Supreme Judicial Court sitting as the Law Court
Law Court Docket number SOM-25-334

State of Maine v. Christopher C. Cates

Appeal from Unified Criminal Docket in
Somerset County

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Introduction

Mr. Cates asserts that his jury should have received a specific unanimity instruction, without which there is no clarity as to whether Mr. Cates' jury unanimously based its verdict on the same, singular act. Mr. Cates asserts that it was prosecutorial misconduct for the State to allude to prior bad acts evidence at trial, which is excludable under Maine Rule of Evidence 404(b). There is also insufficient evidence to support all of Mr. Cates' convictions. And, lastly, the trial court erred in denying Mr. Cates' motion to suppress due to violations of his Fifth and Sixth Amendment rights, and their Maine counterparts.

Procedural History

Christopher Cates, the appellant, was charged by criminal complaint on September 2, 2023 with Counts 1, 2, 3, and 4 of the indictment. (App. at 3). Additional charges were brought and he was indicted on ten charges on February 8, 2024. (App. at 7). The charges included: one count of Unlawful Sexual Contact

(Class B) under Title 17-A M.R.S. § 255-A(1)(E-1);[1] one count of Unlawful Sexual Contact (Class C) under Title 17-A M.R.S. § 255-A(1)(E);[2] one count of Visual Sexual Aggression Against a Child (Class C) under Title 17-A M.R.S. § 256(1)

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[1] Title 17-A M.R.S. § 255-A(1)(E-1) states that "[a] person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and. . . [t]he other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older." Title 17-A M.R.S. § 251(1)(D) defines sexual contact as "any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact." Title 17-A M.R.S. § 251(1)(C) defines sexual acts as "(1) Any act between 2 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; (2) Any act between a person and an animal being used by another person which act involves 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; or (3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. A sexual act may be proved without allegation or proof of penetration."

[2] Title 17-A M.R.S. § 255-A(1)(E) states that "[a] person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and. . . [t]he other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older." Title 17-A M.R.S. § 251(1)(D) defines sexual contact as "any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact." Title 17-A M.R.S. § 251(1)(C) defines sexual acts as "(1) Any act between 2 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; (2) Any act between a person and an animal being used by another person which act involves 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; or (3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. A sexual act may be proved without allegation or proof of penetration."

(B);[3] one count of Unlawful Sexual Touching (Class D) under Title 17-A M.R.S. § 260(1)(C);[4] one count of Indecent Conduct (Class E) under Title 17-A M.R.S. § 854(1)(A)(2);[5] one count of Tampering with a Victim (Class B) under Title 17-A M.R.S. § 454(1-B)(A)(1);[6] one count of Tampering with a Witness (Class C) under Title 17-A M.R.S. § 454(1)(A)(2);[7] and three counts of Attempted Violation of Condition of Release (Class D) under Title 17-A M.R.S. § 152(1)(D) and Title 15

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[3] Title 17-A M.R.S. § 256(1)(B) states that "[a] person is guilty of visual sexual aggression against a child if. . . [f]or the purpose of arousing or gratifying sexual desire, the actor, having in fact attained 18 years of age, exposes the actor's genitals to another person or causes the other person to expose that person's genitals to the actor and the other person, not the actor's spouse, has not in fact attained 12 years of age."

[4] Title 17-A M.R.S. § 260(1)(C) states that "[a] person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and. . . [t]he other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older." Sexual Touching is defined under Title 17-A M.R.S. § 251(1)(G) as "any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire."

[5] Title 17-A M.R.S. § 854(1)(A)(2) states that "[a] person is guilty of indecent conduct if. . . [i]n a public place. . . [t]he actor knowingly exposes the actor's genitals under circumstances that in fact are likely to cause affront or alarm."

[6] Title 17-A M.R.S. § 454(1-B)(A)(1) states that "[a] person is guilty of tampering with a victim if, believing that an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted, the actor. . . [i]nduces or otherwise causes, or attempts to induce or cause, a victim: (1) [t]o testify or inform falsely."

[7] Title 17-A M.R.S. § 454(1)(A)(2) states that "[a] person is guilty of tampering with a witness or informant if, believing that an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted, the actor. . . [i]nduces or otherwise causes, or attempts to induce or cause, a witness or informant. . . (2) [t]o withhold testimony, information or evidence."

M.R.S. § 1092(1)(B).[8] (App. at 3, 7). The indictment was amended by the State on both February 9, 2024 and February 15, 2024.[9] (App. at 8). Mr. Cates was arraigned on the indictment on April 9, 2024. (App. at 9). At his arraignment, Mr. Cates entered not guilty pleas to all charges. (App. at 9).

The State filed a number of motions in limine on April 26, 2024 and January 8, 2025. (App. 9, 11). Mr. Cates filed a motion for a bill of particulars, pertaining to Counts 8 through 10, on December 31, 2024. (App. at 11); (Order (Jan. 15, 2025) at 1). A motion to suppress was also filed by Mr. Cates on January 8, 2024. (App. at 11). A hearing on the pending motion in limine, motion for a bill of particulars, and suppression motion was held on January 9, 2025. (App. at 11). The trial court granted the motion to suppress in part, barring from evidence, on Counts 1-5, all statements made and recorded by Mr. White after September 22, 2023, but allowing the recordings into evidence on the remaining charges. (App. at 12); (Tr. T. (Jan. 22, 2025) at 136). The motion for a bill of particulars was denied on January 15, 2025. (App. at 12).

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[8] Title 17-A M.R.S. § 152(1)(D) states that: "[a] person is guilty of criminal attempt if, acting with the kind of culpability required for the commission of the crime, and with the intent to complete the commission of the crime, the person engages in conduct that in fact constitutes a substantial step toward its commission and the crime is. . . [a] Class C crime." Title 15 M.R.S. § 1092(1)(B) states that ". . . [a] defendant who has been granted preconviction or postconviction bail and who, in fact, violates a condition of release is guilty of. . . [a] Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraph (5) or (8)."

[9] After the State rested, it moved successfully to amend the indictment on Count 5 in order to reference July 1, 2023 and not July 7, 2023. (Tr. T. (Jan. 22, 2025) at 132).

Mr. Cates waived his right to a jury trial on Counts 6-10, pertaining to witness and victim tampering. (App. at 12-13, 14-15). Jury selection occurred on January 9, 2025. (App. at 11-12). A jury trial occurred before the Somerset County Unified Court on Counts 1-5 of the indictment over three days on January, 21, 22, and 23 of 2025. (App. at 13). The jury returned guilty verdicts on all five charges on January 23, 2025. (App. at 13). A bench trial was held on January 23, 2025 on Counts 6-10 and the trial court issued a verdict on those Counts on April 28, 2025. (App. at 13, 17). The Court verdict on April 28, 2025 found Mr. Cates guilty of Counts 6 and 7, and not guilty of Counts 8, 9, and 10 of the indictment. (App. at 17-18).

On June 30, 2025 Mr. Cates was sentenced by the Somerset County Unified Court. (App. at 19, 21). On Count 1, the charge of unlawful sexual contact, the court sentenced Mr. Cates to the Department of Corrections for a term of 10 years. (App. at 21). On Count 2, the charge of unlawful sexual contact, Mr. Cates received a 5 year sentence to be served consecutively to Count 1. (App. at 21). On Count 3, the charge of visual sexual aggression abasing a child, a sentence of 5 year was imposed to run concurrently to Count 1. (App. at 21). On the charge of unlawful sexual touching, a concurrent 364 day sentence was imposed to Count 1. (App. at 22). On Count 5, the charge of indecent conduct, a 180 day concurrent sentence was imposed to Count 2. (App. at 22). On Count 6, the charge of tampering with a victim, an 8 year consecutive sentence was imposed to both

Counts 1 and 2. (App. at 22). On Count 7, the charge of tampering with a witness, a fully suspended 4 year sentence was imposed with 3 years of probation. (App. at 22-23).

A timely notice of appeal was filed February 5, 2025 and June 30, 2025. (App. at 17, 23). An application to allow an appeal of his sentence was filed by Mr. Cates on June 30, 2025, which this Court denied on October 10, 2025. (App. at 23); (Order, Denying Leave (Oct. 10, 2025) at 1).

Statement of Facts

From June 30th to July 1st of 2023, Mr. Cates participated in a camping trip organized by a close friend, Christopher White.[10] (Tr. T. (Jan. 21, 2025) at 81); (Tr. T. (Jan. 22, 2025) at 40, 40, 79-80, 122, 141-142). The campsite was on land owned by paper companies in a remote area of Moscow, Maine. (Tr. T. (Jan. 21, 2025) at 83, 109, 111); (Tr. T. (Jan. 22, 2025) at 41, 44-45, 80-81). This was an area that Mr. White knew about and had been camping at since he was a child. (Tr. T. (Jan. 21, 2025) at 82); (Jan. 22, 2025) at 71-72, 80). Mr. White made multiple

[10] Mr. Cates did not spend the night at the campsite, unlike all the other participants. (Tr. T. (Jan. 22, 2025) at 53-54, 84). He arrived at the campsite before anyone else around 3 p.m. (Tr. T. (Jan. 22, 2025) at 142). Mr. Cates believed that everyone else arrived at the campsite around 5 p.m.. (Tr. T. (Jan. 22, 2025) at 142-143). He left the campsite around 7 pm on June 30th and returned the following morning some time between 7 and 8 in the morning. (Tr. T. (Jan. 21, 2025) at 90, 91); (Tr. T. (Jan. 22, 2025) at 53, 84, 153). He left the campsite at some point on July 1, 2023 and returned with firewood and his wife. (Tr. T. (Jan. 22, 2025) at 159). He left the campsite for the final time around 8 p.m. on the 1st of July. (Tr. T. (Jan. 22, 2025) at 116, 160). After Mr. Cates left the campsite, at around 8:40 p.m., a call was placed to law enforcement. (Tr. T. (Jan. 22, 2025) at 116).

trips to the site prior to the start of the camping trip to transport ATVs, trailers, and campers for the participants to use. (Tr. T. (Jan. 21, 2025) at 82); (Tr. T. (Jan. 22, 2025) at 41,). When the other participants arrived at the campsite, Mr. Cates was already there tending to a fire he had started. (Tr. T. (Jan. 21, 2025) at 83, 122, 164); (Tr. T. (Jan. 22, 2025) at 4, 42, 81, 143). The other participants included Mr. White, his fiancé Joanna Melody, and the B. family (consisting of H.B. , J.B. , and kids: Children).[11] (Tr. T. (Jan. 21, 2025) at 79, 80, 81, 121, 164); (Jan. 22, 2025) at 76, 80).

On June 30th, Victim 1 , who was twelve years old at the time, went for a ride on Mr. Cates' motorcycle.[12] (Tr. T. (Jan. 21, 2025) at 79, 87, 127); (Tr. T. (Jan. 22, 2025) at 52, 83, 145, 147-148). Victim 1 was unable to identify Mr. Cates in the courtroom, but knew the person at the campsite was called Christopher Cates.[13] (Tr. T. (Jan. 21, 2025) at 122). Victim 1 testified that it was her idea to go for a ride on Mr. Cates' motorcycle. (Tr. T. (Jan. 21, 2025) at

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[11] Mr. Cates' wife was at the campsite on July 1, 2023, after Mr. Cates left to retrieve additional firewood, his wife returned to the camp site with him. (Tr. T. (Jan. 22, 2025) at 57, 87).

[12] H.B. testified that the ride was around an hour and a half. (Tr. T. (Jan. 21, 2025) at 87, 88). Mr. Cates testified that the first motorcycle ride was around forty-five minutes. (Tr. T. (Jan. 22, 2025) at 174-175). Victim 1 testified that she went on two motorcycle rides with Mr. Cates. (Tr. T. (Jan. 21, 2025) at 127). Mr. Cates also testified that Victim 1 went on two motorcycle ride with him on June 30, 2023. (Tr. T. (Jan. 22, 2025) at 145, 147-148, 174, 178). He further testified that there was a third motorcycle ride that occurred on July 1, 2023. (Tr. T. (Jan. 22, 2025) at 158-159, 178).

[13] Victim 1 noted that she had never seen Mr. Cates before the camping trip. (Tr. T. (Jan. 21, 2025) at 122).

123). She sat on the motorcycle behind Mr. Cates. (Tr. T. (Jan. 21, 2025) at 124). Victim 1 testified that initially, while on the motorcycle, her arms were around Mr. Cates' body. (Tr. T. (Jan. 21, 2025) at 124). She stated that while on the motorcycle Mr. Cates moved her hand down onto his penis.[14] (Tr. T. (Jan. 21, 2025) at 124-125). Additionally, in his testimony, Mr. Cates addressed contact that occurred between his hand and Victim 1 's body, near her thigh and vagina, when she got onto his motorcycle for a ride.[15] (Tr. T. (Jan. 22, 2025) at 198-203). Victim 1 also testified that they stopped to look at some windmill and Mr. Cates used the bathroom while stopped. (Tr. T. (Jan. 21, 2025) at 127). When returning from using the bathroom, Victim 1 stated that Mr. Cates pants were not fully zipped up and she saw his penis. (Tr. T. (Jan. 21, 2025) at 127). Upon Victim 1 pointing this out, she stated that Mr. Cates zipped up his pants and said sorry. (Tr. T. (Jan. 21, 2025) at 127). Mr. Cates stated that he had only used a restroom at a rest area when they were together and did not expose her penis to her. (Tr. T. (Jan. 22, 2025) at 158, 178-179, 188).

On July 1st, Victim 2 went for a ride on an ATV with Mr. Cates.[16] (Tr. T. (Jan. 21, 2025) at 97); (Tr. T. (Jan. 22, 2025) at 6, 58-59, 88, 163-170). After the

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[14] Mr. Cates testified that any touching was accidental and not sexual. (Tr. T. (Jan. 22, 2025) at 146-147, 171, 180-183).

[15] This was also discussed during the conversations recorded by Mr. White and entered as State's Exhibit 3. (Tr. T. (Jan. 22, 2025) at 125-126; 198-203).

[16] H.B. testified that the ride lasted about two hours. (Tr. T. (Jan. 21, 2025) at 97).

ride, Victim 2 told her mother that she had been sexually assaulted on the ATV a few minutes before. (Tr. T. (Jan. 21, 2025) at 99). Mr. Cates testified that any touching that occurred was accidental. (Tr. T. (Jan. 22, 2025) at 168, 170-171, 188-189, 190-191). Joanna Melody was informed of the information and she asked Mr. Cates to leave the campsite, which he did. (Tr. T. (Jan. 21, 2025) at 99); (Tr. T. (Jan. 22, 2025) at 160, 170). After Mr. Cates had left the campsite, Mr. White was told of the events and he left the campsite to get cell phone reception so he could call law enforcement.[17] (Tr. T. (Jan. 21, 2025) at 101-102); (Tr. T. (Jan. 22, 2025) at 89, 120). Victim 2 's underwear was collected by police and Mr. Cates' DNA was not found on the underwear. (Tr. T. (Jan. 22, 2025) at 30-31, 115-116, 128).

Victim 2 was interviewed by the The Children's Advocacy Center and a video recording of the July 11, 2023 interview was entered into evidence at trial as State's Exhibit 1. (Tr. T. (Jan. 21, 2025) at 136-137, 143-144; 151-152, 154). During the interview Victim 2 stated that Mr. Cates touched her on the four wheeler and put his hand in her underwear and rubbed her vagina. (CAC Interview at 7:26; 17:04; 18:20; 33:34; 43:02; 45:38; 47:41; 1:06:25).[18] She stated that both her butt and vagina were touched. (CAC Interview at 45:38). She stated that the touching

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[17] A portion of the video was not played to the jury, from 8 minutes 36 seconds to 8 minutes 59 seconds, because it mentioned prior bad acts and that Mr. Cates was a convicted sex offender. (Tr. T. (Jan. 21, 2025) at 137-138, 142).

[18] The cited times are references to the starting point of the cited discussions.

stopped if they passed by people. (CAC Interview at 31:15;). She also stated that Mr. Cates had her touch his balls and above parts. (CAC Interview at 10:54; 11:55; 52:22; 53:09). Victim 2 further stated that there was touching on both a four wheeler and a motorcycle.[19] (CAC Interview at 13:26; 29:00; 52:22; 53:09; 54:01; 1:01:50; 1:02:36). She also stated that while collecting bottles in the woods she saw Mr. Cates' balls. (CAC Interview at 1:02:50; 1:05:36). Mr. Cates testified that Victim 2 had accidentally seen him peeing in the woods and no other exposure occurred by him. (Tr. T. (Jan. 22, 2025) at 153, 186-188).

Victim 2 also testified at trial stating that her vagina was touched on the four wheeler. (Tr. T. (Jan. 22, 2025) at 7; 15-16). Additional details were not provided and she stated they were in her CAC interview. (Tr. T. (Jan. 22, 2025) at 11, 12, 13, 14).

When talking with law enforcement about the events of the camping trip, Mr. White also offered to assist law enforcement in their investigation and recorded phone calls with Mr. Cates. (Tr. T. (Jan. 22, 2025) at 123-125). A recorded phone call from August 9, 2023 was entered into evidence by the State, during the jury trial, as State's Exhibit 3. (Tr. T. (Jan. 22, 2025) at 125, 126-127, 128).

[19] Mr. Cates testified that he gave Victim 2 a motorcycle ride first, on June 30th. (Tr. T. (Jan. 22, 2025) at 174).

At the time of the camping trip, Mr. White was a convicted sex offender. (Tr. T. (Jan. 21, 2025) at 105, 115); (Tr. T. (Jan. 22, 2025) at 41, 63, 69-70, 77-78, 93-97, 122, 194).

The jury received instruction from the trial court and was sent to deliberate at the close of evidence. (B. Tr. T. (Jan. 23, 2025) at 74-93, 98). When sent to deliberate the jury was not given written instructions but, after communications were received from the jury, both a list of the charges and a copy of the jury instructions were sent into the jury room. (B. Tr. T. (Jan. 23, 2025) at 50); (Tr. T. (Jan. 23, 2025) at 52-54). After deliberations, the jury reached guilty verdicts on all counts. (B. Tr. T. (Jan. 23, 2025) at 54-55).

A bench trial was held before the trial court on January 23, 2025 on Counts 6 to 10 of the indictment, which pertained to the tampering charges. (App. at 3); (B. Tr. T. (Jan. 23, 2025) at 3). At the trial Mr. White testified that he recorded conversations with Mr. Cates between September 25th and October 1st of 2023, and that he handed those recordings over to law enforcement. (Tr. T. (B. Jan. 23, 2025) at 6). Mr. White testified that in the conversations, Mr. Cates stated that Mr. Cates wanted Ms. B. to know that "she could be endangering her kids and/or could lose her kids, because allowing her kids around him." (B. Tr. T. (Jan. 23, 2025) at 7). Mr. White also stated that "Mr. Cates wanted me to give his description of what happened to Victim 2. It was Mr. Cates' belief that at Victim 2's age, that she was young and impressionable, and by giving her Mr. Cates' version of

events, that it would make her relay his version and not what actually took place." (B. Tr. T. (Jan. 23, 2025) at 7). This information was never relayed to H.B. [redacted] or Victim 2 (B. Tr. T. (Jan. 23, 2025) at 7-8). Law enforcement testified that Mr. White offered to record conversations with Mr. White to get him to implicate himself on the charges contained in Counts 1 though 5 of the indictment. (B. Tr. T. (Jan. 23, 2025) at 12-13). Law enforcement testified that they did not instruct Mr. White to continue to make recordings after Mr. Cates was arrested on Counts 1 though 5. (B. Tr. T. (Jan. 23, 2025) at 14). Mr. White did make recordings and gave them to law enforcement. (B. Tr. T. (Jan. 23, 2025) at 15, 37). The content of the recordings was discussed by law enforcement and some of the recordings were entered into evidence as State's Exhibit 5. (B. Tr. T. (Jan. 23, 2025) at 16-17, 22). The trial court noted that "[s]ubject to the previous ruling, particularly on the motion to suppress and others, I'll receive 5." (B. Tr. T. (Jan. 23, 2025) at 17).

Mr. Cates testified at the bench trial and stated that it was never his intention to influence any witnesses through the course of his conversations with Mr. White and his intent was only to try to better remember the events that took place at the campsite. (B. Tr. T. (Jan. 23, 2025) at 29, 33-34, 36, 39).

A verdict was issued, both verbally and written, by the trial court on April 28, 2025. (Verdict T. (April 28, 2025) at 1, 4). The trial court found Mr. Cates guilty of Counts 6 and 7, but not guilty of the attempted Violation of Conditions of

Release charges found in Counts 8, 9, and 10. (Verdict T. (April 28, 2025) at 8, 11-12, 13).

On June 30, 2025, Mr. Cates received a ten year sentence on Count 1 of the indictment, on Count 2 a consecutive five year sentence was imposed, on Count 3 a concurrent five year sentence was imposed, on Count 4 a concurrent 364 days sentence was imposed, on Count 5 a concurrent 180 day sentence was imposed, on Count 6 a consecutive eight year sentence was imposed, and on Count 7 a fully suspended consecutive four year sentence was imposed with three years of probation. (Sent. T. at 1, 34-36).

Issues Presented for Review

I. Whether it was obvious error for the trial court to not give a specific unanimity instruction to the jury.

II. Whether the State committed prosecutorial error by alluding to Mr. Cates' status as a sex offender and eliciting testimony that was also suggestive of that fact.

III. Whether there is sufficient evidence to support Mr. Cates' tampering, unlawful sexual contact, unlawful sexual touching, visual sexual aggression against a child, and indecent conduct convictions.

IV. Whether the trial court erred in its suppression ruling allowing recorded statements between Mr. Cates and his friend, Mr. White, to be entered into evidence during the bench trial on Counts 6 and 7.

Statement of Issues Presented for Review

Mr. Cates' jury was not instructed on specific unanimity. The State indicted Mr. Cates on five counts alleging sexual misconduct involving Victim 1 and Victim 2 over roughly a 24 hour period of time. Over the course of this roughly 24 hour time period, except in regards to Count 5, there were multiple events entered into evidence that could be used to support Counts 1 through 4. As such, without a specific unanimity instruction, there is no clarity as to whether Mr. Cates' jury unanimously based its verdict on the same, singular act. Such error has affected Mr. Cates' substantial rights and ability to receive a fair trial and his convictions should be vacated.

No information about Mr. Cates' past sexual convictions was admissible at trial, as it was evidence of prior bad acts excludable under Maine Rule of Evidence 404(b). In its opening statement to the jury the State said: "White, you will hear, is also a convicted sex offender and was friends with the Defendant." The statement touched upon Mr. Cates' status as a sex offender. Additionally, during trial, a witness testified that when she spoke to the defendant about Victim 2's disclosure he stated "Oh, no, not again." It was error for the State to place this information before the jury and that error harmed the character and credibility of Mr. Cates, suggesting that he had committed prior acts of sexual misconduct and been convicted of them.

There was insufficient evidence at trial to support Mr. Cates' convictions. The evidence provided by the State in relation to the tampering charges fails to demonstrate that any steps were taken that would "[i]nduces or otherwise causes, or attempts to induce or cause" a victim or witness in the case to alter or withhold their testimony. There was also insufficient evidence to support the unlawful sexual contact, unlawful sexual touching, and visual sexual aggression against a minor charges because the State did not establish evidence of contact, touching, or exposure "for the purpose of arousing or gratifying sexual desire." On the indecent conduct charge there was also no evidence to establish that Mr. Cates "knowingly exposes" his "genitals under circumstances that in fact are likely to cause affront or alarm."

Lastly, the trial court erred in denying Mr. Cates motion to suppress as it pertains to the use of recordings of conversations between Mr. White and Mr. Cates in his bench trial on the tampering charges. The Fifth Amendment was violated as the recordings were elicited from a confidential informant as the result of compulsion. The Sixth Amendment was also violated as the sex and tampering charges are intertwined, have a similar evidentiary basis, and the recordings were made with the intent to incriminate Mr. White on the sex charges for which he had already been charged.

Argument

I. It was obvious error for the trial court to not give a specific unanimity instruction to the jury.

When no objection is raised to jury instructions, this Court reviews "the instructions only for obvious error, that is, 'highly prejudicial error tending to produce manifest injustice.' State v. Baker, 2015 ME 39, ¶ 11, 114 A.3d 214 (quotation marks omitted); see M.R.U. Crim. P. 52(b)." State v. Villacci, 2018 ME 80, ¶ 9, 187 A.3d 576, 580 (Me. 2018). See State v. Schooley, 2025 ME 84, ¶ 17 (Me. 2025); State v. Chase, 2023 ME 32, ¶ 13, 294 A.3d 154, 159 (Me. 2023) (where "[t]he record contain[ed] neither a request for a specific unanimity instruction nor an objection to the court's jury instructions. . . [when] the issue is unpreserved, our review is for obvious error. See State v. Asante, 2020 ME 90, ¶ 10, 236 A.3d 464. Obvious error occurs 'when 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 (quoting State v. Ashley, 666 A.2d 103, 106-07 (Me. 1995)."); State v. Rosario, 2022 ME 46, ¶ 34, 280 A.3d 199, 208 (Me. 2022)(where "[a]t trial, [the defendant]. . . failed to request a specific unanimity instruction, and we therefore review for obvious error.").

"For obvious error to exist there must be (1) an error,[20] '(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. Rosario, 2022 ME 46, ¶ 29, 280 A.3d 199, 208 (Me. 2022)(citing State v. Lajoie, 2017 ME 8, ¶ 13, 154 A.3d 132.). Additionally, "jury instructions [are reviewed] in their entirety to determine if the instructions 'fail[ed] to inform the jury correctly and fairly in all necessary respects of the governing law.' State v. Fox, 2014 ME 136, ¶ 22, 105 A.3d 1029 (quotation marks omitted)." State v. Villacci, 2018 ME 80, ¶ 9, 187 A.3d 576, 580 (Me. 2018). See also State v. Chase, 2023 ME 32, ¶ 13, 294 A.3d 154, 159 (Me. 2023); State v. Fortune, 2011 ME 125, ¶ 25, 34 A.3d 1115, 1121 (Me. 2011)("[w]e review jury instructions 'as a whole, taking into consideration the total effect created by all the instructions and the potential for juror misunderstanding.' State v. Saucier, 2001 ME 107, ¶ 23, 776 A.2d 621; accord State v. Gauthier, 2007 ME 156, ¶ 14, 939 A.2d 77.").

"Any errors 'in criminal cases that affect constitutional rights are reviewed to determine that we are satisfied, beyond a reasonable doubt, that the error did not affect substantial rights or contribute to the verdict.' Gauthier, 2007 ME 156, ¶ 14,

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[20] "To determine whether there is an error, 'we evaluate the instructions in their entirety' and consider their total effect, 'the potential for juror misunderstanding, and whether the instructions informed the jury correctly and fairly in all necessary respects of the governing law.' Id. ¶ 14 (quotation marks omitted)." State v. Rosario, 2022 ME 46, ¶ 29, 280 A.3d 199, 208 (Me. 2022).

939 A.2d 77." State v. Fortune, 2011 ME 125, ¶ 25, 34 A.3d 1115, 1121 (Me. 2011).

Mr. Cates' jury was not instructed on specific unanimity. The State indicted Mr. Cates on five counts alleging sexual misconduct involving Victim 1 and Victim 2 over roughly a 24 hour period of time. (App. at 1); (Tr. T. (Jan. 21, 2025) at 79, 87, 90, 91, 124-125, 127); (Tr. T. (Jan. 22, 2025) at 6, 52, 53-54, 58-59, 83, 84, 88, 116, 142-143, 145, 147-148, 153, 159, 160, 163-170, 198-203); (CAC Interview at 7:26; 10:54; 11:55; 13:26; 17:04; 18:20; 29:00; 33:34; 43:02; 45:38; 47:41; 52:22; 53:09; 54:01; 1:01:50; 1:02:36; 1:02:50; 1:05:36; 1:06:25). Over the course of this roughly 24 hour time period, except in regards to Count 5, there were multiple events entered into evidence that could be used to support Counts 1 through 4. As such, without a specific unanimity instruction, there is no clarity as to whether Mr. Cates' jury unanimously based its verdict on the same, singular act. Such error has affected Mr. Cates' substantial rights and ability to receive a fair trial and, as such, his convictions should be vacated.

"The Maine Constitution provides that 'unanimity, in indictments and convictions, shall be held indispensable.' Me. Const. art. I, § 7."[21] State v. Reynolds, 2018 ME 124, ¶ 15, 193 A.3d 168, 173 (Me. 2018); see also State v.

[21] This Court has also noted that "United States Constitution, the Sixth and Seventh Amendments apply to also require unanimity in state court jury verdicts." State v. Schooley, 2025 ME 84, ¶ 20 (Me. 2025)(citations omitted).

Russell, 2023 ME 64, ¶ 25, 303 A.3d 640, 647 (Me. 2023); State v. Hanscom, 2016 ME 184, ¶ 16, 152 A.3d 632, 637 (Me. 2016).

It has been "previously explained" by this Court that "'[c]ourts regularly encounter indictments that may aggregate, in one count of the indictment, several identical crimes committed against one or more victims.' State v. Fortune, 2011 ME 125, ¶ 26, 34 A.3d 1115." State v. Reynolds, 2018 ME 124, ¶ 15, 193 A.3d 168, 173 (Me. 2018). Such instances are "especially common in cases where, as here, there are allegations of 'multiple sex acts committed against a minor child.'" State v. Reynolds, 2018 ME 124, ¶ 15, 193 A.3d 168, 173-174 (Me. 2018). In these cases, "when separate but similar incidents 'are the evidence supporting a single charge, the jury must unanimously find that one specific incident occurred.'" State v. Reynolds, 2018 ME 124, ¶ 15, 193 A.3d 168, 174 (Me. 2018)(citations omitted).

To this point, it has been noted that

> [w]hen separate, similarly situated victims or similar incidents such as thefts or drug transactions are the evidence supporting a single charge, the jury must unanimously find that one specific incident occurred or that the elements of the crime are proven as to at least one victim in order to convict. See Commonwealth v. Conefrey, 420 Mass. 508, 650 N.E.2d 1268, 1270-72, 1273 n.11 (Mass. 1995)(reversing a conviction when the court denied the defense's request for a specific instruction on unanimity, and alternate incidents could have supported the conviction). On request, the jury should be instructed on this point, if the evidence offered in support of one charge includes more than one incident of the charged offense. See *Maine Jury Instruction Manual* § 6-65 at 6-103 (4th ed. 2011).

State v. Fortune, 2011 ME 125, ¶ 27, 34 A.3d 1115, 1121-1122 (Me. 2011).

"[A] specific unanimity instruction would '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. Chase, 2023 ME 32, ¶ 16, 294 A.3d 154, 160 (Me. 2023); see also State v. Russell, 2023 ME 64, ¶ 25, 303 A.3d 640, 647 (Me. 2023)("'[a] specific unanimity instruction explains 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. Thus, if the State alleges multiple instances of the charged offense, any one of which is independently sufficient for a guilty verdict as to that charge, specific unanimity instructions are proper.' State v. Osborn, 2023 ME 19, ¶ 34, 290 A.3d 558 (citation and quotation marks omitted)").

In State v. Russell, 2023 ME 64, ¶ 3, 303 A.3d 640, 643 (Me. 2023), on appeal to this Court, "[t]he State concede[d]" and this Court "agree[d] that a specific unanimity instruction was necessary. . . [and a]ccordingly, [this Court] vacate[d] the judgment of conviction [for the affected counts]. . . ." In doing so, this Court stated that "[a]n instruction was necessary to inform jurors that they were 'required to unanimously agree that a single incident of the alleged crime occurred that support[ed] a finding of guilt on [each] count.' Its absence is error

that requires us to vacate the judgment[s] . . . ." State v. Russell, 2023 ME 64, ¶ 32, 303 A.3d 640, 649 (Me. 2023)(citation omitted).

Additionally, this Court has repeatedly noted the need for a specific unanimity instruction when multiple incidents could be used to support a finding of guilt for a single criminal charge, such as the ones at issue here:

> • In State v. Villacci, 2018 ME 80, fn. 1, 187 A.3d 576 (Me. 2018) this Court noted that "[a]lthough not raised by Villacci, we note that the court also erred by failing to give the jury a specific unanimity instruction. See State v. Hanscom, 2016 ME 184, ¶ 16, 152 A.3d 632. It does not appear that either Villacci or the prosecutor requested such an instruction, despite the obvious need for one."
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> • In Hodgdon v. State, 2021 ME 22, fn. 5, 249 A.3d 132 (Me. 2021) this Court stated that "[a] specific unanimity instruction explains to jurors the requirement of 'unanimous agreement among the[m] that a single incident of [the alleged crime] occurred' to support a finding of guilt on a given count. Hanscom, 2016 ME 184, ¶ 11, 152 A.3d 632; see Reynolds, 2018 ME 124, ¶ 15, 193 A.3d 168 ('[W]hen separate but similar incidents are the evidence supporting a single charge, the jury must unanimously find that one specific incident occurred.' (quotation marks omitted)). 'On request, the jury should be instructed on this point, if the evidence offered in support of one charge includes more than one incident of the charged offense.' Fortune, 2011 ME 125, ¶ 31, 34 A.3d 1115. . . . Hodgdon was, therefore, entitled to a specific unanimity jury instruction concerning Count 5. See Fortune, 2011 ME 125, ¶ 31, 34 A.3d 1115").
>
> • In State v. Chase, 2023 ME 32, ¶ 16, 294 A.3d 154, 160 (Me. 2023) this Court noted that "'[I]f the State alleges multiple instances of the charged offense, any one of which is independently sufficient for a guilty verdict as to that charge, specific unanimity instructions are proper.' State v. Osborn, 2023 ME 19, ¶ 34, 290 A.3d 558; see also Fortune, 2011 ME 125, ¶ 31, 34 A.3d 1115 ('When separate, similarly situated victims or similar incidents such as thefts or drug transactions are the evidence supporting a single charge, the jury must unanimously find that one specific incident occurred . . . in order to convict.');

Alexander, *Maine Jury Instruction Manual* § 6-65 at 6-145 (2023 ed.)."

> • In State v. Hanscom, 2016 ME 184, ¶ 14, 152 A.3d 632, 636 Me. 2016) this Court found that "[b]ased on the State's evidence, the jury was entitled to reasonably conclude that [the defendant] committed the crime of unlawful sexual contact more than once against each girl. The jury was not instructed, however, about the requirement of unanimity as it applies to a single incident, and the instructions therefore left open the prospect that the jury would find [the defendant] guilty based on verdicts that were less than unanimous."

Recently, in State v. Schooley, 2025 ME 84, ¶ 27 (Me. 2025)(citation omitted) this Court addressed whether the lack of a specific unanimity instruction was prejudicial, stating that "when the central contested issue is the credibility of a child's testimony about a consistent pattern of sexual abuse over a long period, it is likely that 'a jury will either believe that a consistent and repetitive pattern of abuse has occurred, of necessity encompassing a number of discrete acts, or they will disbelieve it.'" Mr. Cates' case can be distinguished from such a conclusion. The allegations in Mr. Cates' case occurred over a period of roughly 24 hours. (Tr. T. (Jan. 22, 2025) at 53-54, 84, 90. 91, 116, 142-143, 153, 159, 160). The alleged conduct was limited to that short time frame and involved distinguishable conduct, as the evidence involved testimony about touching of various body parts.

There were two distinct events testified about which involved Victim 1 [redacted] and contact or touching, one where she touched Mr. Cates' penis over his clothing and another where his hand was in close proximity to her thigh and

vaginal area. (Tr. T. (Jan. 21, 2025) at 124-125); (Tr. T. (Jan. 22, 2025) at 198-203).

The evidence presented at trial also involved multiple incidents of contact and touching in relation to Victim 2 as well. In her CAC interview, played for the jury, Victim 2 stated that Mr. Cates touched her on the four wheeler and put his hand in her underwear and rubbed her vagina. (CAC Interview at 7:26; 17:04; 18:20; 33:34; 43:02; 45:38; 47:41; 1:06:25); (Tr. T. (Jan. 21, 2025) at 136-137, 143-144; 151-152, 154). She stated that both her butt and vagina were touched. (CAC Interview at 45:38). She also stated that Mr. Cates had her touch his balls and above parts. (CAC Interview at 10:54; 11:55; 52:22; 53:09). Victim 2 further stated that there was touching on both a four wheeler and a motorcycle. (CAC Interview at 13:26; 29:00; 52:22; 53:09; 54:01; 1:01:50; 1:02:36).

She also stated that while collecting bottles in the woods she saw Mr. Cates' balls. (CAC Interview at 1:02:50; 1:05:36). Mr. Cates testified that Victim 2 had accidentally seen him peeing in the woods and no other exposure occurred by him. (Tr. T. (Jan. 22, 2025) at 153, 186-188).

All of these events are very distinctive and not the result of prolonged sexual abuse over a long period of time. The conduct does not establish the same repetitive conduct seen in Schooley.

Additionally, Schooley "involv[ed] the allegation of multiple materially similar sexual assaults." State v. Schooley, 2025 ME 84, ¶ 30 (Me. 2025). The

alleged conduct here varies on what body parts were involved; who was doing the touching or contact; and where it occurred. (Tr. T. (Jan. 21, 2025) at 124-125; 136-137, 143-144; 151-152, 154); (Tr. T. (Jan. 22, 2025) at 153, 186-188, 198-203); (CAC Interview at 7:26; 10:54; 11:55; 13:26; 17:04; 18:20; 29:00; 33:34; 43:02; 45:38; 47:41; 52:22; 53:09; 54:01; 1:01:50; 1:02:36; 1:06:25);

Given the trial testimony, where there were multiple instances presented to the jury upon which they could base a verdict, an unanimity instruction was clearly needed. Without the specific unanimity instruction, there is no clarity as to whether the jury unanimously based its verdict on the same, singular act of gross sexual assault. In State v. Russell, 2023 ME 64, ¶ 32, 303 A.3d 640, 649 (Me. 2023)(citation omitted), this Court found that obvious error existed when the jury in that case was not provided with an unanimity instruction by the trial court. Moreover, as highlighted above, this Court has repeatedly noted the need for a specific unanimity instruction in cases where the jury is presented with multiple instances of conduct at trial that could be used to support a singular charge. See State v. Chase, 2023 ME 32, ¶ 16, 294 A.3d 154, 160 (Me. 2023); Hodgdon v. State, 2021 ME 22, fn. 5, 249 A.3d 132 (Me. 2021); State v. Reynolds, 2018 ME 124, ¶ 15, 193 A.3d 168, 174 (Me. 2018); State v. Villacci, 2018 ME 80, fn. 1, 187 A.3d 576 (Me. 2018); State v. Hanscom, 2016 ME 184, ¶ 14, 152 A.3d 632, 636 (Me. 2016).

The trial court's failure to provide the jury with a specific unanimity instruction was obvious error because without the instruction it leaves open the possibility that Mr. Cates' convictions are not based on one specific act, allowing the individual members of the jury to vary on the individual act that they used to support Mr. Cates' convictions. There is no clarity as to the unanimity of the verdicts in Counts 1 through 4. Such an error affects Mr. Cates' constitutional right to unanimity in conviction and the ability to have confidence that a just and constitutional verdict was issued by the jury. As such, Mr. Cates' substantial rights have been violated and he has not received a fair trial and his convictions should be vacated.

II. The State committed prosecutorial error by alluding to Mr. Cates' status as a sex offender and eliciting testimony that was also suggestive of that fact.

When no objection is made to a prosecutor's statements at trial an obvious error standard of review is applicable. State v. Lockhart, 2003 ME 108, ¶ 47, 830 A.2d 433, 449 (Me. 2003); M.R.U. Crim. P. 52(b); see also State v. Fahnley, 2015 ME 82, ¶ 35, 119 A.3d 727, 737 (Me. 2015). The test for establishing obvious error has been concisely stated to include a showing, by the defendant, of "(1) an error, (2) that is plain, and (3) that affects substantial rights. . . [e]ven if these three conditions are met. . .a jury's verdict [is] only [set aside] if. . . (4) the error seriously affects the fairness and integrity or public reputation of judicial

proceedings." State v. Dolloff, 2012 ME 130, ¶ 35, 58 A.3d 1032, 1043 (Me. 2012) (internal citations and quotations omitted).

"It is a 'well-established rule that the prosecutor has a responsibility to help ensure a fair trial, and although permitted to strike hard blows, may not strike foul ones. . ." State v. Lockhart, 2003 ME 108, ¶ 48, 830 A.2d 433, 449 (Me. 2003) (internal citations omitted). The Rules of Professional Conduct requires that attorneys, including prosecutors, adhere to Rule 3.4(e), which states that a lawyer shall not,

> in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.

"This Court has 'often noted that, in addition to their adversarial role, prosecutors have a 'special responsibility' to help ensure a fair trial, State v. Dolloff, 2012 ME 130, ¶ 41, 58 A.3d 1032, 'because they have an obligation to ensure that justice is done, as opposed to merely ensuring that a conviction is secured,' State v. Young, 2000 ME 144, ¶ 6, 755 A.2d 547. When prosecutorial misconduct is alleged, we assess whether there was actual misconduct and, if so, whether the court's response was sufficient to remedy any resulting prejudice. Dolloff, 2012 ME 130, ¶ 32, 58 A.3d 1032" State v. Ayotte, 2019 ME 61, ¶ 12,

207 A.3d 614, 617 (Me. 2019); see also State v. Clark, 2008 ME 136, ¶ 7, 954 A.2d 1066, 1068-1069 (Me. 2008).

This Court has found that

> '[a]s part of its obligation to ensure a fair trial for the defendant, the prosecution must avoid eliciting inadmissible testimony. The failure of the prosecutor to observe this duty is improper prosecutorial conduct.' State v. Hinds, 485 A.2d 231, 235 (Me. 1984). In particular, we note that '[c]haracter is never an issue in a criminal prosecution unless and until the defendant brings it into the trial and makes it an issue by introducing evidence of good character and reputation. The rule is universal that the prosecution may not initially attack the defendant's character.' State v. Wyman, 270 A.2d 460, 463 (Me. 1970).
>
> The State's line of questioning, in violation of the court's earlier ruling, about one of Pratt's other children 'being taken out of the house' was plain error under existing law because it was designed to elicit testimony that was irrelevant, and any probative value in that testimony was outweighed by the danger of unfair prejudice. See M.R. Evid. 402, 403; Dolloff, 2012 ME 130, ¶ 36, 58 A.3d 1032. State v. Pratt, 2020 ME 141, ¶¶ 15-16, 243 A.3d 469, 474 (Me. 2020).

This Court has further found reversible error when "there was no purpose for which the jury could properly consider the testimony and nothing was ever done to remedy the unfair prejudice. . . [resulting from] evidence that was not only inadmissible hearsay but also irrelevant and highly prejudicial. . . . State v. Carmichael, Me., 395 A.2d 826, 828 (1978)." State v. Gaudette, 431 A.2d 31, 34 (Me. 1981).

In sum, "[a]s part of its obligation to ensure a fair trial for the defendant, the prosecution must avoid eliciting inadmissible testimony. State v. Gaudette, 431

A.2d 31, 34 (Me. 1981). The failure of the prosecutor to observe this duty is improper prosecutorial conduct. See id. at 34-35; State v. Thornton, 414 A.2d 229, 235 & n.5 (Me. 1980)." State v. Hinds, 485 A.2d 231, 235 (Me. 1984).

If error is found, it is looked at "'as a whole,' looking 'at the incidents of misconduct both in isolation and in the aggregate.'" State v. Clark, 954 A.2d 1066, 1069 (Me. 2008)(internal citations omitted); see also State v. Dolloff, 2012 ME 130, ¶ 41, 58 A.3d 1032, 1045 (Me. 2012).

No information about Mr. Cates' past sexual convictions was admissible at trial, as it was evidence of prior bad acts excludable under Maine Rule of Evidence 404(b).[22] Additionally, the trial court had ruled on the State's prior bad acts motion in limine before the trial. (App. at 10-11).

Maine Rule of Evidence 404(b) provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." M.R. Evid. 404(b).[23]

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[22] The only evidence about Mr. Cates' past convictions entered into evidence at trial was that he had prior felony convictions from 2017. (Tr. T. (Feb. 22, 2025) at 172); (B. Tr. T. (Jan. 23, 2025) at 55). No details about the convictions were entered into evidence.

[23] The Advisers' Notes stated that "The subdivision does not exclude the evidence when offered for another purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Maine law is in accord. State v. Aubut, 261 A.2d 48 (Me. 1970)(evidence of attempt to utter forged instrument of same tenor on same day admissible to show knowledge of forgery); State v. Wyman, 270 A.2d 460 (Me. 1970)(evidence of other crime of precisely similar nature admissible to show intent; jury must be carefully instructed as to limited purpose)."

This Court has stated that it

> has long recognized that evidence of prior or subsequent acts similar to the charged offense is admissible for any permissible purpose other than to prove the character of the defendant to show that he acted in conformity therewith. . . M.R. Evid. 404(b) excludes only 'evidence of other crimes, wrongs or acts . . . to prove the character of a person in order to show that he acted in conformity therewith.' Such evidence, however, may be admissible for any other permissible purpose. . . In the case at bar, evidence of prior [] acts w[ere] relevant and admissible to show the relationship between the parties that in turn sheds light on defendant's motive (i.e., attraction toward the victim), intent (i.e., absence of mistake), and opportunity (i.e., domination of the victim) to commit the crimes with which he was charged. State v. DeLong, 505 A.2d 803, 805-806 (Me. 1986).

In its opening statement the State argued that:

> Leal also worked closely with one of the witnesses, Christopher White. White was at the campground during this time frame and was a family friend. **White, you will hear, is also a convicted sex offender and was friends with the Defendant**. As a convicted sex offender, White was in a unique position to get the Defendant talking about what happened. With that in mind, Leal -- Det. Leal used White to help collect evidence and help him meet up with the Defendant while wearing a recording device. (Tr . T. (Jan. 21, 2025) at 75)(emphasis added).

During trial, Ms. Melody testified when she spoke to the defendant after Victim 2's disclosure he stated "Oh, no, not again." (Tr . T. (Jan. 22, 2025) at 61).

The response was part of the following exchange

> Q What -- what did he say when you asked him what happened?
>
> A He's like -- he just told me, oh, no.
>
> Q Do you remember -- those were the exact words that he stated.

A Oh, no, not again.
(Tr . T. (Jan. 22, 2025) at 61)(emphasis added).

Through the two cited incidents, the State has placed Mr. Cates' past sexual offenses before the jury. The two cited incidents clearly suggest to the jury that Mr. Cates has a past history of similar actions. This evidence was excludable, as found by the trial court prior to trial, as inadmissible evidence of prior bad acts under Maine Rule of Evidence 404(b).[24] It was error for the State to elicit evidence through its questioning of Ms. Melody that suggested that Mr. Cates had acted similarly on previous occasions. It was also error for the State to craft its opening statements to the jury in a way that suggested that Mr. Cates has acted similarly in the past because he "also" had been convicted of sex crimes. Both instances significantly harmed the character and credibility of Mr. Cates, suggesting that Mr. Cates had committed prior acts of sexual misconduct and been convicted of them. This error severely affected his ability to receive a fair trial.

III. There is insufficient evidence to support Mr. Cates' tampering, unlawful sexual contact, unlawful sexual touching, visual sexual aggression against a child, and indecent conduct convictions.

This Court has noted that "[w]hen a defendant challenges the sufficiency of the evidence on appeal, [the Court] view[s] the evidence in the light most favorable to the State to determine whether a fact-finder could rationally find beyond a

[24] As the State seemed to acknowledge at trial when it skipped a section of Victim 2's CAC interview referring to Mr. Cates having previously done similar acts. (Tr. T. (Jan. 21, 2025) at 137-137, 142).

reasonable doubt every element of the offense charged." State v. Perkins, 2014 ME 159, ¶ 13, 107 A.3d 636, 640 (Me. 2014)(citation omitted); see also State v. Labare, 637 A.2d 854, 856 (Me. 1994).

Mr. Cates was charged, and convicted by the trial court, of two counts involving tampering.

The tampering charge alleged in Count 6 states

> On or about September 26, 2023, in Bingham, Somerset County, Maine, CHRISTOPHER C. CATES, believing an official proceeding or an official criminal investigation was pending or would be instituted, did induce or cause, or attempt to induce or cause, a minor with the initials NB, a victim, to testify or inform falsely.

The tampering charge in Count 7 alleges that

> On or about September 26, 2023, in Bingham, Somerset County, Maine, CHRISTOPHER C. CATES, believing an official proceeding or an official criminal investigation was pending or would be instituted, did induce or cause, or attempt to induce or cause, H.B. a witness or informant to withhold testimony, information or evidence.

Under Title 17-A M.R.S. § 454(1-B)(A)(1) the State has to prove that "[a] person is guilty of tampering with a victim if, believing that an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted, the actor. . . [i]nduces or otherwise causes, or attempts to induce or cause, a victim: (1) [t]o testify or inform falsely."

Under Title 17-A M.R.S. § 454(1)(A)(2) states that "[a] person is guilty of tampering with a witness or informant if, believing that an official proceeding, as

defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted, the actor. . . [i]nduces or otherwise causes, or attempts to induce or cause, a witness or informant. . . (2) [t]o withhold testimony, information or evidence."

The evidence provided by the State in relation to these charges fails to demonstrate that any steps were taken that would "[i]nduces or otherwise causes, or attempts to induce or cause" a victim or witness in the case to alter or withhold their testimony. The evidence involved in the tampering charges centers around Mr. Cates' friend, Christopher White. (Tr. T. (Jan. 22, 2025) at 79-80, 204); (B. Tr. T. (Jan. 23, 2025) at 5-10). Mr. White offered his services to law enforcement to assist in gaining a confession from Mr. White. (Tr. T. (Jan. 22, 2025) at 123-125); (B. Tr. T. (Jan. 23, 2025) at 12-13). Mr. White recorded conversations with Mr. Cates between September 25th and October 1st of 2023, and that he handed those recordings over to law enforcement. (Tr. T. (B. Jan. 23, 2025) at 6, 15, 37). Some of the recordings were entered into evidence at the bench trial as State's Exhibit 5.[25] (B. Tr. T. (Jan. 23, 2025) at 16-17, 22). Mr. White testified that in the conversations, Mr. Cates stated that Mr. Cates wanted Ms. B. to know that "she could be endangering her kids and/or could lose her kids, because allowing her kids around him." (B. Tr. T. (Jan. 23, 2025) at 7). Mr. White also stated that "Mr.

[25] The trial court noted the admission was "[s]ubject to the previous ruling, particularly on the motion to suppress and others, I'll receive 5." (B. Tr. T. (Jan. 23, 2025) at 17).

Cates wanted me to give his description of what happened to [redacted]. It was Mr. Cates' belief that at [redacted]'s age, that she was young and impressionable, and by giving her Mr. Cates' version of events, that it would make her relay his version and not what actually took place ." (B. Tr. T. (Jan. 23, 2025) at 7). This information was never relayed to [redacted] or [redacted]. (B. Tr. T. (Jan. 23, 2025) at 7-8).

Mr. White's testimony during the bench trial on the tampering charges was completely based on the recordings that were entered into evidence as State's Exhibit 5. Therefore, the best source for establishing what was said between Mr. Cates and Mr. White are the actual recordings entered into evidence in Exhibit 5. The recordings demonstrate a discussion between friends.[26] See Exhibit 5; (B. Tr. T. (Jan. 23, 2025) at 16-17, 22). Additionally, Mr. White was present during the time of the alleged crimes, which explains why Mr. Cates was engaging in the conversation. (Tr. T. (Jan. 22, 2025) at 80-82). Most importantly, Mr. White testified that he "absolutely" did not have conversations with Heather or [redacted] about the case against Mr. Cates. (B. Tr. T. (Jan. 23, 2025) at 7-8). The record is therefore deficient of any intent or actual attempt or substantial steps

[26] Mr. Cates testified at the bench trial and stated that it was never his intention to influence any witnesses through the course of his conversations with Mr. White and his intent was only to try and better remember the events that took place at the campsite. (B. Tr. T. (Jan. 23, 2025) at 29, 33-34, 36, 39).

intended to influence Victim 2 or H.B. . As such, there is insufficient evidence to support the two tampering charges Mr. Cates' has been convicted of.

The charges of unlawful sexual contact, unlawful sexual touching, and visual sexual aggression against a child, found in Counts 1, 2, 3, and 4, all involve evidence of contact, touching, or exposure "for the purpose of arousing or gratifying sexual desire." See Supra fns. 1, 2, 3, 4. The evidence at trial is devoid of evidence that would establish this element beyond a reasonable doubt. Given this deficiency, there is insufficient evidence to support these convictions.

The charge of indecent exposure did not demonstrate that Mr. Cates "knowingly exposes" his "genitals under circumstances that in fact are likely to cause affront or alarm." See Supra fn. 5. Victim 1 testified that she saw Mr. Cates' penis when they stopped to look at some windmill and Mr. Cates used the bathroom. (Tr. T. (Jan. 21, 2025) at 127). She stated that when returning from using the bathroom that Mr. Cates pants were not fully zipped up and she saw his penis. (Tr. T. (Jan. 21, 2025) at 127). Upon Victim 1 pointing this out, she stated that Mr. Cates zipped up his pants and said sorry. (Tr. T. (Jan. 21, 2025) at 127). On these facts there is not sufficient evidence to establish that Mr. Cates knowingly exposed his genitals under circumstance likely to cause affront or alarm. The evidence only establishes that the exposure occurred as a result of having used the bathroom and was remedied once the exposure was pointed out.

IV. The trial court erred in its suppression ruling allowing recorded statements between Mr. Cates and his friend, Mr. White, to be entered into evidence during the bench trial on Counts 6 and 7.

This Court "will uphold a denial of a motion to suppress if any reasonable view of the evidence supports the trial court's decision. State v. Thibodeau, 2000 ME 52, ¶ 5, 747 A.2d 596, 598. We review any questions of law that arise in the analysis de novo." State v. O'Rourke, 2001 ME 163, ¶ 12, 792 A.2d 262, 265 (Me. 2001)(citation omitted); see also State v. Lagasse, 2016 ME 158, ¶ 11, 149 A.3d 1153, 1156 (Me 2016); State v. Vrooman, 2013 ME 69, ¶ 11, 71 A.3d 723, 726 (Me. 2013).

The trial court denied Mr. Cates' suppression motion as it pertains to use of recorded conversations between Mr. White and Mr. Cates in relation to the two tampering charges he has been convicted of. (Sup. Order (Jan 15, 2025) at 12-13). The court specifically stated that

> The Sixth Amendment right to counsel is 'offense specific'; that is, 'a defendant's statements regarding offenses for which he [has] not been charged [are] admissible notwithstanding the attachment of his Sixth Amendment right to counsel on other charged offenses." *Cobb*, 532 U.S. at 165, 167-68. Here, Defendant's Sixth Amendment right to counsel attached for counts one through five of the Indictment on September 22, 2023. However, the State only brought counts six through ten of the Indictment (Witness Tampering, Victim Tampering, and Attempted Violation of Condition of Release) after Defendant allegedly engaged in new criminal conduct on September 26, 2023. While the September 26, 2023, charges may be 'closely related factually' to the September 22, 2023, charges, they are distinct offenses for which Defendant's Sixth Amendment rights attach separately. *See id*. at 167-68, 173.

> Accordingly, while Mr. White's post-September 22, 2023, investigation violated Defendant's Sixth Amendment rights regarding counts one through five of the Indictment, it did not violate Defendant's rights regarding counts six through ten of the Indictment. Defendant's right to counsel had not yet attached for those distinct, new alleged criminal acts uncovered by Mr. White. Therefore, the Sixth Amendment does not require the exclusion of statements Defendant made on September 26, 2023, which may constitute Victim Tampering, Witness Tampering, or Attempted Violation of Condition of Release.
> (Sup. Order (Jan 15, 2025) at 12-13).

The Fifth Amendment establishes that no person "shall be compelled in any criminal case to be a witness against himself . . . ." U.S. Const. amend. V.[27] "The privilege against self-incrimination guaranteed by the Fifth Amendment is a fundamental trial right of criminal defendants." United States v. Verdugo-Urquidez, 494 U.S. 259, 264, 110 S. Ct. 1056, 1060, L. Ed. 2d 222, 232 (1990) (citation omitted). Statements, elicited from "confidential informants, can violate the Fifth Amendment if they 'rise to the level of compulsion or coercion' or are not voluntary." United States v. Williamson, 447 F. App'x 446, 449 (4th Cir. 2011) (unpublished)(citing Illinois v. Perkins, 496 U.S. 292, 297, 110 S. Ct. 2394, 2398, 110 L. Ed. 2d 243, 251 (1990)). A "confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise." Wan v. United States, 266 U.S. 1, 14-15, 45 S. Ct. 1, 4-5, 69 L. Ed. 131 (1924)(citation omitted).

[27] The Maine Constitution coextensive counterpart is Article 1, Section 6. State v. Lovejoy, 2014 ME 48, ¶ 18, 89 A.3d 1066, 1072 (Me. 2014).

> requires suppression of statements made when the State intentionally creates a situation likely to induce a defendant to make incriminating statements without the assistance of counsel. United States v. Henry, 447 U.S. 264, 274, 100 S. Ct. 2183, 2189, 65 L. Ed. 2d 115, 125 (1980); see Brewer v. Williams 430 U.S. 387, 400-01, 97 S. Ct. 1232, 1240-41, 51 L. Ed. 2d 424, 437-38 (1977) Massiah v. United States, 377 U.S. 201, 206, 84 S. Ct. 1199, 1203, 12 L. Ed. 2d 246, 250 (1964)."[28]
> State v. White, 460 A.2d 1017, 1020-1021 (Me. 1983).

Moreover, "'By its very terms, [the Sixth Amendment] becomes applicable only when the government's role shifts from investigation to accusation.'" Moran v. Burbine, 475 U.S. 412, 430, 106 S. Ct. 1135, 1146, 89 L. Ed. 2d 410, 427 (1986)

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[28]The Supreme Court has stated that "[i]t is undisputed that Henry was unaware of Nichols' role as a Government informant. . . . An accused speaking to a known Government agent is typically aware that his statements may be used against him. The adversary positions at that stage are well established; the parties are then 'arm's-length' adversaries. . . . When the accused is in the company of a fellow inmate who is acting by prearrangement as a Government agent, the same cannot be said. Conversation stimulated in such circumstances may elicit information that an accused would not intentionally reveal to persons known to be Government agents. Indeed, the Massiah Court noted that if the Sixth Amendment 'is to have any efficacy it must apply to indirect and surreptitious interrogations as well as those conducted in the jailhouse.' The Court pointedly observed that Massiah was more seriously imposed upon because he did not know that his codefendant was a Government agent. 377 U.S., at 206. . . . Moreover, the concept of a knowing and voluntary waiver of Sixth Amendment rights does not apply in the context of communications with an undisclosed undercover informant acting for the Government. See Johnson v. Zerbst, 304 U.S. 458 (1938). In that setting, Henry, being unaware that Nichols was a Government agent expressly commissioned to secure evidence, cannot be held to have waived his right to the assistance of counsel." United States v. Henry, 447 U.S. 264, 272-273, 100 S. Ct. 2183, 2188, 65 L. Ed. 2d 115, 123-124 (1980).

(citations omitted).[29] The Sixth Amendment's right to counsel includes an "affirmative obligation [for the State] not to act in a manner that circumvents the protections accorded the accused by invoking this right." Maine v. Moulton, 474 U.S. 159, 176, 106 S. Ct. 477, 487, 88 L. Ed. 2d 481, 497 (1985). A Defendant is

> denied the basic protections of th[is] guarantee when there was used against him at his trial evidence of his own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel. . . . 'if such a rule is to have any efficacy it must apply to indirect and surreptitious interrogations as well as those conducted in the jailhouse. In this case, Massiah was more seriously imposed upon . . . because he did not even know that he was under interrogation by a government agent.' Massiah v. United States, 377 U.S. 201, 206, 84 S. Ct. 1199, 1203, L. Ed. 2d 246, 250 (1964)(citation omitted).

"The protections of [the Fifth and Sixth] Amendments do not extend to a defendant's incriminating statement made to a private individual unless that individual is acting on behalf of the government or the statement results from police subterfuge or intimidation." State v. Joubert, 603 A.2d 861, 865 (Me. 1992) (citations omitted); see also State v. York, 1997 ME 156, ¶ 9, 705 A.2d 692, 695

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[29] The U. S. Supreme Court has additionally noted that "[w]hatever else it may mean, the right to counsel granted by the Sixth and Fourteenth Amendments means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him- 'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.'" Brewer v. Williams, 430 U.S. 387, 398-399, 97 S. Ct. 1232, 1239, 51 L. Ed. 2d 424, 436 (1977). "[T]he clear rule of Massiah is that once adversary proceedings have commenced against an individual, he has a right to legal representation when the government interrogates him. " Brewer v. Williams, 430 U.S. 387, 402, 97 S. Ct. 1232, 1241, 51 L. Ed. 2d 424, 438 (1977).

(Me. 1997)("York's right to counsel was violated when the State used the recorded information at the trial to impeach his testimony.")

This Court has also stated that

> pursuant to the reasoning in Cobb and Blockburger, a defendant's Sixth Amendment right to counsel from a prior prosecution attaches to an ensuing prosecution only if (1) the same 'act or transaction' gave rise to the two prosecutions and (2) the facts the State must prove to carry its burden in the second prosecution are included among those it needed to prove to carry its burden in the first. State v. Babb, 2014 ME 129, ¶ 14, 104 A.3d 878, 882 (Me. 2014).

The trial court should have suppressed all of the recordings made by Mr. White from the time of his arrest. First, the recording violated the Fifth Amendment as the statements were elicited from a confidential informant and the result of compulsion. Second, use of the recordings violated the Sixth Amendment. The recordings happened after formal proceedings had been initiated against Mr. Cates and the purpose of Mr. White in continuing to record Mr. Cates was to gather incrimination evidence pertaining to the sex charges. (Sup. H. T. at 20-21, 35-36). It was only after he spoke to law enforcement that he was made aware that the recording might be useful in establishing additional tampering charges. Id. As such, the same 'act or transaction' gave rise to the two prosecutions. State v. Babb, 2014 ME 129, ¶ 14, 104 A.3d 878, 882 (Me. 2014). Moreover, all charges were merged into the same indictment with the intent to try all the charges together because they arose out of the same events. Additionally, the fact that Mr. Cates was charged with the sex crimes was an essential element in establishing that he had engaged in

victim or witness tampering. An element under both Title 17-A M.R.S. § 454(1-B)(A)(1) and under Title 17-A M.R.S. § 454(1)(A)(2) is that a defendant believes that "an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted." Without the original five counts in the indictment none of the additional charges would have existed, as the tampering and violation of conditions of release charges were wholly dependent on the existence of the sex crime charges. Given the unmistakable intertwining of charges, it is a violation of Mr. Cates' Sixth Amendment rights to allow the recordings made by Mr. White into evidence.

Conclusion

For the above-reasons, the Appellant asks this Court vacate his convictions and remand his case to the Somerset County Courts for further proceedings.

Dated: October 31, 2025

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Certificate of Service

I, Jeremy Pratt, Esquire, hereby certify that on this date I sent by electronic mail one copy of the foregoing Brief of Appellant, later to be followed by one printed copy, via the U. S. Postal service, to, Timothy Allan Snyder II, Esq., Office of the District Attorney, 41 Court Street, Skowhegan, ME 04976.

Dated: October 31, 2025

_____/s/ Jeremy Pratt_____
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