

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW COURT DOCKET NO.: Som-25-305

**STATE OF MAINE
Appellee**

v.

**DEVON STEWART
Appellant**

**ON APPEAL FROM THE
SOMERSET COUNTY UNIFIED CRIMINAL DOCKET**

BRIEF FOR THE APPELLANT

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TABLE OF CONTENTS

STATEMENT OF THE CASE	5
ISSUES PRESENTED FOR REVIEW	7
ARGUMENT	8
I. There was insufficient evidence of compulsion presented at trial to support a conviction for Gross Sexual Assault.....	8
A. Preservation and standard of review	8
B. Analysis	9
II. The trial court erred by allowing [REDACTED] N.W. to leave the courtroom during the 911 call	11
A. Preservation and standard of review	11
B. Analysis	11
III. In permitting [REDACTED] N.W. to testify to a prejudicial statement, the court failed to exercise sound discretion, thereby causing unfair prejudice to Devon Stewart	15
A. Preservation and standard of review	15
B. Analysis	15
IV. Trial court erred by overemphasizing a lack of remorse and ignoring other mitigating factors at sentencing.....	17
A. Standard of review.....	17
B. Analysis	17
V. The trial court erred in sentencing Devon Stewart to six years of Probation.....	25
A. Standard of review.....	25
B. Analysis	25
CONCLUSION	26
CERTIFICATE OF SERVICE	28

TABLE OF CASES AND OTHER AUTHORITIES

Cases

<i>State v. Adams</i> , 2019 ME 132, 214 A.3d 496.....	12, 14
<i>State v. Bentley</i> , 2021 ME 3916	17, 25
<i>State v. Gatto</i> , 2020 ME 61, 232 A.3d 228	9
<i>State v. Gorman</i> , 2004 ME 90, 854 A.2d 1164	12
<i>State v. J.R.</i> , 2018 ME 117, 191 A.3d 1157	11
<i>State v. Kendall</i> , 2016 ME 147, 148 A.3d 1230.....	8
<i>State v. Nichols</i> , 2013 ME 71, ¶ 23, 72 A.3d 503	11
<i>State v. Ringuette</i> , 2022 ME 61.....	17
<i>State v. Robshaw</i> , 2025 ME 50	17, 25
<i>State v. Thomas</i> , 2022 ME 27, 274 A.3d 356.....	15, 16
<i>State v. Watson</i> , 2024 ME 24, 319 A.3d 430.....	11

Constitutional provisions

Me. Const. art. I, § 6	19
------------------------------	----

Statutes

17-A M.R.S. § 253-A(1).....	26
17-A M.R.S. § 253(1)(A).....	9
17-A M.R.S. § 1804(1)(A).....	25
17-A M.R.S. § 1804(2)	25
17-A M.R.S. § 1804(3)	25
17-A M.R.S. § 1804(4)	25
17-A M.R.S. § 1804(4-A).....	25
17-A M.R.S. § 1804(5)	25

Rules

M.R. Evid. 40316
M.R. Evid. 404(b)16
M.R. Evid. 803(5)12
M.R. Evid. 80412
M.R.U. Crim. P. 29(a).....8

Regulations

24 C.F.R. § 982.553(a) (2025)23

Other Authorities

Alexander, *Maine Appellate Practice* § 416 at 258 (6th ed. 2022)9
Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 *Neuropsychiatric Disease & Treatment* 449 (2013)20
Michelle A. Cubellis, Douglas N. Evans & Adam G. Fera, *Sex Offender Stigma: An Exploration of Vigilantism Against Sex Offenders*, *Deviant Behavior* (2018)...22
Douglas Evans, Adam Trahan & Kaleigh Laird, *Shame and Blame: Secondary Stigma Among Families of Convicted Sex Offenders*, 23 *Criminology & Crim. Just.* 78 (2023)21

STATEMENT OF THE CASE

During the daytime on February 17, 2023, 16-year-old [REDACTED] N.W. [REDACTED]

[REDACTED] left home due to an argument with her mother. While she was walking in Fairfield, she saw a former middle school acquaintance, Devon Stewart (“Mr. Stewart”), and they began talking. They eventually started walking with each other and she accompanied him to a friend’s house to drop off a speaker. Afterwards, they walked along nearby train tracks.

[REDACTED] N.W. testified that when they reached the middle of the train tracks, Mr. Stewart “acted weird” and told her he loved her. Trial Transcript (“T.T.”) 38-39. She further testified that Mr. Stewart kissed her and put his hands under her pants and pushed her into the railing, then “put his penis into [her] butt and . . . into [her] vagina.” T.T. 41-42. She denied fighting him as they had sex but testified that she screamed “no” multiple times. T.T. 42. She also testified that there were no threats made to her by Mr. Stewart, and that she did not make any attempt to resist him. T.T. 56-57. After they had sex, they left the area – she walked to a restaurant where she called 911, and he walked in the opposite direction. T.T. 46.

During direct and cross-examination of [REDACTED] N.W. and Officer Nolan Allen (“Ofc. Allen”) of the Waterville Police Department, testimony conflicted about whether Mr. Stewart had made suicidal statements. Ofc. Allen testified that [REDACTED] N. [REDACTED] said to him that she had sex with Mr. Stewart because of past suicidal

statements made by Mr. Stewart, and that she did not want him to get into trouble. T.T. 65-66.

Detective Shanna Blodgett (“Det. Blodgett”) testified primarily about DNA collection, the interview at the Child Advocacy Center (“CAC”) by [REDACTED], and her interviews with Mr. Stewart. It was during cross-examination, that Det. Blodgett testified that [REDACTED] told the CAC interviewer that she had been flirting with Mr. Stewart after they met, and that she thought he was cute. T.T. 82.

Ultimately, Mr. Stewart testified on his own behalf. He explained that it was [REDACTED] who approached him first because he did not recognize her due to a hoodie she was wearing. T.T. 107. He testified that they walked to his friend’s house and along train tracks. While on the train trestle, [REDACTED] initiated contact with him by kissing him on the cheek which escalated to having sex when she asked him. T.T. 111. He testified that she turned around and pulled down her pants and asked him to pull down her underwear. T.T. 112. He denied her ever screaming for help. T.T. 113. He further testified that after they had sex, they walked off the platform together and she asked for his phone number and Facebook information. T.T. 115.

After a two-day trial, Mr. Stewart was found guilty of Gross Sexual Assault. At sentencing, he was sentenced to 20 years in prison, all but 11 years suspended, with 6 years of probation. Docket Record, 6.

ISSUES PRESENTED FOR REVIEW

- I. Whether there was sufficient evidence presented at trial to support a conviction for Gross Sexual Assault, despite no evidence of compulsion presented by the State.
- II. Whether the trial court erred when allowing [REDACTED] N.W. to leave the courtroom during the 911 call.
- III. Whether, in permitting [REDACTED] N.W. to testify to a prejudicial statement, the court failed to exercise sound discretion, thereby causing unfair prejudice to Devon Stewart.
- IV. Whether the trial court erred by overemphasizing a lack of remorse and ignoring other mitigating factors during sentencing.
- V. Whether the trial court erred by sentencing Devon Stewart to six years of probation.

ARGUMENT

I. There was no evidence of compulsion presented at trial to support a conviction for Gross Sexual Assault.

A. Preservation and standard of review

Mr. Stewart did not preserve this issue pursuant to M.R. U. Crim. P. 29(a), however, preservation is immaterial. Even if counsel had not done so, “the trial court has an independent duty pursuant to M.R.U. Crim. P. 29(a) to assess the sufficiency of the evidence at the close of both the State's case-in-chief and the accused's case.” *State v. Kendall*, 2016 ME 147, ¶ 12, 148 A.3d 1230.

The issue of sufficiency is before a trial court “irrespective of whether the defendant articulates it.” *Ibid.*; see M.R. U. Crim. P. 29(a) (“The court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more crimes charged in the indictment, information, or complaint after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such crime or crimes.”). Regardless of whether defendant objected at trial, this Court has historically reviewed the sufficiency of the evidence “under the standard of review applicable to preserved error.” *Kendall*, 2016 ME 147, ¶ 12.

This means the Court reviews the evidence in the light most favorable to the State, evaluating whether a jury could rationally find each required element to be

proven beyond a reasonable doubt. *State v. Gatto*, 2020 ME 61, ¶ 16, 232 A.3d 228. See also Alexander, *Maine Appellate Practice* § 416 at 258 (6th ed. 2022).

B. Analysis

The first step in analyzing the sufficiency of evidence is to identify the elements of the offense. To convict Mr. Stewart of Gross Sexual Assault pursuant to 17-A M.R.S. § 253(1)(A), the State had to prove two things: (1) Mr. Stewart engaged in a sexual act with [REDACTED N.W.], and (2) that [REDACTED N.W.] submitted as a result of compulsion. The trial court defined “sexual act” and “compulsion” during jury instructions:

‘Sexual act’ is defined in our law as any act between two persons involving direct physical contact between the genitals of one and the mouth or anus of the other or direct physical contact between the genitals of one and the genitals of the other. . . . ‘Compulsion’ is defined in our law as the use of physical force, a threat to use physical force, or a combination of those two things that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury, or kidnaping might be imminently inflicted upon that person or another human being. Compulsion places no duty upon the victim to resist the actor.

Sentencing Transcript, 27.

To define compulsion in this manner reflects an intent to limit criminal liability to cases involving genuine coercion, not merely cases of silence, hesitation, or regret.

There is no dispute that a sexual act occurred. The issue is whether the sexual act occurred because Mr. Stewart used force or the threat of force to engage in the sexual act with [REDACTED] N.W. .

The State presented no evidence of compulsion. [REDACTED] N.W. testified that she froze during the incident T.T. 41, and that Mr. Stewart never threatened her. T.T. 56-57. There was no testimony that he threatened her, displayed a weapon to threaten her, or restrained her from leaving. She did not testify that he held her down or kept her pressed against the railing while he pulled her pants down. She denied sustaining any injury, denied asking for help, and denied hearing threats of suicide or homicide. The only testimony even approaching force was that Mr. Stewart “pushed her into the railing,” yet no evidence suggested injury, fear, or incapacitation. T.T. 57. Pushing, without more, cannot reasonably be construed as force rising to the statutory definition of compulsion.

Moreover, the surrounding circumstances confirm the absence of compulsion. The testimony described kissing, touching, undressing, and bodies pressed together. These acts, while physical, do not equate to the statutory concept of compulsion unless accompanied by violence or credible threats. To hold otherwise would be like treating consensual intimacy the same as forced sexual acts, which goes way beyond what the law allows.

Freezing, by itself, is a psychological response, not an external force. The law

requires proof that [REDACTED] N.W. submitted as a result of Mr. Stewart's use of force or threats. Because the State failed to provide such proof, it failed to establish an essential element of the offense. A conviction built on insufficient evidence cannot stand, and Mr. Stewart is entitled to relief.

II. The trial court erred by allowing [REDACTED] N.W. to leave the courtroom during the 911 call.

A. Preservation and standard of review

If an issue is not preserved at trial, the Court reviews the issue for obvious error. *See State v. Watson*, 2024 ME 24, ¶ 18, 319 A.3d 430; *State v. J.R.*, 2018 ME 117, ¶ 20, 191 A.3d 1157. Error is obvious “when there is (1) an error, (2) that is plain, and (3) that affects substantial rights. If these conditions are met, [the Court] must also conclude that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings before we vacate a judgment on the basis of the error.” *State v. Nichols*, 2013 ME 71, ¶ 23, 72 A.3d 503.

B. Analysis

The trial court's decision to allow [REDACTED] N.W. to leave the courtroom during the playing of the 911 call was a misapplication of evidentiary law. A recording is admissible when the record “(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately; (B) was made or adopted by the witness when the matter was fresh in the witness's memory; and (C)

accurately reflects the witness’s knowledge.” M.R. Evid. 803(5); *State v. Adams*, 2019 ME 132, ¶14, 214 A.3d 496. *See also State v. Gorman*, 2004 ME 90, ¶ 27, 854 A.2d 1164. “When the witness is unable or unwilling to testify from present memory, “it is within the discretion of the trial court to determine whether the foundational requirements of M.R. Evid. 803(5) have been satisfied on a case-by-case basis, whether by direct or circumstantial evidence.” *Id.* ¶ 28.

A witness may not be required to testify to a recorded statement if they are unavailable. M.R. Evid. 804 lists the following criteria for an unavailable declarant:

(a) Criteria for being unavailable. A declarant is considered to be unavailable as a witness if the declarant:

- (1) Is exempted from testifying about the subject matter of the declarant’s statement because the court rules that a privilege applies;
- (2) Refuses to testify about the subject matter despite a court order to do so;
- (3) Testifies to not remembering the subject matter;
- (4) Cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) Is absent from the trial or hearing and the statement’s proponent has not been able, by process or other reasonable means, to procure the declarant’s attendance.

But this subdivision (a) does not apply if the statement’s proponent procured or wrongfully caused the declarant’s unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

- (1) *Former Testimony.* Testimony that:
 - (A) Was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

- (B) Is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross, or redirect examination.
- (2) *Statement under the belief of imminent death.* A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.
- (3) *Statement against interest.* A statement—except, in a criminal case, for a statement or confession made by a defendant or other person implicating both the declarant and the accused that is offered against the accused—that:
 - (A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability or to render invalid a claim by the declarant against another, or to make the declarant an object of hatred, ridicule, or disgrace; and
 - (B) Is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.
- (4) *Statement of personal or family history.* A statement about:
 - (A) The declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or
 - (B) Another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

Prior to the beginning of the trial, the parties spoke in chambers about the plan for playing the 911 recording. The State indicated that [REDACTED] N.W. was too upset to hear the 911 call and requested to leave the courtroom when it was played. T.T. 6. The State was going to introduce the recording through a detective as opposed to

█ N.W. █, however, that changed when trial counsel requested she be available for cross-examination. After discussion, the trial court allowed █ N.W. █ to leave the courtroom during the recording, relying on its ruling in *State v. Adams*, 2019 ME 132, ¶ 14, 214 A.3d 496.

In *Adams*, the victim was 6 years old at the time of the sexual abuse, 7 years old at the time of the CAC interview, and 11 years old at the time of the trial. She was unable to recall all of the details by the time the trial commenced; however, she testified that she remembered being interviewed by the CAC interviewer, had a clear memory of the abuse, and told the interviewer the truth. *Id.* at 499. In contrast, █ N. █ was 18 years old at the time of the trial and was testifying about something that had happened only two years prior. Unlike the victim in *Adams*, █ N.W. █ could remember what happened. She simply refused to listen to the recording because she would be too upset. That is not legal unavailability.

By excusing █ N.W. █ from the courtroom, the trial court denied Mr. Stewart the opportunity to test her live testimony against her recorded statements, depriving him of the most fundamental tool of cross-examination: the ability to challenge inconsistencies. This ruling placed the jury in the position of hearing the 911 call without seeing the witness confronted with its contents, leaving credibility untested. That kind of imbalance undermines the whole point of the adversarial process.

Allowing an alleged victim to avoid confronting prior statements because they

were emotionally difficult undermines the evidentiary rules and compromises the fairness of the trial. This was obvious error, and reversal is required.

III. In permitting the witness to testify to a prejudicial statement, the court failed to exercise sound discretion, thereby causing undue prejudice to Devon Stewart.

A. Preservation and standard of review

Mr. Stewart preserved this issue. The Court reviews a “trial court’s ruling on admissibility of evidence for abuse of discretion. A court abuses its discretion in ruling on evidentiary issues if the ruling arises from a failure to apply principles of law applicable to the situation, resulting in prejudice.” *State v. Thomas*, 2022 ME 27, ¶ 23, 274 A.3d 356.

B. Analysis

During [REDACTED N.W.]’s testimony, she began to describe a conversation she had with Mr. Stewart after the incident. As she describes Mr. Stewart seeing a police car, trial counsel objected to what he knew was coming next – an unfairly prejudicial statement by [REDACTED N.W.] against Mr. Stewart. The trial court overruled the objection, allowing [REDACTED N.W.] to testify that Mr. Stewart saw a police car and that “he was trying to walk a little bit away from me because he had told me after the police had went that he's not supposed to be around minors.” T.T. 45-46.

Few statements are as damaging in a sex-offense trial as a witness telling the jury that the defendant has restrictions around minors. This testimony carried an

unmistakable suggestion of prior misconduct, inviting the jury to infer that Mr. Stewart had a criminal history or other disqualifying background. Such implications fall squarely within the prohibition against propensity evidence. See M.R. Evid. 404(b). They also create unfair prejudice that substantially outweighs any probative value under Rule 403. *Thomas*, 2022 ME 27, ¶ 23.

The trial court failed to consider the unfair prejudicial nature of what N. [REDACTED] was going to say. The stigma of sexual offenses is profound. Jurors, once told Mr. Stewart was “not supposed to be around minors,” could not be expected to compartmentalize or ignore that statement. They are left with questions – is he a sex offender? Has he been convicted of something already? What did he do? What else is there that we do not know? Jurors, unlike the lawyers in the case, do not know or understand the intricacies of the trials and the legal system. N.W. [REDACTED]’s testimony let the jurors dangerously fill in the blank on what that statement meant. It was not a neutral statement. The same reason we do not introduce a Violation of Conditions of Release charge at a jury trial is the same reason the trial court should have not let in N.W. [REDACTED]’s statement – it sways the jury to determine guilt based on a previous act as opposed to the jury evaluating the current evidence.

By letting the statement be introduced, the jury was left with the damaging impression that Mr. Stewart had a history of sexual restrictions, an inference that could only bias their deliberations. In a case that turned on credibility and required

the jury to assess the complainant's word against the defendant's, that unfair prejudice likely tipped the scales.

IV. The trial court erred by overemphasizing a lack of remorse and ignoring other mitigating factors during sentencing.

a. Standard of review

This Court reviews “the determination of the basic sentence (1) *de novo* for misapplication of legal principles and (2) for an abuse of the court's sentencing power.” *State v. Robshaw*, 2025 ME 50, ¶ 12, 339 A.3d 784; *see also State v. Bentley*, 2021 ME 39, ¶ 10, 254 A.3d 1171.

b. Analysis

In *State v. Ringuette*, this Court explained that

The *Hewey* analysis consists of three steps: (1) the court determines a ‘basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual; (2) the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case; and (3) what portion, if any, of the maximum term of imprison . . . should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension.’”

2022 ME 61, ¶ 9, 288 A.3d 393.

Despite the trial court's contention that it is not penalizing Mr. Stewart for going to trial, the court heavily relied on a lack of remorse by Mr. Stewart. During step 2 of the *Hewey* analysis, the trial court made comments about this very issue:

- (1) Mr. Stewart’s “almost complete failure . . . to take any responsibility for this until way after the fact.” Sentencing transcript (“S.T.”) 29.
- (2) “Until a few minutes ago, I haven’t heard any remorse from Mr. Stewart.” S.T. 28.
- (3) “The remorse shown by Mr. Stewart today, I give him some credit for it, but it’s way after the fact. He either minimized his involvement in the offense he was convicted of fairly quickly by a jury, if not outright denied any criminal responsibility even after he was convicted.” S.T. 28.
- (4) “. . . it’s not okay for someone to go to trial and just bald faced lie (*sic*) . . .” S.T. 30.

The trial court placed undue weight on the perceived lack of remorse, viewing it as the principal reason for finding that aggravating factors outweighed any mitigating evidence at sentencing. By doing so, the trial court seemingly ignored Mr. Stewart’s constitutional right to face his accuser and put the State to its burden.

The Maine Constitution is clear:

In all criminal prosecutions, the accused shall have a right to be heard by the accused and counsel to the accused, or either, at the election of the accused;

To demand the nature and cause of the accusation, and have a copy thereof;

To be confronted by the witnesses against the accused;

To have compulsory process for obtaining witnesses in favor of the accused;

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. The accused shall not be compelled to furnish or give evidence against himself or herself, nor be deprived of life, liberty,

property or privileges, but by judgment of that person's peers or the law of the land.

Me. Const. art. I, § 6.

It is unclear when the trial court wanted to see Mr. Stewart's remorse and how much the timing would have played into the analysis: does the trial court expect a confession during interrogation? Should a defendant accept an early plea to show remorse? Is a defendant waiving indictment only mere weeks or months into a case? Is it that he testifies in a way the court deems remorseful?

People should not be punished by exercising their constitutional rights. The State has the burden to prove their case beyond a reasonable doubt. This includes having a trial and allowing a defendant to challenge witnesses and accusers. There are numerous reasons a defendant may elect to proceed to trial. A defendant may dispute the State's evidence, believe the State's case is weaker than it appears, or consider a plea offer unreasonable. In some instances, a defendant may feel compelled to go to trial to protect everything they have at stake. Others may simply wish to ensure that the State fulfills its burden of proof. But the trial court did not take any of that into consideration and implied that Mr. Stewart wasted time.

In this case, the issue was about consent. The evidence showed that **N.W.** did not fight back or yell or try to get away. Mr. Stewart's testimony is his version of events, and he had the same opportunity to tell it, just as **N.W.** did. That does not mean that Mr. Stewart decided to lie on the witness stand; there are two

interpretations of the same event.

The trial court, despite saying the words that Mr. Stewart was not punished for having a trial, did exactly that by focusing aggravating factors on a perceived lack of remorse and responsibility. By focusing primarily on this one aspect, the trial court failed to take into account the mitigating factors that Mr. Stewart has.

First, he was only 19 years old at the time of the incident. For years, studies have shown that an adolescent brain is still growing and maturing until a person is in their mid-20s. Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 *Neuropsychiatric Disease & Treatment* 449, at 450 (2013). Genetics, hormones, and environment are all factors in how the brain matures. Not only was Mr. Stewart a teenager at the time of the incident but his brain was still forming at the time of his trial. He is expected to continue to mature and will potentially be rehabilitated at the same time his brain is forming.

Second, the trial court failed to consider the lifelong effect of Mr. Stewart being subject to the sex offender registry. Being on the sex offender registry for any length of time is a punishment in and of itself. For someone who is subject to it for the remainder of their life, it is nothing short of a life sentence. For someone like Mr. Stewart, who is only in his early 20s, the stigma will haunt him for the next approximately 60 years. He loses his privacy; he is followed by law enforcement through 90-day check-ins until he dies; his debt is never truly paid to society as one

would be with a period of incarceration; and notably, his family will suffer as well which can reduce his support system which impacts his ability to be rehabilitated.

“This [stigma] is notable in the United States, where individuals convicted of a sex offence are required to submit their pictures and personal information to a publicly accessible online registry managed by law enforcement. Many registered sex offenders are required to register for life. This can create problems for families of registered sex offenders, who experience the effects of arrest, incarceration and reentry, but *more publicly and shamefully* than family members of other convicted offenders.” Douglas Evans, Adam Trahan & Kaleigh Laird, *Shame and Blame: Secondary Stigma Among Families of Convicted Sex Offenders*, 23 *Criminology & Crim. Just.* 78, at 81 (2023) (emphasis added).

The safety net of the supporters of a convicted person are subject to scrutiny – loss of housing, loss of employment, shame in their town and among their extended loved ones. This, in turn, affects a convicted person. When he is released from prison and needs a place to go, he may not be able to live with family due to extenuating circumstances such as the location of the house to a school, minors living in the home, housing rules or restrictions. Without that support, the convicted person is essentially left to his own devices.

The potential violence against a person convicted of a sex crime is not hyperbole. A 2005 study found that 5% to 16% of persons convicted of a sex offense

experience physical assault. Michelle A. Cubellis, Douglas N. Evans & Adam G. Fera, *Sex Offender Stigma: An Exploration of Vigilantism Against Sex Offenders*, *Deviant Behavior*, at 3 (2018), citing Levenson, Jill S. and Leo P. Cotter, *The Effect of Megan's Law on Sex Offender Reintegration*. *Journal of Contemporary Criminal Justice* 21(1): 49–66 (2005).

The Sex-Offender Vigilante database compiled data between 1983 and 2015 which showed that

[m]ore than one fourth of all incidents (28%) involved vigilantes who beat, punched, and kicked their victims with their fists and feet, without using an actual weapon. Nine percent of incidents involved the use of intimidation, which occurred through verbal threats or the dissemination of unsanctioned flyers. When vigilantes used an actual weapon, the most common weapon, used in 13% of the incidents, was a bludgeoning instrument (e.g., baseball bat, stick). In about 12% of vigilante acts, the vigilante used a stabbing weapon (e.g., knife, box cutter). Ten percent of incidents were shootings that involved the use of a gun. Another 10% of incidents involved the use of fire or some concoction used to start a fire (i.e., Molotov cocktail). The remaining weapons used in vigilante acts were tools used to commit acts of vandalism (3%), medical or body fluid, including urine, feces, and spit that were thrown at SO victims (2%), whipping instruments (1%), and other unspecified weapons (12%).

Michelle A. Cubellis, Douglas N. Evans & Adam G. Fera, *Sex Offender Stigma: An Exploration of Vigilantism Against Sex Offenders*, *Deviant Behavior*, at 6 (2018).

Although Maine does not publish data that specifically quantify acts of vigilantism against individuals charged with sex offenses, such individuals commonly report a substantial fear of physical attack. Any attorney who has ever

represented a client who is facing sex charges has heard stories from the client and their family about these concerns.

A person with a sex offense conviction cannot obtain subsidized housing in Maine under the Public Housing Agency (“PHA”) if he is a lifetime registrant of the sex offender registry. The Department of Housing and Urban Development mandates the PHA to

. . . establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

24 C.F.R. § 982.553(a) (2025).

As Mr. Stewart will be a convicted felon and lifetime registrant of the sex offender registry, he will be facing scrutiny, criticism, lifelong challenges with employment and housing. His punishment will last long after his release from incarceration. These factors were not at all considered by the trial court. By ignoring these lifelong factors, the trial court created a sentence that focused on imprisonment as opposed to rehabilitation.

Lastly, the trial court failed to take into account Mr. Stewart’s age and lack of criminal history. Mr. Stewart’s age magnifies the enduring burdens imposed by a

felony conviction and the requirement of lifetime sex offender registration. He is a young man with many decades before him. Mr. Stewart's youthful age significantly amplifies the lifelong consequences of a felony conviction and lifetime sex offender registration. Unlike an older individual, he faces decades in which the burdens of this conviction will shape his personal, professional, and social life. Subjecting him to such a severe sentence fails to account for his capacity for rehabilitation and personal growth, disregarding the reality that young offenders have a unique ability to learn from mistakes and mature over time. A sentence that does not consider his age and the extraordinary duration of its impact risks imposing a punishment that is disproportionately harsh relative to his potential for change and reintegration into society. In light of these factors, the court should weigh his youth and long-term prospects carefully when determining an appropriate sentence.

Mr. Stewart's lack of prior criminal history strongly supports a more lenient sentence. He has no record of past offenses, demonstrating that this conviction is an aberration rather than part of a pattern of criminal behavior. Courts consistently recognize a clean prior record as a significant mitigating factor, reflecting both a person's law-abiding character and the reduced risk of recidivism. Sentencing a first-time offender as though he has a long-standing criminal history would fail to account for his demonstrated lawfulness and potential to lead a productive, law-abiding life. In combination with his youth, the absence of prior convictions underscores that a

lower sentence is appropriate and proportionate under the circumstances.

V. The trial court erred in sentencing Devon Stewart to six years of probation.

a. Standard of review

This Court reviews “the determination of the basic sentence (1) de novo for misapplication of legal principles and (2) for an abuse of the court's sentencing power.” *State v. Robshaw*, 2025 ME 50, ¶ 12, 339 A.3d 784; *see also State v. Bentley*, 2021 ME 39, ¶ 10, 254 A.3d 1171.

b. Analysis

17-A M.R.S. § 1804(1)(A) states that the standard probation length for a Class A crime is 4 years. There are exceptions (summarized):

- (1) When the victim is 12 years of age. 17-A M.R.S. § 1804(2).
- (2) When the victim is a household or family member as identified by statute. 17-A M.R.S. § 1804(3).
- (3) When the defendant is a repeat sexual offender. 17-A M.R.S. § 1804(4).
- (4) When the defendant is sentenced for aggravated attempted murder. 17-A M.R.S. § 1804(4-A).
- (5) When a person is sentenced for nonsupport of dependents. 17-A M.R.S. § 1804(5).

Mr. Stewart does not fit into any of these categories. Assuming the trial court based its decision on Mr. Stewart being a repeat sexual offender, we must turn to that statute to find out what the definition is for a repeat sexual offender. 17-A

M.R.S § 253-A(1) defines a repeat sexual offender as

... a person who commits a new gross sexual assault after having been convicted previously and sentenced for any of the following:

- A. Gross sexual assault;
- B. Rape;
- C. Attempted murder accompanied by sexual assault;
- D. Murder accompanied by sexual assault;
- E. Conduct substantially similar to a crime listed in paragraphs A to D that is a crime under the laws of another jurisdiction.

Mr. Stewart does not have a criminal history as acknowledged by the trial court. S.T. 28. There was no evidence of substantially similar conduct in another jurisdiction. The only evidence the State offered of allegedly similar criminal conduct was a juvenile offense that was dismissed following Mr. Stewart's presumed compliance with the court's requirements. S.T. 22. The trial court discussed this, and although it was stated such conduct was not being considered, the trial court still stated that the conduct was "troubling" and "could show a pattern of conduct." S.T. 29. To state in the same breath that the previous charge was not considered in sentencing but was nevertheless troubling is logically inconsistent and casts doubt on the fairness of the sentencing determination and on whether the trial court, in fact, refrained from factoring that information into its decision.

CONCLUSION

Mr. Stewart's conviction cannot stand. The State's failure to prove that Mr. Stewart forced or threatened force against **N.W.** in order to engage in a sexual

act requires reversal. The trial court's decision to excuse [REDACTED] N.W. during the 911 call misapplied evidentiary law and undermined the fairness of the proceedings. Finally, the court's failure to exclude the unfairly prejudicial testimony suggesting that Mr. Stewart was not allowed around minors irreparably tainted the jury's deliberations. Any one of these errors alone would warrant reversal; taken together, they reflect a trial that fell far short of the constitutional and statutory guarantees of fairness. Mr. Stewart respectfully requests that this Court vacate his conviction and remand for a new trial.

Should this Court nevertheless uphold the conviction, it should remand for resentencing consistent with the governing statute and fundamental principles of fairness. The sentencing record contains internal inconsistencies and suggests reliance on information the court claimed not to consider, casting doubt on whether the sentence was imposed in accordance with law. A remand for proper sentencing would ensure that any punishment imposed is both legally sound and proportionate.

Dated: November 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kayla M. Alves, attorney for the Appellant, hereby certify that the Appellant's Brief and Appendix have been served upon Appellee by emailing them to Assistant District Attorney Timothy Snyder at tim.snyder@somerset-countyme.org on November 7, 2025.

Dated: November 7, 2025

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