

SUPREME JUDICIAL COURT
Sitting as the Law Court
Law Court Docket Number: SOM-25-305

STATE OF MAINE

v.

DEVON STEWART

On Appeal from a criminal conviction entered by the Unified Criminal Court
sitting in Somerset County.

Brief for Appellee (Part 2) – The State of Maine

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PROCEDURAL HISTORY

On January 19, 2024, the Appellant, Devon Stewart (hereinafter “Appellant”), had an initial appearance on a criminal complaint for the crime of Gross Sexual Assault (Class A) (17-A M.R.S. § 253(1)(A)). Bail was set at his in custody initial appearance at \$2,500 cash bail with numerous special conditions. (A. 4.)

On April 19, 2024, the Somerset County Grand Jury returned a True Bill formally charging Appellant. (A. 4.) The charge was identical to that found in the Complaint. (A. 4.) The Appellant entered a plea of Not Guilty on the True Bill on April 24, 2024. (A. 5.)

A jury trial began on January 27, 2025. (A. 6.) The jury returned a verdict on January 28, 2025, and found the Appellant guilty of the sole count. (A. 6.)

A contested sentencing hearing was held on June 4, 2025. (A. 7.) The Court rendered a sentence of twenty (20) years all but eleven (11) years suspended with six (6) years of probation. (A. 8.) Appellant timely filed a Notice of Appeal on June 25, 2025, challenging the verdict on the grounds discussed below. (A. 9.)

STATEMENT OF FACTS

A. Trial Facts

On February 17, 2023, 16-year-old [N.W.] walked away from her home to get some space from her mom. (1Tr. 35.) [N.W.] was wearing a hoodie, sweatpants, and shoes. (1Tr. 37.) At the time, she was on her period and also wearing a menstrual pad. (1Tr. 37.) She had not used any alcohol or drugs. (1Tr. 35-36.)

While out, [N.W.] saw the Appellant, and the two started walking and talking. (1Tr. 36.) Initially, the interaction was casual. (1Tr. 37.) The Appellant had just finished smoking marijuana. (1Tr. 39.) The two soon approached some railroad tracks, and the Appellant started acting strange and making inappropriate comments. (1Tr. 38-39.) For example, the Appellant told [N.W.] that she was beautiful and that the Appellant loved her. (1Tr. 39.) The Appellant then hugged [N.W.] and began kissing her on the mouth. (1Tr. 40.) [N.W.] did not hug or kiss him back. (1Tr. 40.) As the Appellant kissed [N.W.] he slid his hands inside the back of [N.W.]'s pants. (1Tr. 40.) [N.W.] grew confused and scared. (1Tr. 41.) The Appellant then pushed [N.W.] into the railing of the railroad track and turned her around. (1Tr. 40-41.) When this happened, [N.W.] froze. (1Tr. 41.) The Appellant pulled [N.W.]'s pants down and used his penis to vaginally and anally assault her. (1Tr. 42.) The Appellant did not wear a condom as he did this. (1Tr. 43.) [N.W.] yelled out “no” and “stop” as the

assault happened. (1Tr. 42.; 1Tr. 51) After a couple minutes, the Appellant pulled his penis out of **N.W.** and ejaculated on the train tracks. (1Tr. 43.)

Soon after the assault, the Appellant walked away, and **N.W.** walked to the nearby Fairfield House of Pizza and called 911. (1Tr. 44-46.) Because of the assault, **N.W.**'s vagina was in pain. (1Tr. 51.) Officer Nolan Allen responded a few minutes later. (1Tr. 63.) Allen found **N.W.** crying hysterically. (1Tr. 63.) **N.W.** told Allen that she was injured and pointed to her vagina. (1Tr. 63.) Allen transported **N.W.** to a nearby hospital for a sexual assault examination. (1Tr. 63.) After the examination was complete, Allen collected the examination evidence and delivered it to the Fairfield Police Department for further testing. (1Tr. 64.)

Detective Shanna Blodgett led the investigation. (1Tr. 73.) Shanna Blodgett interviewed the Appellant at his home. (1Tr. 75.) Blodgett also collected a DNA swab from the Appellant. (1Tr. 78.) During this first interview, the Appellant denied seeing anybody on February 17th. (State's Trial Exhibit 2.) After being confronted about potential DNA evidence, the Appellant stated a "black girl" did run up to him and grab his hand. (State's Trial Exhibit 2.) The girl, the Defendant claimed, "tried kissing me and stuff," but the Appellant allegedly ran off. (State's Trial Exhibit 2.)

Detective Ronnie Blodgett also assisted with the investigation. (1Tr. 89.) In his interview with Detective Ronnie Blodgett, the Appellant initially denied having sexual intercourse with **N.W.** (1Tr. 91.) Later, when confronted with DNA

evidence, the Appellant admitted he did have sexual intercourse with **N.W.** (State's Trial Exhibit 2.) The Appellant claimed that **N.W.** asked him to "rape" her and to get her pregnant. (State's Trial Exhibit 2.) During trial, the Appellant acknowledged that he was dishonest with police numerous times. (1Tr. 127.)

On October 23, 2023, DNA forensic analyst Brandi Caron conducted DNA testing related to **N.W.**'s reported assault. (State's Trial Exhibit 3.) Caron examined the Appellant's DNA swab, and both the genital swab and vaginal/cervical swab from **N.W.**'s sexual assault examination. (State's Trial Exhibit 3.) Caron concluded that the Y-STR DNA profile obtained from the genital swab was the same as the Y-STR DNA profile of the Appellant. (State's Trial Exhibit 3.) Caron also concluded that the Y-STR DNA profile obtained from the vaginal/cervical swab was the same as the Y-STR DNA profile of the Appellant. (State's Trial Exhibit 3.)

ISSUES PRESENTED

- I. Whether there was sufficient evidence of compulsion to support a conviction for Gross Sexual Assault?
- II. Whether it was permissible for the trial court to allow the 911 call to be played while the declarant was out of the courtroom?
- III. Whether victim's ambiguous testimony about the Appellant's statement was error?
- IV. Assuming there was error, was the victim's testimony about the Appellant's statement harmless?
- V. Did the sentencing court properly apply the Hewey analysis and appropriately weigh the mitigating and aggravating factors?
- VI. Did the sentencing court err by sentencing the Appellant to six years of probation?

SUMMARY OF ARGUMENT

- I. This Court should deny the appeal because there was sufficient evidence to establish that the Appellant forced the victim into a sexual act because of compulsion. The victim testified she was kissed without consent, groped, pushed against a railing, bent over, and anally and vaginally assaulted. She also testified that she screamed “no” and “stop” as the assault took place but that the Appellant refused. Compulsion was also established through circumstantial evidence that showed the victim was in pain, distraught, that she called 911, and was immediately transported to the hospital for a sexual assault examination.

- II. This Court should find the trial court did not commit an obvious error by allowing the 911 call to be played while the declarant was out of the courtroom because the foundation was laid for it to be admitted as an “excited utterance.” Because it was an excited utterance, it is irrelevant whether the declarant was “available” or present at the time it was played. However, even if witness availability was relevant, the declarant *was* “available” for cross-examination.

- III. This Court should find that the trial court committed no error when it allowed the victim to testify to the Appellant’s ambiguous statement

because it was “not hearsay,” it was relevant, and its relevance was not substantially outweighed by unfair prejudice.

- IV. If this Court determines the trial court erred by allowing the victim to testify about the Appellant’s ambiguous statement, this Court should find that it was a harmless error because it is highly probable that the error did not affect the judgment.
- V. The sentencing court properly applied the *Hewey* analysis. The court identified numerous mitigating and aggravating factors and did not abuse its discretion when assigning weight to each factor.
- VI. The sentencing court committed error by sentencing the Appellant to six years of probation.

ARGUMENT

- I. This Court should find there was sufficient evidence to support the jury’s finding that the Appellant forced [REDACTED] N.W. [REDACTED] into a sexual act because of compulsion.**

This Court should deny the appeal because there was sufficient evidence to establish that the Appellant forced [REDACTED] N.W. [REDACTED] into a sexual act because of compulsion. [REDACTED] N.W. [REDACTED] testified that the Appellant initiated contact by kissing and groping her and that she was afraid and froze. [REDACTED] N.W. [REDACTED] also testified that he pushed her into a railroad railing and that he used his penis to anally and vaginally assault her as she yelled “no” and “stop.” Because the evidence established “compulsion,” this Court should deny the appeal.

“A person is guilty of gross sexual assault if that person engages in a sexual act with another person and [t]he other person submits as a result of compulsion ...” 17-A M.R.S. 253(1)(A). “ ‘Compulsion’ means the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being.” 17-A M.R.S. 251(E). Compulsion “places no duty upon the victim to resist the actor.” *Id.*

“Proof of compulsion properly focuses on the acts of the perpetrator of a sexual assault.” *State v. Rackliffe*, 2010 ME 70, ¶ 10, 1 A.3d 438, 440. “[T]he State

need not prove that the victim cried out or physically resisted the assault to prove compulsion.” *Id.* “A conviction may be based entirely on circumstantial evidence.” *State v. Whitten*, 667 A.2d 849, 851 (1995) (holding that victim’s fear of perpetrator based on prior abuse, her statements to police and medical personnel, and her distraught demeanor supported compulsion finding).

In *State v. Almurshidy*, 1999 ME 97, ¶ 11, 732 A.2d 280, 284, the Maine Supreme Court found there was sufficient evidence to support the jury’s finding that “the victim submitted to the gross sexual assault as a result of compulsion.” In *Almurshidy*, the victim testified “she was up against a tree” while the defendant “touched her genitals with his hand.” *Almurshidy*, 1999 ME 97 at ¶ 12. She also testified “that she was scared” and that the defendant “touched her even though she asked him not to.” *Id.* According to the victim, the defendant “did not stop until she pushed him, and he let go of her for a second.” *Id.* She then pulled up her pants. Based on this factual record, the Maine Supreme Court upheld the jury’s finding of guilt. *Id.*

Here, there is sufficient direct evidence to support that the Appellant forced [REDACTED] into a sexual act because of compulsion. [REDACTED] testified that the Appellant initiated contact by kissing and groping and that he slid his hands inside her pants. (1Tr. 40.) According to [REDACTED] she did not reciprocate the kissing or touching. (1Tr. 40.) Rather, [REDACTED] a virgin at the time, testified that she was

confused, scared, and that she froze. (1Tr. 41.) **N.W.** testified the Appellant then “pushed” her into a railroad railing and used his penis to vaginally and anally assault her as she yelled “no” and “stop.” (1Tr. 42.) This is all direct evidence of compulsion.

There is also a plethora of circumstantial evidence that supports compulsion. Some of the circumstantial evidence includes that (1) **N.W.** immediately called police after the assault (1Tr. 44-46.); (2) **N.W.** was distraught at the time of the police response (1Tr. 63.); (3) **N.W.** testified that her vagina was in pain because of the assault (1Tr. 51.); (4) Officer Allen testified that **N.W.** expressed that her vagina was in pain (1Tr. 63.); (5) **N.W.** underwent a sexual assault examination directly after the assault (1Tr. 63.); (6) the Appellant’s DNA was located inside **N.W.**’s vagina (State’s Trial Exhibit 3.); and (7) the Appellant was dishonest with police in numerous interviews spanning many months concerning the fact that any sexual encounter ever took place. (1Tr. 127.).

The facts of the present case share many similarities to the facts of *Abernathy*, and like *Abernathy*, this conviction should be upheld. In both cases, the perpetrator initiated sexual contact. In both cases, the perpetrators pressed their victims up against an object (a tree in *Abernathy*; a railroad railing here). In both cases, the victims testified that they were scared and expressed their lack of consent.

In many ways, the facts here are more egregious than those found in *Abernathy*. For example, **N.W.** testified that she was a virgin and that she was both vaginally and anally assaulted. **N.W.** also testified that she not only expressed a lack of consent but that she screamed “no” and “stop” as it was happening. Because the facts in this case are similar and even go beyond the facts in *Abernathy*, this Court should find there is supporting evidence of compulsion and uphold the Appellant’s conviction.

II. The trial court’s decision to allow the 911 call to be played while the declarant was out of the courtroom was not an obvious error

This Court should find the trial court did not commit an obvious error by allowing the 911 call to be played while the declarant was out of the courtroom. An “excited utterance” is a “statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.” M.R. Evid. (803)(2). An excited utterance is “not excluded by the rule against hearsay, *regardless of whether the declarant is available as a witness.*” *Id.* (emphasis added).

Here, the trial court admitted the 911 call as an “excited utterance.” (1Tr. 47). Because it was an excited utterance, it is irrelevant whether the declarant was “available” at all. However, even if witness availability was relevant, the declarant was “available” for cross-examination as she was cross examined during the trial. For these reasons, this Court should find the trial court did not commit an error.

III. The victim's testimony about the Appellant's ambiguous statement was not an error

This Court should find that the trial court did not err by allowing the victim to testify to a statement by a party opponent. There was no error because the statement was "not hearsay." There also was no error because the statement did not result in any unfair prejudice.

A statement made by and offered against a party opponent is not hearsay. M.R. Evid. 801(d)(2). "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of ... unfair prejudice ..." M.R. Evid. 403. The Law Court reviews "a trial court's rulings on the admissibility of evidence for an abuse of discretion." *State v. Maclean*, 2025 ME 71, ¶ 20, 340 A.3d 653, 660. "Abuses of discretion occur when, in making an evidentiary ruling, the judge makes an error in the application of the law to the facts." *Id.*

Here, the trial court allowed the victim to testify to a statement made by the party opponent, the Appellant, which is permissible under Rule 801(d)(2). Specifically, the victim testified that the Appellant "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."

The above testimony did not violate Rule 403 because it had probative value and did not create a danger of unfair prejudice. The Appellant claims that the jury

must have interpreted the statement to mean that the Appellant was a potential sex offender. However, the statement made by the Appellant was ambiguous. There was no explanation as to why the Appellant made the statement. There was no evidence presented to the jury that the Appellant had any prior contacts with police, and there was no reference to this particular testimony by any other witness. On the other hand, there was much testimony and argument about the victim having skipped school on this day. Because that was an issue in the case, the jury would most likely attribute the Appellant's statement to that circumstance. This further undermines the argument that there was unfair prejudice. For these reasons, this Court should find the trial court did not commit an obvious error.

IV. If the victim's testimony about the Appellant's statement was an error, it was harmless

If this Court determines there was an error, this Court should find that it was harmless because it is highly probable that the error did not affect the judgment. "There are two types of trial errors: (1) those that are structural, which prejudice is presumed, triggering vacatur; and (2) those that are nonstructural, triggering an analysis as to the impact of the error in the specific case." *State v. Judkins*, 2024 ME 45, ¶ 19, 319 A.3d 443, 450. "For nonstructural errors, there are two standards for determining whether a trial error is harmless – one applies generally, and the other applies to errors of constitutional magnitude." *Judkins*, 2024 ME 45 at ¶ 20.

“The less stringent general standard applies to evidentiary errors, incorrect jury instructions, and improper prosecutorial comments that do not violate constitutional rights.” *Id.* at ¶ 21. Under a general harmless error standard, “reversal is required only if the error affects the substantial rights of the defendant.” *Id.* at ¶ 20. “In general, a trial error is harmless if it is highly probable that the error did not affect the judgment.” *State v. Quirion*, 2025 ME 75, ¶ 20, 340 A.3d 662, 671.

If this Court determined that **N.W.**'s testimony was an error, it should be deemed harmless because it is highly probable the error did not affect the judgment. As mentioned, the statement was ambiguous. This ambiguity diluted its potential effect on the jury and its judgment. Further, the statement was not mentioned in opening statements, closing arguments, or by any other witness. Thus, it played an extremely small role in the trial.

On the other hand, the jury had an abundance of evidence to rely upon in making its determination. Such evidence included DNA evidence, testimony about the victim's emotional response and injuries, the sexual assault examination, and the Appellant's numerous inconsistent stories. For these reasons, this Court should determine the error (if there was one) was harmless.

V. The sentencing court properly applied the *Hewey* analysis and appropriately weighed the aggravating and mitigating factors

The trial court did not err in sentencing the Appellant. The trial court properly applied the *Hewey* analysis and appropriately weighed the aggravating and mitigating factors. For these reasons, this Court should deny the appeal.

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. Robishaw*, 2025 ME 50, ¶ 12, 339 A.3d 784, 789. “When sentencing a person convicted of a felony in Maine, the sentencing court is required to perform the analysis prescribed in *State v. Hewey*, 622 A.2d 1151, 1154-55 (Me. 1993) and codified at 17-A M.R.S. § 1602(1) (2025).” *Id.*

There are three steps in the *Hewey* analysis. First, “the court determines a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual.” *State v. Hewey*, 622 A.2d 1151, 1154-55 (Me. 1993); *see also* 17-A M.R.S. § 1602(1) (2025). Second, “the court determines the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case.” *Id.* Third, “the court determines what portion, if any, of the maximum term of imprisonment should be suspended and, if a suspension order is to be entered, determine[s] the appropriate period of probation or administrative release to accompany that suspension.” *Id.*

The Appellant incorrectly claims the sentencing court erred because it ignored mitigating factors. The Appellant fails to acknowledge, however, that the sentencing court cited multiple mitigating factors during step-two of its *Hewey* analysis. The sentencing court, for example, noted that the Appellant had no criminal history and that he is young. (ST. 28.) The sentencing court then gave the Appellant credit for these mitigating factors. Because the sentencing court correctly cited the Appellant’s mitigating factors and gave him credit for those, the sentencing court did not commit error by “ignoring mitigating factors.”

The Appellant also incorrectly claims that the sentencing court erred because it overemphasized a lack of remorse. During step-two of the sentencing court’s *Hewey* analysis, the sentencing court identified numerous mitigating and aggravating factors. Some of the mitigating factors were mentioned above. As a mitigating factor, the court gave the Appellant “some credit” for his expressed remorse but also acknowledged some problems with his remorse. The court then specifically cited the Appellant’s sex offender evaluation, which was conducted after the jury trial. Nowhere in that evaluation did the Appellant express remorse. The sentencing court found this to be problematic and noted that the Appellant “denied any criminal responsibility even after he was convicted.” (ST. 28.) Thus, when the Appellant complains that the sentencing court expected remorse sooner

and penalized the Appellant for having a trial, the Appellant is mischaracterizing the trial court's actual sentencing analysis.

The sentencing court also properly identified and evaluated the aggravating factors. First, the sentencing court noted the subjective effect on the victim as an aggravating factor. This was a proper aggravating factor. The court also found there to be a lack of potential for rehabilitation. To support its conclusion, the sentencing court cited the sex offender evaluation and found the report to be the "most chilling sex evaluation risk assessments I've ever seen."¹ (ST. 28.)

In the end, this Court should find the sentencing court did not misapply legal principles and did not abuse its sentencing power. First, the sentencing court properly identified mitigating factors and gave appropriate credit for them. The sentencing court also properly determined aggravating factors and identified the relevant sentencing goals of "rehabilitation," "differentiation of sentences," "individual circumstances," and achieving a "just outcome." (ST. 29.) When balancing these factors, the sentencing court enhanced the basic sentence from 15

¹ The evaluator found the Appellant well above the average risk category relative to others who have been charged and or convicted of sexual offenses. (ST. 7.) The evaluator also found he is "resistant to change," "unempathetic towards others," "ascribes malicious tendencies towards others," and that he has "hostility towards women." (ST. 6-7.)

years to 20 years, which was not an abuse of discretion. Thus, this Court should deny the appeal.

VI. The sentencing court committed error by sentencing the Appellant to six years of probation

The Appellee agrees with the Appellant's assertion that the sentence of six years of probation is not authorized by statute.

CONCLUSION

For the reasons detailed above, it is requested that this Court find that there was sufficient evidence to support the jury's finding that the Appellant forced [REDACTED] N.W. to perform a sexual act as a result of compulsion. This Court should also find the trial court did not commit error by allowing the 911 call to be played when the victim was out of the courtroom, and by allowing the victim to testify the Appellant's ambiguous statement. However, if this Court does find error, it should find it was a harmless error. Finally, this Court should find the sentencing court properly applied the Hewey analysis by properly identifying the aggravating and mitigating factors and by giving them the appropriate weight. At the same time, the Appellee acknowledges that there was error in sentencing the Appellant to six years of probation and that this will need remedy.

Date: 12/29/2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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

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

Dated: 12/29/2025

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