STATE OF MAINE
YORK, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. YOR-25-189

STATE OF MAINE,
Appellee

v.

ERIK VALERIANI,
Appellant

ON APPEAL FROM THE YORK COUNTY UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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STATEMENT OF FACTS

Erik Valeriani and Victim share two children. Trial Tr. Vol. 2 ("T.Tr.II") 123:19-25. Around December 13, 2023, Valeriani was living with Victim and their children at her residence in Old Orchard Beach, Maine. *Id*. On that date, Victim returned home with their daughters to find Valeriani intoxicated and playing video games. (T.Tr.II 124:20-25, 125:1.) She put her children to bed and asked Valeriani to help her wrap Christmas presents. (T.Tr.II 125:22-25.)

An argument began when Victim refused to purchase more alcohol for Valeriani. (T.Tr.II 125:25, 126:1-4.) Victim knew the argument "wasn't going in a good place because of the way he was speaking to [her]," so Victim messaged one of his friends and asked them to pick up Valeriani. (T.Tr.II 126:10-21.) Valeriani then attempted to take Victim phone, which she had put in her pocket, and her wallet. (T.Tr.II 126:25, 127:1-6.) He started "bear-hugging" Victim from behind and "thrashing" her around. (T.Tr.II 127:13-15.) Victim phone "flew somewhere" and, because Valeriani had taken her glasses, Victim could not find her phone. (T.Tr.II 127:24-25, 128:1-10.) Victim still had her car keys and wallet, so she placed them in her car. (T.Tr.II 128:10-13.) Unable to leave because her children were asleep inside and she could not legally drive without her glasses (T.Tr.II 128:1-2, 128:15-16, 136:3-7), Victim proceeded to the upstairs part of the house (T.Tr.II 128:13-15).

Victim testified that Valeriani then ventured upstairs with a machete in hand and started hitting things with it. (T.Tr.II 128:16-18.) She was sitting on the couch behind the coffee table, and Valeriani slammed the machete down in front of her multiple times. (T.Tr.II 128:18-20.) Valeriani sat down next to her, stuck her in the leg with the machete, and asked her, "are you scared of me now?" (T.Tr.II 128:20-25.) Victim pleaded for him to leave and he refused, so she went downstairs to "just try to get away." (T.Tr.II 129:4-5.)

Victim heard Valeriani come downstairs, so she went outside, around the house, back inside, and hid in a closet for about twenty minutes. (T.Tr.II 129:6-9.) Valeriani found Victim in the closet and strangled her to the point where she could not breathe. (T.Tr.II 129:9-11.) He "slammed" Victim against the wall, where she hit her head "real hard" and fell onto the floor. (T.Tr.II 129:11-12.) He proceeded to dump a bottle of water on her, called her "a bunch of names" and then "disappeared." (T.Tr.II 129:14-16.) Victim hid the machete in the bedroom closet. (T.Tr.II 129:18-19.) Victim testified that at one point during the night, Valeriani held the machete up to her neck and told her "don't fuck with me." (T.Tr.II 129:20-21.)

Valeriani proceeded to take a shower for three or four hours, to the point where the paint on the walls was sagging because the shower had been on for so long. (T.Tr.II 129:23-25, 130:1-3.) Victim went into the bathroom to turn the water off and found Valeriani sleeping in the bathtub. (Ex. 3-A, T.Tr.II 133:12-23.) When

Victim tried to turn the water off, Valeriani shoved her into the sink. (T.Tr.II 130:5-6.) At the time she was testifying, Victim still had a scar on her arm from the incident. (T.Tr.II 130:5-6.) Victim testified that, at this point in the night, she "gave up." (T.Tr.II 130:7.) Her children had woken up and wanted to sleep with her, so she laid with them in bed. (T.Tr.II 130:7-10.)

Around six or seven a.m., Valeriani came into the bedroom and got into bed with Victim and the children. (T.Tr.II 130:11-13.) She asked him to "get away" and leave, and he responded, "or what?" (T.Tr.II 130:13-15.) Victim told him she would call the police and he would be leaving in a cruiser, and Valeriani responded that if she called police, she would be leaving in an ambulance. (T.Tr.II 130:15-17.)

Victim waited for Valeriani to fall asleep before she left with the children. (T.Tr.II 130:18-21.) She brought her children to school, went to her friend's house and then to the hospital. (T.Tr.II 130:18-21.) She was evaluated at the hospital by Dr. Weeden Bauman, an emergency room physician for MaineHealth, who testified that Victim injuries included "strangulation, multiple bruises, and being poked by a machete in left thigh," in addition to a suspected occult fracture on her elbow. (T.Tr.III 8:3-10, 14:12-19, 16:13-25, 17:1-16; Ex. 23, T.Tr.III 13:9-25.)

Detective Kyle Sheahan, with the Old Orchard Beach Police Department, testified that he met Victim in the hospital the next morning. (T.Tr.II 64:7-9.) She reported to him that she had a persistent headache and difficulty speaking and

swallowing. (T.Tr.II 52:15-17.) When she was speaking with the officer, he noticed that "she seemed like she had gone through something stressful." (T.Tr.II 52:8-10.)

Detective Sheahan then went to the residence to search for Valeriani and to photograph the scene. (T.Tr.II 53:8-13.) He noticed damage throughout the residence, including "a hole in the wall that led to the downstairs," a "gash" in the master bedroom doorframe, and "a statute that appeared to be decapitated." (T.Tr.II 53:20-25, 53:1-3; Ex. 6, T.Tr.II 58:10-12; Ex. 7, T.Tr.II 58:13-14; Ex. 8, T.Tr.II 58:18-20; Ex. 9, T.Tr.II 58:21-22.) Detective Sheahan found the sheath to the machete in the kitchen. (T.Tr.II 56:20-25, 57:1-7; Ex. 4.) He found the machete tucked in the corner of the closet in the bedroom. (T.Tr.II 60:20-21; Ex. 10, T.Tr.II 59:11-14; Ex. 12, T.Tr.II 60:5-6; T.Tr.II 60:20-25, 62:1-25.)

Detective Ryan LaRose conducted a follow-up with Victim on December 16, 2023. (T.Tr.III 66:19-25.) He photographed her injuries, including bruises and cuts on her arms, shoulders, and legs, and a puncture wound on her leg. (Ex. 14-21, T.Tr.III 68:24 - 77:15.)

PROCEDURAL HISTORY

Erik Valeriani was charged with (1) Domestic Violence Reckless Conduct with a Dangerous Weapon, 17-A M.R.S. § 211-A(1)(A), 1604(5)(A); (2) Domestic Violence Aggravated Assault, 17-A M.R.S. § 208-D(1)(D); (3) Domestic Violence

Aggravated Assault, 17-A M.R.S. § 208-D(1)(D); (4) Domestic Violence Criminal Threatening with a Dangerous Weapon, 17-A M.R.S. § 209-A(1)(A), 1604(5)(A); and (5) Domestic Violence Assault, 17-A M.R.S. § 207-A(1)(A). He was indicted on March 5, 2024.

A four-day jury trial began on September 30, 2024. After the State rested, the Honorable Judge Tice granted the defendant's Motion for Judgement of Acquittal on Count 3, Domestic Violence Aggravated Assault. The jury found Erik Valeriani not guilty of Count 1, Domestic Violence Reckless Conduct with a Dangerous Weapon, and Count 4, Domestic Violence Criminal Threatening with a Dangerous Weapon. The jury found Erik Valeriani guilty of Count 2, Domestic Violence Aggravated Assault, and Count 5, Domestic Violence Assault.

On March 21, 2025, a sentencing hearing was held before Judge Tice. The State and Defense both recommended a straight-time sentence on the Domestic Violence Assault conviction, concurrent to the unsuspended portion of the Domestic Violence Aggravated Assault conviction. (Sent. Tr. "S.Tr." 10:10-25, 11:1-6.) The Court sentenced Valeriani to seven years to the Department of Corrections, with all but three years suspended, and four years of probation on the Domestic Violence Aggravated Assault conviction and 364 days incarceration, concurrent on the Domestic Violence Assault conviction. (S.Tr. 67:22-25.)

STATEMENT OF ISSUES

I. Whether the trial court committed obvious error by not providing a specific unanimity instruction regarding the Domestic Violence Assault charge.

II. Whether the sentencing court committed obvious error by considering information derived from trial testimony when setting the basic sentence.

III. Whether the sentencing court violated Erik Valeriani's constitutional rights when it sentenced him to seven years, all but three years suspended, and four years of probation on the Domestic Violence Aggravated Assault charge.

ARGUMENT

I. The trial court was not required to provide a specific unanimity instruction for the Domestic Violence Assault charge, but if the instruction was warranted, failure to give the instruction was not obvious error.

Valeriani first contends that the trial court erred by failing to give a jury instruction on specific unanimity with regard to Count 5, Domestic Violence Assault. However, a specific unanimity instruction was not required, because the jury could have found Valeriani guilty of Domestic Violence Assault based on the same incident that served as the basis for the Domestic Violence Aggravated Assault conviction. Even if the court finds a specific unanimity instruction should have been given, this error is not plain and does not affect a substantial right.

A. Preservation and Standard of Review

The issue is unpreserved because the record does not include a request for a specific unanimity instruction, nor did Valeriani object to the trial court's jury instructions. Therefore, this Court reviews for obvious error. *See State v. Asante*, 2020 ME 90, ¶ 10, 236 A.3d 464.

Obvious error exists where there is "(1) an error, (2) that is plain, (3) that affects substantial rights, and (4) that seriously affects the integrity, fairness, or public reputation of judicial proceedings." *State v. Chase*, 2023 ME 32, ¶ 15, 294 A.3d 154 (quoting *State v. Lajoie*, 2017 ME 8, ¶ 13, 154 A.3d 132). Obvious error is found where "jury instructions, viewed as a whole, are affected by highly prejudicial error tending to produce manifest injustice." *State v. Baker*, 2015 ME 39, ¶ 11, 114 A.3d 214. The jury instructions are evaluated in their entirety. *See Chase*, 2023 ME 32, ¶ 15.

B. Specific Unanimity Instruction

There are two types of jury instructions on unanimity: the "general unanimity instruction" that instructs the jury to agree on the verdict of each charge, and the "specific unanimity instruction" that instructs the jury to agree on the factual basis for each verdict. *State v. Schooley*, 2025 ME 84, ¶ 21, 345 A.3d 78.

Specific unanimity instructions "explain to jurors that they are required to unanimously agree that a single incident of the alleged crime occurred that supports

a finding of guilt on a given count." *State v. Rosario*, 2022 ME 46, ¶ 34, 280 A.3d 199. Where the state alleges multiple similar incidents or similarly situated victims, "any of which is independently sufficient for a guilty verdict as to that charge, specific unanimity instructions are proper." *Chase*, 2023 ME 32, ¶ 16 (quoting *State v. Osborn*, 2023 ME 19, ¶ 34, 290 A.3d 558); see also *State v. Fortune*, 2011 ME 125, ¶ 31, 34 A.3d 1115. However, this mandate is not automatic, as "[c]ourts regularly encounter indictments that may aggregate, in one count of the indictment, several identical crimes committed against one or more victims." *Fortune*, 2011 ME 125, ¶ 26. Courts continue to acknowledge the validity of general verdicts. *Chase*, 2023 ME 32, ¶ 15; *see also Fortune*, 2011 ME 125, ¶¶ 28-29.

In *State v. Hanscom*, the Law Court, reviewing the jury instructions for prejudicial error because the issue was preserved, held that the trial court erred by failing to give a specific unanimity instruction where defendant was charged with two counts of Unlawful Sexual Contact against two victims, and each victim testified to numerous incidents, any of which could have led to a guilty verdict. 2016 ME 184, ¶ 12, 152 A.3d 632.

However, even where a specific unanimity instruction may be proper, it is not always required. In *State v. Fortune*, the defendant was charged with one count of attempted murder with three named victims. 2011 ME 125, ¶ 20. On appeal, Fortune argued, inter alia, that failure to give a specific unanimity instruction violated his

constitutional right to unanimity by creating the potential for jurors to agree that he was guilty of attempted murder, but lack unanimous agreement as to which one or more of the three individuals was the victim of the crime. *Id*. at ¶ 24. The Law Court found no error in the trial court's failure to give a specific unanimity instruction, because the jury could have found the elements for attempted murder with regard to any of the three victims. *Id*. at 32. Although it may have been "better practice" for the state to bring three separate attempted murder charges, the lack of a specific unanimity instruction was not error. *Id*.

Similarly, in *State v. Chase*, the defendant appealed his convictions arguing that a specific unanimity instruction was required for his convictions of Domestic Violence Assault and Aggravated Assault. 2023 ME 32, ¶ 9. At trial, the State had presented evidence of multiple assaults, including strangling the victim, dragging her out of the car onto the ground by her shoulders, slamming her face against the steering wheel, and pushing her into the car. *Id*. at ¶¶ 3-6. Chase appealed, arguing that, since the evidence included multiple instances of what the jury could have concluded qualify as Domestic Violence Assault or Aggravated Assault, failure to give a specific unanimity instruction constitutes obvious error. *Id*. at ¶ 12. The Law Court rejected this contention, holding that failure to give the specific unanimity instruction was not error because, although the State presented evidence of multiple incidents that could constitute the Domestic Violence Assault charge, the jury could

have based the Domestic Violence Assault conviction on the strangulation, which was the basis for the Aggravated Assault charge that the jury found Chase unanimously guilty of. *Id*. at ¶ 18.

There is no material difference between *Chase* and the case at bar. Valeriani could have moved for relief from prejudicial joinder, proposed jury instructions for specific unanimity, or requested a jury verdict form specifying which factual incident supported each count. *Id*. at ¶ 15. Instead, the jury was tasked with determining Valeriani's guilt on the Domestic Violence Assault charge, with evidence of multiple instances of conduct that could constitute that charge. "As Chase points out, the evidence included multiple instances of what the jury could have taken to constitute domestic violence assault by Chase. They include, but are not limited to, the strangulation incident that must have been the basis for Chase's aggravated assault conviction." *Chase* 2023 ME 32, ¶ 18. Similarly, the jury could have found Valeriani guilty of Domestic Violence Assault based on the numerous assaults that Victim testified to and the State presented evidence of, including the strangulation incident that was the basis of the Domestic Violence Aggravated Assault conviction. Therefore, the trial court did not err when it failed to give a specific unanimity instruction.

However, if the Court finds this constituted error, the error is not plain, because, as described above, failure to give a specific unanimity instruction in this

case aligns with on-point precedent. *United States v. Hoffman*, 710 F.3d 1228, 1232 (11th Cir. 2013).

Nor does this error affect a substantial right. "When an unpreserved error relates to jury instructions, it affects the defendant's substantial rights if there is a reasonable probability that the error was sufficiently prejudicial to have affected the outcome of the proceeding." *Schooley* 2025 ME 84, ¶ 26 (quoting *State v. Scott*, 2019 ME 105, ¶ 25, 211 A.3d 205) (internal quotation marks omitted). During this third step of the analysis, the Court considers "whether, in the absence of a specific unanimity instruction, there was a reasonable probability that the jury convicted [defendant] of [the charge] without a unanimous agreement on the factual basis for the verdict." *Id*. at ¶ 26.

In *State v. Schooley*, because defendant's entire strategy at trial was to discredit the State's main witness, the Court found it was unlikely the specific unanimity instruction would have changed the verdict. *Id.* at ¶ 27. The Court reasoned that the jury was either going to believe the witness and find him guilty or not believe the witness and find him not guilty. *Id.*

Similarly, in *State v. Pabon*, the Law Court held that the trial court's error in failing to instruct the jury on the dwelling-place exception to the duty to retreat did not effect a substantial right because, although there was evidence warranting that instruction, the evidence was so "thin" that it was not reasonably probable the jury

would have reached a different verdict, had the instruction been given. *State v. Pabon*, 2011 ME 100, ¶38, 28 A.3d 1147.

Here, there is no reasonable probability that a specific unanimity instruction would have changed the verdict. Defense's strategy regarding the Domestic Violence Assault charge was twofold. Defense's first strategy was to discredit Victim by arguing that she was "directing" the police investigation, "trying to control the storyline," and should not be believed. (T.Tr.IV 76:7-9, 79:20-21, 77:16-18.) It is not reasonably probable that a specific unanimity instruction would have changed the jury's perception of Victim credibility to the extent required to change their verdict. Second, defense proposed a self-defense argument to the Domestic Violence Assault charge, which was given as an instruction. (T.Tr.IV 128:15-17.) The evidence to support that defense was thin, as it rested almost entirely on Valeriani's own testimony. Regardless, that defense could have applied to any conduct constituting the Domestic Violence Assault charge. The absence of a specific unanimity instruction was not sufficiently prejudicial to have affected the outcome of the proceeding. Therefore, it was not obvious error for the trial court to not provide the specific unanimity instruction regarding the Domestic Violence Assault charge.

II. The sentencing court properly considered reliable and relevant information when setting the basic sentence and acted within its discretion when determining the weight of that information.

Valeriani argues on appeal that the sentencing court erred when it considered (1) the "bathroom incident," (2) that Victim was terrified and frightened throughout the incident, and (3) that Valeriani took Victim glasses, because the State did not prove these factors by a preponderance of the evidence at sentencing. However, the sentencing court did not err by considering this information when setting the basic sentence, because the court based its findings on reliable and relevant evidence presented at trial, which is permissible under the Due Process Clause.

Appellant additionally implies that the sentencing court erroneously afforded little weight to the fact that Victim did not call for help or that Valeriani "retreated" to the bathroom. This was not error, because the weight given to each factor was supported by the evidence, and the court acted within its discretion.

A. Preservation and Standard of Review

Valeriani's appeal to the Sentencing Review Panel was denied on September 16, 2025. *See* Order in SRP-25-188. "Generally, a defendant is not entitled to a direct review of a sentence and must seek review through the sentence review process." *See State v. Moore*, 2023 ME 18, ¶ 23, 290 A.3d 533 (quoting *State v. Winslow*, 2007 ME 124, ¶ 27, 930 A.2d 1080). A direct appeal from a sentence confines the appellant's challenge to "a claim that the sentence is illegal, imposed in an illegal

manner, or beyond the jurisdiction of the court, and the illegality appears plainly on the record." *State v. Dobbins*, 2019 ME 116, ¶ 51, 215 A.3d 769; *State v. Bennett*, 2015 ME 46, ¶ 11, 114 A.3d 994.

Valeriani did not file a motion to correct the purportedly illegal sentence under M. R. Crim. P. 35(a), so the issue is unpreserved. The Law Court reviews a sentencing court's factual findings for obvious error when the issues are unpreserved.[1] *State v. Gonclaves*, 2025 ME 70, ¶ 43, 340 A.3d 639. "Error is obvious when there is (1) an error, (2) that is plain, and (3) that affects substantial rights. If these conditions are met, we 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. Watson*, 2024 ME 24, ¶ 18, 319 A.3d 430. Even when considering the court's factual findings for obvious error, the Law Court reviews only the legality of the sentence, not its propriety. *Gonclaves*, 2025 ME 70, ¶ 27; *see also Dobbins*, 2019 ME 116.

B. Factors Considered at Sentencing

Appellant contends that the sentencing court erred when it "imposed an increased sentenced based on aggravating factors which were not supported by a

[1] *Contra State v. Rosario*, 2022 ME 46, ¶ 38, 280 A.3d 199 ("Because the Sentence Review Panel denied [Appellant's] application for leave to appeal from the sentence, this is a direct appeal and we review de novo only the legality, and not the propriety, of the sentence") *State v. Dobbins*, 2019 ME 116, 215 A.3d 769 (reviewing de novo only the legality and constitutionality of the sentence when leave to appeal the sentence was denied, without regard to preservation of the issues); *State v. Bennett*, 2015 ME 46, 114 A.3d 994 (same).

preponderance of the evidence." (Blue Brief at 23, 30) Appellant specifies that these factors are (1) the incident in the bathroom, (2) that Victim was terrified and frightened throughout the incident, and (3) that Valeriani took Victim glasses. (Blue Brief at 32) As an initial matter, this information was taken into account by the sentencing court when setting the basic sentence at step one of the *Hewey* analysis,[2] not the maximum sentence in step two. (S.Tr. 62:12-25, 63:1-25, 64:1-12.) Regardless, the court did not err when it considered these factors.

The sentencing court is obligated to "make its own findings relevant to the sentence, by a preponderance of the evidence, based on whatever information the court deemed reliable." *State v. Carrillo*, 2021 ME 18, ¶ 42, 248 A.3d 193; *United States v. Watts*, 519 U.S. 148, 157 (1997) (per curium). Courts have "broad discretion in determining what information to consider in sentencing." *Carrillo*, 2021 ME 18, ¶ 44; *see also State v. Witmer*, 2011 ME 7, ¶ 20, 10 A.3d 728; *State v. Seamon*, 2017 ME 123, ¶ 24, 165 A.3d 342. Individualized factors between defendants, victims, and circumstances, are considered in each case. *State v. Servil*, 2025 ME 73, ¶ 9, 340 A.3d 630 (stating "[w]ithin certain parameters, the court is given the discretion to fashion an individual sentence"); *see also State v. Stanislaw*, 2011 ME 67, ¶ 14, 21 A.3d 91. "Because it can be challenging in a given case to reconcile potentially disparate sentencing goals, the trial court is generally afforded significant leeway in

[2] *State v. Hewey*, 622 A.2d 1151 (Me. 1993); see also 17-A M.R.S. § 1602(1)(A)-(C).

determining which factors are considered and the weight a factor is assigned." *Servil*, 2025 ME 73, ¶ 9; *see also Watson*, 2024 ME 24, ¶ 22.

Courts are limited by the Due Process Clause requirement that this information must be factually reliable and relevant. *See Servil*, 2025 ME 73 (considering it impermissible when the sentencing court found the victim's obituary online without either party introducing it as evidence); *see also Gonclaves*, 2025 ME 70 (finding the sentencing court erred when it consider the "assault that [defendant] made against" the hotel clerk as an aggravating factor, when there was no evidence in the record that defendant assaulted the hotel clerk); *Watson*, 2024 ME 24 (finding the sentencing court erred when it considered the "interconnection of drugs and homicides" during sentencing for a drug charge, when there was no basis in the record for the court to consider murder and instead the court was relying on his own prior personal experience as a homicide prosecutor, and the court failed to consider several relevant sentencing goals).

Information procured from the trial process "is factually reliable because it is derived from sworn testimony of witnesses subject to cross-examination and observation by the court." *Seamon*, 2017 ME 123, ¶ 24 (quoting *State v. Dumont*, 507 A.2d 164, 166 (Me. 1986)). The sentencing court may consider information relevant to charges the defendant was acquitted of at trial. *See Witmer*, 2011 ME 7, ¶ 29 (stating "a sentencing court is not required to disregard facts that result in a

conviction simply because some of those facts may also have been relevant to other charges of which the defendant was acquitted"); *see also Seamon*, 2017 ME 123, ¶ 24; *State v. Dumont*, 507 A.2d 164, 166 (Me. 1986).

In the case at bar, all considerations of the sentencing court that Valeriani contests on appeal were based on Victim trial testimony, which was reiterated at sentencing.

At trial, Victim testified that Valeriani was in the shower so long it was causing water damage to the bathroom walls, so she attempted to shut the shower off, when he shoved her into sink causing an elbow injury. (T.Tr.II 129:22-9, 130:4-6; T.Tr.II 131:6-11.) The sentencing court took the "bathroom incident" into consideration when setting the basic sentence to describe the incident as a long, drawn-out, series of conduct that happened throughout the night. (S.Tr. 63:16-22.) This was permissible, since the "bathroom incident" was based on trial testimony, and corroborated by medical records and pictures of the injuries introduced to the jury at trial.

Similarly, Victim testified that Valeriani took her glasses, without which she cannot see. (T.Tr.II 127:24-25.) Victim testified that she cannot legally operate a vehicle without her glasses, and she couldn't find her glasses because of her inability to see clearly. (T.Tr.II 128:1-5.) Victim testified that she couldn't leave the house, in part, because her glasses were taken. (T.Tr.II 136:3-7.) The sentencing court

considered this testimony when setting the basic sentence. The court found that taking glasses from an individual who is very visually impaired inhibits that person's ability to defend herself, get away, or call for help. (S.Tr. 63:1-10.) This finding by the sentencing court was derived from Victim trial testimony, and, therefore, permissible.

Throughout Victim trial testimony, she reiterated her fear of Valeriani that night. (T.Tr.III 153:17, 156:3-5.) She told the jury how she was crying (T.Tr.II 128:25) and pleaded for Valeriani to leave her alone (T.Tr.II 129:1-4). The sentencing court considered Victim testimony when finding that she was terrified throughout the night, and that fright explained why she "did or didn't do certain things." (S.Tr. 63:19-22.) Because the court may take into consideration information derived from the trial process, the court did not err by making these factual findings when setting a basic sentence.

Nor did the court err when affording little weight to the fact that Victim did not call for help. Victim explained at trial that she could not leave the house because her kids were asleep in their bedroom, she was afraid Valeriani would try to stop her from leaving, and Valeriani had disabled her from leaving in her vehicle by taking away her glasses. (T.Tr.II 136:3-7.) She testified that her phone was lost during the physical struggle. (T.Tr.II 127:23-25, 128:2-7.) Victim also testified that she was too scared to call for help. (T.Tr.II 127:23-25.) The court had more than enough

information to determine that Victim failure to call for help deserved little weight when determining Valeriani's sentence.

The sentencing court additionally did not err when it failed to consider Valeriani "retreating" to the bathroom as a mitigating factor. Both Victim and Valeriani testified that Valeriani went into the bathroom and slept or "passed out" for a period of time. (T.Tr.III 39:19-24; T.Tr.I 129:22-29, 131:6-11.) Victim testified that, before Valeriani shut himself in the bathroom, he had tried to take her phone, thrashed her around, took her glasses, threatened her with a machete while holding it to her neck, cut her leg and caused property damage with the machete, strangled her, threw her against the wall where she hit her head, and dumped water on her. (T.Tr.II 127:21-25, 128:1-25, 129:1-25.) She testified that while he was in the bathroom, he awoke and pushed her into the sink causing an elbow injury. (T.Tr.II 129:22-25, 130:1-6.) Later, Valeriani broke into the bedroom, got in bed with them, and threatened Victim when she mentioned calling the police. (T.Tr.II 130:11-18.)

At sentencing, defense counsel argued that this was not "hours and hours of harming Ms. Victim because Valeriani retired to the bathroom for some time. (S. Tr. 34:1-10.) The court promptly pointed out to defense that there was an assault in the bathroom after Valeriani woke up, calling the series of events a "play in two parts," which defense conceded. (S.Tr. 34:11-22.) Because it was merely a pause during the hours-long terrorizing of Victim the court did not consider Valeriani's

time spent in the bathroom as a mitigating factor. This was not an error, based on the evidence presented to the court during trial and sentencing, and given the discretion afforded to the sentencing court in determining the weight of a factor for sentencing purposes. *Servil*, 2025 ME 73, ¶ 9.

Lastly, Valeriani implies on appeal that the sentencing court erroneously considered the machete incidents, which served as the basis for Count 1 Domestic Violence Reckless Conduct with a Dangerous Weapon and Count 4 Domestic Violence Criminal Threatening with a Dangerous Weapon, when sentencing Valeriani on the counts he was found guilty of at trial. However, the court did not make explicit findings regarding the machete incidents when sentencing Valeriani. Therefore, no error appears in the record. However, even if the court had considered the machete incidents when sentencing Valeriani on the Domestic Violence Aggravated Assault and Domestic Violence Assault charges, this would not be error. The sentencing court may consider facts brought out at trial, even if those facts served as the basis for charges of which the defendant was acquitted. *Witmer*, 2011 ME 7, ¶ 29. The jury's reason behind finding Valeriani not guilty of the charges involving the machete will never be fully known. However, considering the jury found Victim testimony regarding the strangulation and assault credible, it is unlikely the reason for the not guilty verdicts was because the jury found piecemealed portions of her testimony not credible. The State's burden of proof at

sentencing is "by a preponderance," which is less than proof beyond a reasonable doubt. *Carrillo*, 2021 ME 18, ¶ 42. A sentencing court may make factual findings to support imposition of a sentence based on evidence that was not sufficient to prove guilt beyond a reasonable doubt for a conviction. *Witmer*, 2011 ME 7, ¶ 20.

Because the sentencing court relied on permissible information and did not misapply legal principals, the court did not err.

III. The sentencing court imposed a constitutionally permissible sentence.

Valeriani appeals his sentence, arguing that seven years to the Department of Corrections, with all but three years suspended, and four years of probation on the charge of Domestic Violence Aggravated Assault is a violation of his constitutional rights.[3] However, this sentence is not unconstitutionally excessive because the sentence is proportionate to the gravity of the offense and comparable to sentences in similar cases.

A. Preservation and Standard of Review

No motion to correct an illegal sentence was filed in this case, and Valeriani's appeal to the Sentencing Review Panel was denied. *See* Order in SRP-25-188. When leave to appeal the sentence is denied and the issue is otherwise unpreserved on appeal, the Law Court reviews the sentence for obvious error, *Gonclaves*, 2025 ME

[3] Although no constitutional provision is cited in Appellant's brief other than the Due Process Clause, the State treats this appeal as an argument under the Eighth Amendment to the United States Constitution and under Article I, Section 9 of the Maine Constitution based on Appellant's use of the word "excessive."

70, ¶ 43, and is confined in considering only "a claim that the sentence is illegal, imposed in an illegal manner, or beyond the jurisdiction of the court, and the illegality appears plainly in the record," *Bennett*, 2015 ME 46, ¶ 11.

B. Final Sentence Not Excessive

It is undisputed that the sentencing court had jurisdiction to sentence Valeriani on the charges. Additionally, the seven-year prison sentence is within the 10-year maximum prison sentence authorized by the Legislature for Class B felony crimes, 17-A M.R.S. § 1604(1)(B), and the four-year probation sentence is within the maximum period of probation allowed by the Legislature, when the victim is a family or household member, 17-A M.R.S. § 1804(3)(B). In this regard, no illegality appears on the face of the record.

Instead, Valeriani argues on appeal that the sentence violates his constitutional rights. The Eighth Amendment to the United States Constitution forbids the imposition of cruel and unusual punishment. U.S. Const. amend. VIII. Further, article I, section 9 of the Maine Constitution provides that "all penalties and punishments shall be proportioned to the offense." Me. Const. art. I, § 9.

The Law Court has established a two-part test to determine whether a sentence is excessive: (1) "compare the gravity of the offense with the severity of the sentence" and (2) "if this comparison results in an inference of gross disproportionality, then compare the defendant's sentence with the sentences

received by other offenders in the same jurisdiction." *Stanislaw*, 2013 ME 43, ¶ 29 (quoting *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 2022, 176 L. Ed. 2d 825 (2010)). "[O]nly the most extreme punishment decided upon by the Legislature as appropriate for an offense could so offend or shock the collective conscience of the people of Maine as to be unconstitutionally disproportionate, or cruel and unusual." *State v. Lopez*, 2018 ME 59, ¶ 15, 184 A.3d 880 (quoting *State v. Ward*, 2011 ME 74, ¶ 18, 21 A.3d 1033).

In the first step, the court evaluates where, within the range of incarceration time authorized by the Legislature, the defendant's term of imprisonment falls. *Id.* at ¶ 16; *see also Bennett*, 2015 ME 46, ¶ 15. The facts of the case are considered "in conjunction with the commonly accepted goals of punishment." *Stanislaw*, 2013 ME 43, ¶ 30. The court considers the relevant factors affecting the proportionality of a sentence on a case-by-case basis. *Id.*; *see also Lopez*, 2018 ME 59, ¶ 16.

The second step of the analysis is only engaged in if there is an inference of gross disproportionality between the offense and the sentence. *See Stanislaw*, 2013 ME 43, ¶ 34. The court compares the sentence to sentences imposed for similar or more severe crimes within the court's jurisdiction, recognizing that comparisons between cases is difficult due to the multitude of factors taken into account during sentencing. *Id*. "Given the differences among cases, there will almost never be a

precedent involving identical sentencing facts, and therefore exact comparisons are not possible." *Id*.

Here, the Court sentenced Valeriani to seven years, all but three years suspended, with four years of probation. Given the gravity of the offense, this sentence was not excessive. It was well within the range of incarceration time authorized by the Legislature and comported with the commonly accepted goals of punishment. Therefore, the Court need not engage in the second step of the analysis.

However, if the Court finds that Valeriani's sentence is grossly disproportionate to the offense, his sentence is comparative to similar cases. Valeriani's sentence falls medially between the sentences in the multitude of comparative cases cited in Appellant's Brief, defense counsel's Sentencing Memorandum, and the State's Sentencing Memorandum.

Because Valeriani's sentence is proportionate to the gravity of the offense and falls well within the range of sentencing for similar conduct, the sentence is not excessive.

CONCLUSION

Based upon the foregoing reasons, the State respectfully requests this Honorable Court affirm Erik Valeriani's convictions for Domestic Violence Aggravated Assault and Domestic Violence Assault, and the sentencing court's sentence of seven years to the Department of Corrections, with all but three years

suspended, and four years of probation for Domestic Violence Aggravated Assault, and 364 days incarceration for Domestic Violence Assault.

Respectfully submitted,

Dated: March 11, 2026

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CERTIFICATE OF SERVICE

I, Madelyn P. Thomas, certify that a copy of the foregoing "BRIEF OF THE APPELLEE" has been sent via electronic mail to the Appellant's attorney of record, Rezvaneh Ganji, Esq.

Dated: March 11, 2026

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