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

REPLY BRIEF OF APPELLANT

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First Assignment of Error

I. The State may not enhance reckless conduct convictions based solely on evidence of reckless driving.

Under *Jones*, the State may not convict a defendant of the "use of a dangerous weapon" felony enhancement, 17-A M.R.S. § 1604(5), based merely on evidence of reckless driving. *State v. Jones*, 405 A.2d 149, 151 (Me. 1979). The State must also prove that a defendant in fact *used his vehicle as a weapon*. In this case, the State did not provide sufficient evidence to sustain defendant's conviction.

A. Felony enhancement via § 1604(5)(A) requires proof of the use of a weapon.

So that it is completely clear: defendant has never argued that reckless conduct with a dangerous weapon is a specific intent crime. *But see* Red Br. 17 (mischaracterizing defendant's argument). It obviously is not. *See State v. Grant*, 466 A.2d 27, 28 (Me. 1983); 17-A M.R.S. § 34(4)(A) ("Unless otherwise expressly provided, a culpable mental state need not be proved with respect to… [a]ny fact that is solely a basis for sentencing classification."). Nonetheless, the State must additionally prove beyond a reasonable doubt that a defendant "used" a dangerous weapon before it can enhance a charge of reckless conduct to a felony.

What does it require to prove the use of a dangerous weapon? For example, § 1604(5)(A) marks a difference between, say, carelessly tossing a brick off the roof of a building, *Jones*, 405 A.2d at 152, quoting 17-A M.R.S. § 211, Comment, and throwing that rock at passing cars. *Cf. State v. Mullen*,

2020 ME 56, ¶¶ 3, 7, 231 A.3d 429. In each case, the defendant creates a substantial risk of serious bodily injury. But only in the latter example does the defendant actually use an object as a dangerous weapon against others – distinguishing a misdemeanor from a felony.

The State asserts in its brief that "[p]roperly instructed, the jury found not merely that the Defendant drove recklessly, but that the way he used his motor vehicle while driving recklessly created a substantial risk of death or serious bodily injury." Red Br. 19. This is exactly the problem. "[R]ecklessly creat[ing] a substantial risk of serious bodily injury" are the identical elements of the Class D misdemeanor of reckless conduct. *See* 17-A M.R.S. § 211. The State contends that the jury assumed precisely what the *Jones* Court said was incorrect as a matter of law: Committing reckless conduct while driving is, per se, chargeable as a felony offense under § 1604(5)(A). 405 A.2d at 151. Unfortunately, without the limiting principle established by *Jones*, there is nothing to stop the State from obtaining the felony enhancement in each and every occasion of reckless driving.

Permitting such an outcome would gut the rules of lenity and strict construction – this Court's guiding principles in interpreting criminal statutes. *See, e.g.*, *State v. Whitney*, 2024 ME 49, ¶ 10, 319 A.3d 1072, 1076. No ordinary person believes they are "using a dangerous weapon" simply by heading out onto the roads each morning. Thus, reckless conduct when driving shall not be chargeable as a felony *unless* there is evidence the defendant specifically used his or her car as a weapon.

B. Under the correct standard, the evidence was insufficient to convict the defendant.

The evidence was insufficient to convict defendant of reckless conduct with the use of a dangerous weapon. The video capturing the chase should be watched in its entirety while keeping two standards in mind. To sustain a conviction, the State must offer a discrete instance[1] where (1) the conduct reflects defendant's use of a dangerous weapon per the *Jones* standard, and (2) such conduct creates a "substantial risk of serious bodily injury" to another person – as in, "a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health." 17-A M.R.S. §§ 211, 2(23). This definition is equivalent to "deadly force" under Maine law. *See* 17-A M.R.S. § 2(8). No example the State mentions satisfies these two qualifications, and its suggestions to the contrary rely on mischaracterizing the evidence.

The State first points to the collision between defendant and Officer Day in West Bath, suggesting that Coffill "attempted to ram into a police cruiser," or that he "attempted to strike Officer Day's cruiser" or "crashed into [a] police cruiser[]." Red Br. 15, 3-4, 12. The actual trial testimony

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[1] Later in its Brief, the State asserts that reckless conduct is a "continuing crime" and therefore defendant was continuously committing it during the police pursuit. On these facts, it is not a continuing crime, and the State must therefore point to specific instances of conduct that satisfy all elements of the crime.

characterizes this collision as accidental and minor. Officer Day stated that as he attempted to follow defendant's car onto Route 1, defendant's car instead "did the majority of a U-turn on the ramp and then drove at my car, causing both of us to slam on the brakes." (1Tr. 133). Officer Day's Watchguard video confirms the accuracy of his trial testimony, foreclosing any notion that defendant's driving put anyone at substantial risk of serious bodily injury. (SX 2 ca. 20:00; SX 6 ca. 21:15).

The State next asserts, "as shown on the Watchguard video introduced as an exhibit at trial, the Defendant drove through that emergency crossover, did not reduce his speed as he pulled into oncoming traffic" and "forced a vehicle onto the shoulder of the highway as he crossed from one side of the divided highway to the other." Red Br. 4. What the video actually depicts is defendant applying his brakes for a full eight seconds before entering the crossover, braking again as he prepared to merge onto the northbound lanes, and exiting into the left-hand lane at a very low rate of speed. (SX 6 ca. 18:30). As is clear from the video, in no sense did he "force[]," Red Br. 4, 12, an oncoming car to swerve and avoid a collision; the closest car to him was already travelling in the right-hand lane and later pulled over in response to the police lights behind it.

Third, the State asserts that defendant's "weaving through traffic and stop lights in rush hour traffic" justifies its conviction. Red Br. 12. This sort of driving may very well be misdemeanor reckless conduct – but it does not demonstrate the use of a dangerous weapon as contemplated by *Jones*.

The fourth instance the State points to is defendant's "narrowly missing a collision with a police cruiser," Red Br. 12, based on the fact that "Deputy Camarda testified that the Defendant almost struck his cruiser as he attempted to intercept him in Topsham." Red Br. 4. This underscores the untenability of the State's case: It argues that defendant was properly convicted of using a dangerous weapon for safely *avoiding* collisions with officers who *were intentionally trying to crash into him*. If nothing else, this assertion reiterates the need for the *Jones* standard to check the State when its judgments about alleged criminal conduct stray outside of statutory requirements.

The final instance the State points to is defendant's collision with Officer Merrill in the Circle-K parking lot. Again, it overstates its evidence, asserting that defendant drove towards Officer Merrill's cruiser "at speeds that did not set off airbags, but caused the officer to experience a concussion and caused damage to the vehicle that officers testified cost thousands of dollars to repair." Red Br. 5. Officer Merrill testified that he was diagnosed with a "mild concussion," and the jury was clearly not sold on testimony that the collision cost thousands of dollars to repair, as it found Coffill not guilty of aggravated criminal mischief. (1Tr. 225). Further, Merrill testified that defendant was driving a mere 15 miles per hour when the two collided. (1Tr. 221-22). Officer Day's Watchguard video confirms the collision occurred at very low speed, and Officer Merrill's Watchguard shows that he had stopped completely by the time defendant's car reached his own. (SX 6 ca. 21:15; SX 2 ca. 20:00). The trial evidence amply demonstrates that there was no

"substantial risk of serious bodily injury" from this collision. 17-A M.R.S. § 211. Defendant did not use "deadly force" here, and holding that he did would stretch to the breaking point a statutory definition intended for only the most serious of bodily injuries. *See* 17-A M.R.S. § 2(8).

Because no single instance of defendant's driving demonstrates his use of a vehicle as a weapon placing another person at a substantial risk of serious bodily injury, the Court must overturn defendant's conviction for reckless driving with a dangerous weapon.

Second Assignment of Error

II. The grand jury lacked jurisdiction to indict the defendant for any conduct occurring in Sagadahoc County, and the indictment must be dismissed.

The State's arguments on appeal fail for two fundamental reasons. First, grand-jury jurisdiction is constitutional and statutory. It is not something this Court – or any court – can create by caselaw or construct via an amendment to an otherwise jurisdiction-less indictment. Second, the State conflates venue and jurisdiction. There is no doubt that, had defendant been properly indicted for any conduct occurring in Sagadahoc County, a Maine court acting pursuant to M.R. U. Crim. P. 21(b) might have changed the venue of trial to another county. However, no Maine court may lawfully try a defendant for conduct for which the grand jury lacked jurisdiction to indict. These two errors in the State's analysis sink its argument on appeal.

A. The State lacks authority for its proposition that continuing crimes may be indicted in any county in which part of the offense occurs.

According to the State, "[c]aselaw" authorizes a grand jury to indict a defendant for any part of a continuing offense some of which occurred within the grand jury's territorial jurisdiction. Red Br. 20. No such authority exists, nor could it.

State v. Moulton, 148 A.2d 155 (Me. 1984) decided nothing about jurisdiction. Rather, it was about "indictments dismissed on venue grounds." *Moulton*, 148 A.2d at 158. As a basis about its ruling on venue, it cited former M.R. Crim. P. 18, which dealt with "Venue" and "Place of Trial." *See* M.R. Crim. P. 18 (1983). The venue provision then read:

> In all criminal prosecutions, ***the trial*** shall be in the county in which the offense was committed, except as otherwise provided by law.

(emphasis added). Defendant has emphasized the language about ***the trial***. Notably, it says nothing about *the indictment* or *the prosecution*. Rather, old Rule 18, like the current version, M.R. U. Crim. P. 21(a), is about trials. It, and therefore *Moulton*, say nothing about indictments. The State offers no authorities – no cases or statutes – other than *Moulton*.[2]

Regardless, any attempt by this Court to fashion a decisional rule of jurisdiction would fail for constitutional reasons. Article I, § 7 permits only "the Legislature" to establish rules for grand juries. The State makes no argument that the provisions that body *has* established – 15 M.R.S. § 3, 15 M.R.S. § 1255-A(2), or otherwise – apply.

Whether the Legislature ought to do so, of course, is another question. While the State frets that prosecutors might "be required to choose in which [one] county to prosecute" or else "run afoul of this Court's double jeopardy jurisprudence," Red Br. 21-22, that is not the case. Certainly, the court below had jurisdiction to adjudicate the conduct occurring in Cumberland County. The State could simply have proceeded in one county or the other, so long as the jury knew it could convict only in the county of indictment. *Cf. State v. Reynolds*, 2018 ME 124, ¶¶ 3-5, 26-29, 193 A.3d 168 (permissible for State

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[2] The State's citation to *United States v. Rodriguez-Moreno*, 526 U.S. 275, 281-82 (1999) is a non-starter for two reasons: (1) *Rodriguez-Moreno* contains no mention of "jurisdiction," and (2) the Grand Jury Clause of the Fifth Amendment has not been incorporated against the states, *Hurtado v. California*, 110 U.S. 516 (1884), rendering federal law on the topic immaterial.

to introduce evidence of criminal incidents occurring other than in county of prosecution). Regardless, ease of prosecution is clearly not the purpose of ME. CONST. Art. I, § 7.

B. The State conflates venue and jurisdiction.

The State's contention that a judge can simply amend a jurisdiction-less indictment would swallow the right to an indictment. Why bother convene a grand jury according to the rules and statutes established pursuant to "the Legislature" and § 7 if, anyway, a judge can simply "amend" away any deficient compliance with those provisions? What good, for example, is 15 M.R.S. § 3's 100-rod jurisdiction-requirement if the judge can simply wave her pen and "amend" the State's failure to comply?

Respectfully, it seems that the State's error here is a fundamental omission to recognize the important distinction between venue and jurisdiction. Throughout its brief, the State repeatedly refers to the former – venue – when the issue on appeal is the latter – jurisdiction. For example, the State writes,

> Reading this Court's precedents and the Rules of Criminal Procedure together, it is clear that the Court contemplated that purported defects in venue arising from Grand Jury territorial authority can be addressed and cured in the Superior Court with motion practice.

Red Br. 24-25. However, we aren't talking about venue. This issue is not about where a trial can be held; it is where an indictment must be obtained and where a prosecution must be commenced.

Later, the State puts the cart before the horse. It writes, "[D]efects in the institution of the prosecution or in the charging document that are *not*

jurisdictional in nature include, among others, venue and jurisdiction over the person of the defendant." Red Br. 19, citing 1 Cluchey & Seitzinger, *Maine Criminal Practice* § 12.3 – 12.4 at IV-59-61 (rev. ed. 1994) (emphasis in Red Br.). While this might well be true for many "defects in the institution of the prosecution," *True* establishes that the territorial jurisdiction of a grand jury is not a forgivable such defect. *State v. True*, 330 A.2d 787, 790 (Me. 1975) ("15 M.R.S.A. § 3 not only establishes the counties in which offenses committed within 100 rods of a county line may be *tried*, but it also fixes a grand jury territorial authority to *indict* for such offenses. An indictment returned by a grand jury which has acted without authority gives the court no jurisdiction…") (emphasis in *True*).[3] So, while it could well be accurate that an *otherwise lawful* indictment is not rendered irredeemable by a defect in pleading, an indictment obtained in the first instance without grand jury jurisdiction is not salvageable.

C. The remedy is dismissal.

As amended, the State currently has an indictment, handed down by a Cumberland County grand jury, that, with a wave of her pen, a judge "amended" to also include conduct in Sagadahoc County. A60-A61. The judge had no authority to do so; that "amendment" violates defendant's constitutional and statutory rights. The court lacked jurisdiction to convict defendant for any conduct occurring in Sagadahoc County.

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[3] There appears to be a discrepancy in *True* as reported by the undersigned's Lexis and Westlaw accounts. The former italicizes these terms as quoted above; the latter contains no emphasis at all.

The appropriate remedy is not merely remand for further proceedings. That would permit the same error to repeat itself. At a minimum, it must entail striking the improvident so-called "amendment." After that, prosecutors in Cumberland County might elect to proceed on conduct based solely in Cumberland County. Or prosecutors in Sagadahoc County might decide to seek an indictment for the allegations there. Where and on what conduct the State seeks to proceed, if at all, will determine the future of the prosecution. As currently formulated, however, the indictment cannot stand.

CONCLUSION

For the foregoing reasons, and those discussed in the Blue Brief, this Court should vacate defendant's convictions and remand for proceedings not inconsistent with its mandate.

June 13, 2025

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

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

/s/ Sanders Wommack

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