SUPREME JUDICIAL COURT
Sitting as the Law Court
Law Court Docket Number: SOM-25-334

STATE OF MAINE

v.

CHRISTOPHER CATES

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

Brief for Appellee – The State of Maine

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PROCEDURAL HISTORY

On September 22, 2023, the State charged the Appellant, Christopher Cates (hereinafter "Appellant"), on a criminal complaint with the following: Unlawful Sexual Contact (Class B) (17-A M.R.S. § 255-A(1)(E-1)); Visual Sexual Aggression Against a Child (Class C) (17-A M.R.S. § 256(1)(B)); Unlawful Sexual Touching (Class D) (17-A M.R.S. § 260(1)(C)); and Indecent Conduct (Class E) (17-A M.R.S. § 854(1)(A)(2)). Bail was initially set at $25,000 cash bail with numerous special conditions. (A. 3.) On September 29, 2025, the State filed a Motion to Revoke Bail, alleging the Appellant had violated the terms of his bail. (A. 4.). On October 2, 2023, the court revoked the Appellant's bail and held him without bail. (A. 5.).

On February 8, 2024, the Somerset County Grand Jury returned a True Bill formally charging the Appellant. (A. 7.) The charges included Unlawful Sexual Contact (Class B) (17-A M.R.S. § 255-A(1)(E-1)), Unlawful Sexual Contact (Class C) (17-A M.R.S. § 255-A(1)(E), Visual Sexual Aggression Against a Child (Class C) (17-A M.R.S. § 256(1)(B)), Unlawful Sexual Touching (Class D) (17-A M.R.S. § 260(1)(C)), Indecent Conduct (Class E) (17-A M.R.S. § 854(1)(A)(2)), Tampering with a Victim (Class B) (17-A M.R.S. § 454(1-B)(A)(1)), Tampering with a Witness or Informant (Class C) (17-A M.R.S. § 454(1)(A)(2)), and 3 counts of Attempted Violation Condition of Release (Class D) (17-A M.R.S. § 152(1)(D), 15 M.R.S. §

1092(1)(B)). (A. 7.) The Appellant entered pleas of Not Guilty on the True Bill on April 9, 2024. (A. 9.)

On April 26, 2024, the State filed a Motion in Limine: Other Acts Evidence. (A. 9.). A hearing was held on the motion on November 19, 2024. (A. 10.) The trial court denied the State's Motion in Limine: Other Acts Evidence on November 26, 2024. (A. 10.)

On December 31, 2024, the Appellant filed a Motion for a Bill of Particulars. (A. 11.). On January 15, 2024, the court denied the Appellant's motion for a Bill of Particulars. (A. 12.)

On January 6, 2025, the Appellant filed a Motion to Suppress (A. 11.). The court held a hearing on this motion on January 9, 2024. (A. 11.) On January 15, 2025, the trial court issued a motion to suppress order. (A. 12.) In its order, the trial court denied suppressing "statements made by Defendant to Mr. White before the State charged Defendant on September 22, 2023." (A. 42.) The trial court found these statements were voluntary and not obtained in violation of the Fifth or Fourteenth Amendment. (A. 33-37.) The trial court, however, suppressed "all statements made by Defendant to Mr. White from September 22, 2023, onwards relating specifically to Defendant's alleged unlawful conduct at the Moscow campground. (A. 42.) The trial court ruled that these statements were not admissible because they were obtained in violation of the Sixth Amendment. (A. 39-41.)

Finally, the trial court denied suppressing "statements which may form the basis for the new criminal charges of Victim Tampering, Witness Tampering, and Attempted Violation of Condition of Release." (A. 42). The trial court determined that the Sixth Amendment was "offense specific" and did not protect these statements. (A. 41.)

A jury trial related to Counts 1, 2, 3, 4, and 5 began on January 21, 2025. (A. 13.) The jury returned a verdict on January 23, 2025, and found the Appellant guilty of Counts 1, 2, 3, 4, and 5. (A. 13.)

Counts 6, 7, 8, 9, and 10 were presented to the court during a bench trial on January 23, 2025. (A. 13.) On April 28, 2025, the trial court found the Defendant guilty of counts 6 and 7 but dismissed counts 8, 9, and 10 of the Indictment because of insufficient charging language. (A. 17.)

A contested sentencing hearing was held on June 30, 2025. (A. 19.) The Court rendered a sentence of 10 years on Count One; a sentence of 5 years on Count Two, which was ordered to run consecutively to Count One; a sentence of 5 years on Count Three, which was order to run concurrently to Count One; a sentence of 364 days on Count 4, which was order to run concurrently to Count One; a sentence of 180 days on Count Five, which was order to run concurrently to Count One; a sentence of 8 years on Count 6, which was order to run consecutively to Counts One and Two; and a sentence of 4 years all suspended with 3 years of probation on Count 7, which

was order to run consecutively to Counts One, Two, and Six. (A. 21-23.) Appellant timely filed a Notice of Appeal on June 30, 2025. (A. 23.)

STATEMENT OF FACTS

A. Trial Facts

On June 30, 2023, Jason and H.B. went camping in Moscow, Maine. (1Tr. 81.) They brough their three children, including nine-year-old Victim 2 and 12-year-old Victim 1. (1Tr. 81.) Family friends Christopher White and Joanna Melody were also present. (1Tr. 81.) At the time, the B. family was aware that Christopher White was a convicted sex offender. (1Tr. 80.)

When the B. family and their friends arrived at the campground, the Appellant was unexpectedly there. (1Tr. 83.) Initially, the Appellant was helping get the campground setup. (1Tr. 84.) Soon, however, the Appellant became interested in Victim 2 and Victim 1 and started exploring the area with them. (1Tr. 85.) While the Appellant was alone with Victim 2, the Appellant exposed his penis to her. (State's Exhibit 1.)

Later that same day, the Appellant offered to give Victim 1 a ride on his motorcycle. (1Tr. 87.) Victim 1 and her parents agreed to a quick ride. (1Tr. 88.) The Appellant then left the campground with Victim 1 and did not come back for approximately 90 minutes. (1Tr. 88.) While on the motorcycle, the Appellant placed Victim 1's hand on his penis and kept it there. (1Tr. 125.) He then stopped the ride near a lake and suggested that Victim 1 do a "photo shoot." (1Tr. 126.) Victim 1 was uncomfortable as the Appellant took photos of her. (1Tr. 126.) At another point

during their outing, the Appellant stopped his motorcycle near some windmills. (2Tr. 127.) Claiming he needed to urinate, the Appellant exposed his penis to Victim 1. (2Tr. 127.) Soon after, the Appellant and Victim 1 returned to the Moscow campground. (2Tr. 128.) Victim 1 did not tell anyone what happened because she did not want to ruin the trip. (2Tr. 128.) Later that night, the Appellant left to go home. (1Tr. 90.)

At 7 a.m. the next morning, the Appellant was back at the campground on his motorcycle. (1Tr. 92.) Everybody present eventually woke up and plans were made to go ATV riding. (1Tr. 94.) The Appellant joined. (1Tr. 94.) However, instead of taking an ATV, the Appellant rode his motorcycle through the woods. (1Tr. 94.) While out, the Appellant offered to give Victim 2 a ride on his motorcycle. (1Tr. 94.) H.B. told the Appellant "no." (1Tr. 94.)

When they got back to camp, J.B. Other Child, Victim 1, and Heather's young son left and drove to town. (1Tr. 96.) H.B. Joanna Melody, and Victim 2 remained at camp with the Appellant. (1Tr. 96.) Shortly thereafter, the Appellant's wife, Crystal Cates, arrived. (1Tr. 97.) The Appellant asked Heather if Victim 2 could go on a quick ATV ride with the Appellant. (1Tr. 97.) Heather agreed. (1Tr. 97.) The Appellant then disappeared with Victim 2 for about two hours. (1Tr. 97.)

During the ride, the Defendant placed his hand inside Victim 2's underwear and rubbed her vagina. (2Tr. 7.) He also placed her hand on his penis. (State's Exhibit 1.) The Appellant and Victim 2 then returned to the campground. (2Tr. 59.) By this point, Victim 2 was shaking and had tears in her eyes. (1Tr. 98.) Victim 2 then told her mother, H.B. that she was just sexually assaulted. (1Tr. 99.) Joanna Melody confronted the Appellant. (2Tr. 61.) The Appellant then pretended to faint. (2Tr. 61.) Crystal Cates loaded the Appellant into their vehicle and immediately drove off. (2Tr. 62.)

Detective Jeremy Leal was assigned to investigate. (2Tr. 120.) On July 11, 2023, Detective Leal contacted Christopher White, who was friends with the Appellant. (2Tr. 122.) Leal believed White was in a unique position to record conversations with the Appellant about what happened at the campground. (2Tr. 123.) White agreed to assist with the investigation. (2Tr. 123.)

Between July 11, 2023, and September 22, 2023, White recorded a series of conversations he had with the Appellant. (2Tr. 126; State's Exhibit 3.) Throughout the conversations, the Appellant made incriminating statements. (State's Exhibit 3.)

On September 22, 2023, the State charged the Appellant with Unlawful Sexual Contact, Visual Sexual Aggression of a Child, Unlawful Sexual Touching, and Indecent Conduct related to the events that occurred on June 30th and July 1st,

2023. (A. 3.) On September 24, 2023, the Appellant was released from custody on $25,000 cash bail with conditions that he have no contact with H.B. Victim 2, Victim 1, or any other immediate family members. (3Tr. 13.) (A. 3.)

After his release, the Appellant contacted Christopher White and asked to meet up. (3Tr. 15.) White did so and recorded his interactions with the Appellant. (3Tr. 6.) During these interactions, the Appellant asked Mr. White to speak with H.B. to let her know that she could lose her kids if she testified in the Appellant's trial. (3Tr. 7.) Despite the Appellant's request, Mr. White did not relay the message to H.B. (3Tr. 8.)

The Appellant also asked Mr. White to speak with Victim 2 and relay the Appellant's version of events to Victim 2. (3Tr. 7.) The Appellant believed that Victim 2 was young and impressionable. He also believed that if Mr. White provided Victim 2 with the Appellant's version of events that Victim 2 would relay the Appellant's version of events, not what occurred. (3Tr. 7.) Despite the Appellant's request, Mr. White did not relay the message to Victim 2. (3Tr. 8.)

ISSUES PRESENTED

I. Whether the trial court was justified in not providing the jury with a specific unanimity instruction.

II. Whether the State committed no prosecutorial error in opening argument and when eliciting testimony from Joanna Melody.

III. Whether there was sufficient evidence to support the Appellant's convictions for Tampering, Unlawful Sexual Contact, Unlawful Sexual Touching, Visual Sexual Aggression Against a Child, and Indecent Conduct

IV. Whether the trial court correctly ruled that the Appellant's statements were admissible evidence.

SUMMARY OF ARGUMENT

I. This Court should deny the appeal because the trial court did not commit obvious error by not giving a specific unanimity jury instruction. A specific unanimity instruction was not necessary because the evidence did not establish multiple instances of the same charged conduct. Rather, the State charged the Defendant with one count for each distinct offense. But even if this Court finds that a specific unanimity instruction was required, it should uphold the conviction because the Appellant's substantial rights were not violated.

II. This Court should deny the appeal because there was no prosecutorial error. The prosecution did not allege in its opening statement that the Appellant was a sex offender. Further, Ms. Melody's statement was not suggestive of the Appellant being a sex offender.

III. This Court should deny the appeal because there was sufficient evidence to support each convicted charge.

IV. The trial court did not err in its suppression ruling by allowing Mr. White's recordings of the Appellant into evidence during the bench trial. The trial court's suppression ruling was correct because admission of the recordings did not violate the Fifth Amendment as the Appellant's statements were voluntary and not made due to compulsion. Admission of the recordings

also did not violate the Sixth Amendment because the Appellant was committing new criminal offenses for which he had no Sixth Amendment rights.

ARGUMENT

I. The trial court did not commit obvious error by not giving a specific unanimity jury instruction.

This Court should find the trial court did not commit an obvious error by not giving a specific unanimity instruction. Such instruction was not necessary in this case because the evidence did not establish multiple instances of the same charged conduct. Rather, the State charged the Defendant with one count for each distinct offense.

When there is no raised objection to jury instructions, this Court reviews the instructions for "obvious error," that is, "highly prejudicial error tending to produce manifest injustice." *State v. Baker*, 2015 ME 39, ¶ 11, 114 A.3d 214, 218. To show obvious error, "there must be (1) an error, (2) that is plain, and (3) that affects substantial rights." *State v. Gervais*, 2025 ME 27, ¶ 20, 334 A.3d 645, 652. If those conditions are met, this Court will "exercise [its] discretion to notice an unpreserved error only if [it] also conclude[s] that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id*. "[A]n error is plain when the trial court is derelict in countenancing it, even absent the defendant's timely assistance in detecting it." *Id*. "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." *State v. Schooley*, 2025 ME 84, ¶ 26, 345 A.3d 78, 87.

This Court reviews "reviews jury instructions as a whole for prejudicial error, and to ensure that they informed the jury correctly and fairly in all necessary respects of the governing law." *State v. Russell*, 2023 ME 64, ¶ 15, 303 A.3d 640, 645. The Maine Constitution states that when a jury delivers a criminal verdict "[u]nanimity … shall be held indispensable." Me. Const. art. 1, § 7. "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." *State v. Russell*, 2023 ME 64, ¶ 25, 303 A.3d 640, 647. "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." *Id*.

"[T]he specific unanimity requirement does not mean that the jurors must agree on every detail of the State's proof." *State v. Schooley*, 2025 ME 84, ¶ 23, 345 A.3d 78, 86. The rule "does not require that each bit of evidence be unanimously credited or entirely discarded, but it does require unanimous agreement as to the nature of the defendant's violation, not simply the fact that a violation has occurred." *McKoy v. North Carolina*, 494 U.S. 433, 449, 110 S.Ct. 1227 (1990). In cases that involve child sexual abuse, "the State is not required to present specific evidence of separate and discrete incidents of abuse for the jury to convict a defendant of every charged offense, so long as the jury is properly instructed on specific unanimity."

State v. Reynolds, 2018 ME 124, ¶ 21, 193 A.3d 168. "The particular details surrounding a child molestation charge are not elements of the offense and are unnecessary to sustain a conviction." *State v. Schooley*, 2025 ME 84, ¶ 24, 345 A.3d 78, 86-87.

In *State v. Schooley*, this Court upheld the defendant's conviction despite the trial court committing error by not providing a specific unanimity instruction. 2025 ME 84, ¶ 31, 345 A.3d 78, 89. In *Schooley*, the State charged the defendant with a single count of Gross Sexual Assault that occurred "on or between January 1, 2020 and July 16, 2022." *Schooley*, 2025 ME 84, ¶ 25. During trial, "the victim gave generic testimony about many instances of Schooley engaging in sexual acts with her during the two and a half years covered in the indictment and also testified to three instances as to which she described particular details." *Schooley*, 2025 ME 84, ¶ 25. "The prosecution's direct evidence consisted solely of the victim's testimony about multiple incidents of similar sexual acts by Schooley, with no corroborating evidence." *Schooley*, 2025 ME 84, ¶ 27. At the conclusion of trial, the trial court did not provide a specific unanimity instruction. Despite that, this Court upheld the conviction, finding (1) no reasonable probability "that the jury found the victim's testimony credible as to some of Schooley's sexual assaults but not others" and (2) that the lack of a specific unanimity instruction did not affect Schooley's substantial rights. *Schooley*, 2025 ME 84, ¶ 31.

Here, this Court should find there were not "multiple instances" of the same charged conduct. In relation to **Count One**, Victim 2 testified that she was alone with the Appellant during an ATV ride. During this ride, the Appellant placed his hand in her underwear and rubbed her vagina. She also testified that the Appellant had Victim 2 touch his genitals. Victim 2's statements did not describe "multiple instances." Instead, she described numerous details that all occurred within the same single event. This is similar to an individual who has been punched five times in a row. Or a sexual abuse victim who is penetrated and penetrated and penetrated again. A specific unanimity instruction is not required under such circumstances because each example describes one criminal event, albeit with numerous actions and details.

In relation to **Count Two**, Victim 1 testified that she went on a single motorcycle ride with the Appellant. During that ride, Victim 1 testified that the Appellant placed Victim 1's hand on his penis. Victim 1 did not describe any other action that would have constituted the crime of Unlawful Sexual Contact. Thus, a specific unanimity instruction was not required for that count.

In relation to **Count Three**, Victim 2 stated that the Appellant exposed his genital to her while they were collecting bottles in the woods. Victim 2 did not describe any other event in which the Appellant's genitals were visually exposed to her. Thus, this Court should find that no specific unanimity instruction was required for Count Three.

In relation to **Count Four**, Victim 2 testified that the Appellant touched her butt during their single ATV ride. No other evidence was presented that the Appellant touched Victim 2's "breasts, buttocks, groin or inner thigh." Because there was only one description of the crime that stemmed from a single event, this Court should find that no specific unanimity instruction was required for Count Four.

In relation to **Count Five**, Victim 1 testified that the Appellant exposed his penis to her while they were near windmills. Victim 1 did not describe any other event in which the Appellant exposed his penis to her. Because this was the only testimony supporting Count Five, and because the testimony described a single event, this Court should find that a specific unanimity instruction was not required.

Finally, even if this Court finds that a specific unanimity instruction was required, it should uphold the conviction because the Appellant's substantial rights were not violated. Both Victim 2 and Victim 1 were subjected to largely uncorroborated sexual abuse. There was no DNA evidence, no eyewitness, and no confession. Rather, the record shows that the jury found both girls credible, like the victim in *Schooley*. Because it is not "reasonably probable" that the lack of a specific unanimity affected the outcome of the proceedings, this Court should uphold the Appellant's conviction.

II. The State did not commit prosecutorial error because the prosecutor did not allude to the Appellant's status as a sex offender nor elicit testimony suggestive of that fact

This Court should find there was no prosecutorial error. First, the prosecution did not allege in its opening statement that the Appellant was a sex offender. Second, Ms. Melody's statement was not suggestive of the Appellant being a sex offender. For these reasons, this Court should deny the Appellant's claim that he did not receive a fair trial.

"[W]hen a defendant has not objected to statements made by the prosecutor at trial, and subsequently asserts on appeal that those statements constituted prosecutorial misconduct that deprived her of a fair trial, we review for obvious error." *State v. Dolloff*, 2012 ME 130, ¶ 35, 58 A.3d 1032, 1043. "To demonstrate obvious error, the defendant must show that there is (1) an error, (2) that is plain, and (3) that affects substantial rights." *Id*. "Even if these three conditions are met, we will set aside a jury's verdict only if we conclude that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings." *Id*.

For unpreserved allegations of misconduct, the Appellant bears the "burden of demonstrating error." *Id.* ¶ 36. "An error is plain if the error is so clear under current law that the trial judge and prosecutor were derelict in countenancing it, even absent the defendant's timely assistance in detecting it." *Id*. "An error affects a

criminal defendant's substantial rights if the error was sufficiently prejudicial to have affected the outcome of the proceeding." *Id.* ¶ 37.

An Appellant's burden to demonstrate sufficient prejudice in relation to unpreserved prosecutorial error is "significant." *Id.* ¶ 38. "When a prosecutor's statement is not sufficient to draw an objection, particularly when viewed in the overall context of the trial, the statement will rarely be found to have created a reasonable probability that it affected the outcome of the proceeding." *Id.*

Here, the prosecution did not allege that the Appellant was a sex offender in its opening statement. The Appellant points to the following from the opening statement:

> 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. (1Tr. 75.) (emphasis added).

The above statement shows that the prosecution committed no error. The prosecutor clearly stated that Christopher White, a key witness, was a convicted sex offender. This was no secret and was a central issue in the case. Because the prosecutor committed no error in his opening statement, this Court should find that the Appellant was not deprived of a fair trial.

The Appellant also claimed that there was error with Ms. Melody's statement: "Oh, no, not again." (2Tr. 61.) In his brief, the Appellant claimed that this was a reference to the Appellant's sexual abuse history. The Appellant, however, failed to mention that directly after Ms. Meldoy's aforementioned statement she testified that the Appellant "proceeded to make like he was fainting." (2Tr. 61). This Court should find that there was no error because Ms. Melody's testimony that the Appellant stated "oh, no, not again" was in reference to him fainting, a fair observation for testimony. Because the Appellant has failed to establish any prosecutorial error in this case, this Court should deny his appeal.

III. There is sufficient evidence to support the Appellant's convictions for Tampering, Unlawful Sexual Contact, Unlawful Sexual Touching, Visual Sexual Aggression Against a Child, and Indecent Conduct

This Court should deny the appeal because there was sufficient evidence to support each convicted charge. When criminal defendants challenge "the sufficiency of the evidence to support the finding of guilt, we view the evidence in the light most favorable to the State to determine whether the fact-finder could rationally find every element of the offense beyond a reasonable doubt." *State v. Haag*, 2012 ME 94, ¶ 17, 48 A.3d 207, 210. "As thee fact-finder, the jury is permitted to draw all reasonable inferences from the evidence presented at trial." *Id*. "We will reverse a jury verdict only where no tried of fact rationally could find proof of guilt beyond a reasonable doubt." *Id*.

In relation to **Tampering with a Victim**, Christopher White testified that White had conversations with the Appellant about Victim 2. According to White, during those conversations, the Appellant wanted White to "give [the Appellant's] description of what happened to Victim 2" because it was the Appellant's "belief that at Victim 2's age, that she was young and impressionable." (3Tr. 7.) Thus, "it would make her relay [the Appellant's] version and not what actually took place." (3Tr. 7.) To corroborate White's testimony, the prosecution also admitted recordings of the conversations between White and the Appellant. (3Tr. 23.) The aforementioned evidence was sufficient to support the Appellant's conviction because it shows that the Appellant was attempting to have Christopher White undermine the memory of Victim 2. Thus, this Court should deny his appeal.

In relation to **Tampering with a Witness**, Christopher White testified that White had conversations with the Appellant about H.B. the mother of the victims. According to White, during those conversations, the Appellant "wanted it known that if [the case] went to trial that she could be endangering her kids and/or could lose her kids, because allowing her kids around him." (3Tr. 7.) To corroborate White's testimony, the prosecution also admitted recordings of the conversations between White and the Appellant. (3Tr. 23.) The aforementioned evidence was sufficient to support the Appellant's conviction because it shows that the Appellant

was attempting to have Christopher White scare H.B. into not testifying. Thus, this Court should deny his appeal.

In relation to **Unlawful Sexual Contact**, Victim 2 testified that she was alone with the Appellant during an ATV ride. During this ride, Victim 2 stated that the Appellant placed his hand in her underwear and rubbed her vagina. She also stated that the Appellant that the Appellant had Victim 2 touch his genitals. This testimonial evidence is sufficient to support the Appellant's conviction. This, this Court should deny his appeal.

In relation to **Unlawful Sexual Touching**, Victim 1 testified that she went on a single motorcycle ride with the Appellant. During that ride, Victim 1 testified that the Appellant placed her hand on his penis. This testimonial evidence is sufficient to support the Appellant's conviction. This, this Court should deny his appeal.

In relation to **Visual Sexual Aggression Against a Child,** Victim 2 stated that the Appellant exposed his genital to her while they were collecting bottles in the woods. This testimonial evidence is sufficient to support the Appellant's conviction. This, this Court should deny his appeal.

In relation to **Indecent Conduct**, Victim 1 testified that the Appellant exposed his penis to her while they were near windmills. This testimonial evidence

is sufficient to support the Appellant's conviction. This, this Court should deny his appeal.

IV. The trial court did not err in its suppression ruling by allowing Mr. White's recordings of the Appellant into evidence

The trial court did not err in its suppression ruling by allowing Mr. White's recordings of the Appellant into evidence during the bench trial. The trial court's suppression ruling was correct because admission of the recordings did not violate the Fifth Amendment as the Appellant's statements were voluntary and not made due to compulsion. Admission of the recordings also did not violate the Sixth Amendment because the Appellant was committing new criminal offenses for which he had no Sixth Amendment rights. For these reasons, this Court should deny the appeal.

A. The trial court's suppression ruling did not violate the Appellant's Fifth Amendment rights

This Court ordinarily reviews "the denial of a motion to suppress for clear error as to factual issues and de novo as to issues of law." *State v. Ames*, 2017 ME 27, ¶ 11, 155 A.3d 881, 884-885. "When a ruling on a motion to suppress is based primarily on undisputed facts, it is viewed as a legal conclusion that is reviewed de novo." *Id*. "We will uphold the court's denial of a motion to suppress is any reasonable view of the evidence support's the trial court's decision." *Id*.

The Fifth Amendment of the United States Constitution establishes that no person "shall be compelled in any criminal case to be a witness against himself …" "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 (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 (1924).

To determine if an individual's statements were voluntary, this Court should consider the totality of the circumstances, including "the details of the interrogation; duration of the interrogation; whether the interrogation was custodial; the recitation of Miranda warnings; the number of officers involved; the persistence of the officers; police trickery; threats, promises or inducements made to the defendant; and the defendant's age, physical and mental health, emotional stability, and conduct." *State v. Athayde*, 2022 ME 41, ¶ 30, 277 A.3d 387. A defendant's statements are voluntary if they are "the product of free will and intellect and untainted by pressure, either external or internal." *Id*. ¶ 28.

Here, the Appellant claims that his statements to Christopher White were a result of compulsion. However, the Appellant provides no further argument or

support in the record for his assertion. Presumably, this is because there is no evidentiary support for the assertion. The Appellee agrees with this notion.

On the other hand, there is a great deal of evidence to establish that the Appellant's statements were voluntary. The trial court determined that the issue of voluntariness was not a "close case," finding that the conversations were "congenial," that the conversations were short, that the conversations were not antagonistic, that there were no threats or promises, that the conversation "occurred at environments familiar to Mr. White and [the Appellant]," and that the Appellant appeared "calm and comfortable" during the conversations. (A. 34-35.) The trial court's findings were not in "clear error." For these reasons, this Court should find the Appellant's statements were not the result of compulsion.

B. The trial court did not err in its suppression ruling because the admitted recordings were not made in violation of the Appellant's Sixth Amendment rights

The trial court did not err in its suppression ruling because the admitted statements were not made in violation of the Appellant's Sixth Amendment rights. In the admitted statements, the Appellant committed the new crimes of Victim Tampering and Witness Tampering. Because Sixth Amendment rights are "offense specific," the statements – which formed the basis of new, uncharged crimes – were not obtained or admitted in violation of the Sixth Amendment. Thus, this Court should deny the appeal.

The Sixth Amendment of the United States Constitution establishes that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." If a person is not yet charged with a crime, his Sixth Amendment rights are "not triggered." *State v. Pettingill*, 611 A.2d 88, 90 (1992).

The Sixth Amendment right to counsel is "offense specific" and "cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced ..." *Texas v. Cobb*, 532 U.S. 162, 167-68, 121 S.Ct. 1335, 1340 (2001). 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." *Id*. Pursuant to *Cobb* and *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180 (1932), there is a two-part test, often referred to as the *Blockburger test*, to determine whether the "right to counsel from a prior prosecution attaches to an ensuing prosecution." *State v. Babb*, 2014 ME 129, ¶ 14, 103 A.3d 878, 882. First, "the same act or transaction" must give "rise to the two prosecutions." *Id*. Second, "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." *Id*.

Here, the trial court properly excluded all the Appellant's statements related to his "alleged unlawful conduct at the Moscow campground" made after the

Appellant was charged by the State on September 22, 2023. (A. 42.) The trial court also properly ruled that statements that formed "the basis for the new criminal charges of Victim Tampering [and] Witness Tampering" were admissible. (A. 42.) The trial court's ruling was correct because the Appellant's admitted statements were not the "same act or transaction" as the unlawful sexual activity that occurred at the Moscow campground. Further, as shown in this case, the State did not need any of the Appellant's admitted statements to "carry its burden" of proving the unlawful sexual activity that occurred at the Moscow campground. For these reasons, this Court should deny the appeal.

CONCLUSION

For the reasons detailed above, it is requested that this Court find (1) that the trial court did not commit obvious error by not giving a specific unanimity instruction; (2) that there was no prosecutorial error; (3) that there was sufficient evidence to support each convicted charge; and (4) that the trial court did not err in its suppression ruling by allowing Mr. White's recordings of the Appellant into evidence during the bench trial.

Date: 12/18/2025 Respectfully Submitted,

/s/ Tim Snyder

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CERTIFICATE OF SERVICE

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

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

Dated: 12/18/2025

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