, neither of these statutes affords a Cumberland County grand jury jurisdiction to indict defendant for conduct occurring in Sagadahoc County.

The first, 15 M.R.S. § 3, provides

> When an offense is committed on the boundary between 2 counties or within 100 rods thereof … the offense may be alleged in the complaint of **indictment** as committed, and may be tried in either.

(emphasis added). This provision is inapplicable, given the facts. The trial court explicitly found, with support in the record, "We're not – we're not in the 100-rod area. That is about 500 yards. So I can't use that exception." (A55-A56; JSTr. 15-16).

The second statutory provision is also inapplicable. 15 M.R.S. § 1255-A(2)(A) requires that an indictment be returned by "the grand jury serving the county where the crime was committed." There is an exception to the general rule: A "grand jury in a multicounty judicial region may share authority to indict for crimes committed in that judicial region," so long as the "judicial region" in question is one established by the Chief Justice. 15 M.R.S. § 2155-A(2)(A); *see also* 14 M.R.S. § 1257. Importantly, Cumberland and Sagadahoc Counties are not part of the same "judicial region." Cumberland is in Region II; Sagadahoc is in Region VI. Establishment of Judicial Regions, Me. Admin. Order JB-08-1, (July 1, 2008); *see also* Standing Order Establishing Procedures for Convening and Using Regional Grand Juries in Multicounty Judicial Regions (Aug. 1. 2009). Section 1255-A therefore accords no jurisdiction in this case.

The third statutory provision is also inapplicable. 15 M.R.S. § 1255-A(2)(B) notes that the "territorial authority to indict for crimes may also be exercised as otherwise provided by law." Numerous statutes thereby extend venue and jurisdiction for prosecution of particular crimes. *E.g.,* 17-A M.R.S. §§ 352(5)(E), 506(2), 552(2-A), 703(3), 708(3-A), 755(3-A), 805(1-B), 1106-A(1). None of these statutes, though, are applicable in this case.

3. Vacatur and dismissal are necessary.

When a jury "may have based its guilty verdict on a charge over which the [court] lacked subject matter jurisdiction," vacatur is necessary. *State v. Collin*, 1997 ME 6, ¶ 12, 687 A.2d 962. Here, both of the felony-level[3] counts of conviction could be based on evidence that defendant committed the conduct outside of the grand jury's jurisdiction (*i.e.*, in Topsham or West Bath, Sagadahoc County):

- As to the charge of reckless conduct with a dangerous weapon, 17-A M.R.S. §§ 211, 1604(5)(A) (Class C), the State was clear, "The testimony was that multiple vehicles had to swerve out of the way, and that he almost collided with one vehicle on the road." (2Tr. 9). At least one of these vehicles was in Topsham, with an officer testifying that other cars were "swerving towards the shoulder" to avoid defendant. (1Tr. 139-40). Others on New Meadows Road in West Bath (Sagadahoc County) similarly had to "slow down and swerve" to avoid defendant. (1Tr. 132).
- As to the charge of eluding an officer, 29-A M.R.S. § 2414(3) (Class C), as the State noted, the evidence was that defendant led police on a high-speed chase "ultimately ending in Topsham." (2Tr. 22).

[3] Misdemeanors, of course, do not require grand jury indictments. *See* ME. CONST. Art., § 7 (which applies only "capital or infamous crimes"); *see also* 17-A M.R.S. § 9.

In both cases, because the jury "may have" based its verdict on conduct for which the grand jury lacked jurisdiction to indict defendant, the verdicts are unsustainable.

When a court lacking jurisdiction has entered a judgment of conviction against a defendant, the resulting convictions must, of course, be vacated, but the indictments themselves need also be dismissed. *E.g.*, *Sloboda*, 2020 ME 103, ¶ 23. Anything less would set up a second prosecution for identical, repeat error.

CONCLUSION

For the foregoing reasons, this Court should vacate defendant's convictions, remand for entry of a judgment of acquittal on Count V and dismissal of the other felony-level counts of conviction.

March 28, 2025

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I have filed this brief, and served opposing counsel, as listed on the briefing schedule and the Board of Bar Overseers' (email) directory, in compliance with M.R. App. P. 1D(c), 1E and 7(c).

/s/ Rory A. McNamara