

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
Sitting as the Law Court

Law Court Docket Number: KEN-25-458

STATE OF MAINE

v.

CHAD T. MCDOUGAL

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

Brief for Appellee – The State of Maine

Maeghan Maloney
District Attorney
Bar Number: 8792
Prosecutorial District IV

Shannon Flaherty
Assistant District Attorney
Bar Number: 6188

Attorneys for the State
Kennebec County District Attorney's Office
95 State Street
Augusta, Maine 04330

TABLE OF CONTENTS

Table of Cases and Other Authorities	2
Statement of the Case	5
a. Procedural History	5
b. Statement of Facts	6
Issues Presented	13
Argument	14
I. The holding in <i>State v. James</i> regarding confrontation rights in probation revocation hearings is not unconstitutional	14
II. The District Court did not err when it admitted reliable hearsay statements pursuant to the guidelines in <i>State v. James</i>	21
a. <u>State’s Exhibit 2: K.G.’s statement dated February 6, 2025</u> .	22
b. <u>State’s Exhibit 3: K.G.’s statement dated May 6, 2025</u> .	25
c. <u>State’s Exhibit 5: Maine Health Records</u>	26
Conclusion	28
Certificate of Service	30

TABLE OF CASES AND OTHER AUTHORITIES

U.S. Supreme Court Cases

<i>Crawford v. Washington</i> , 541 U.S. 36 (2004)	14
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973)	16
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972)	15

Federal Circuit Cases

<i>United States v. Aspinall</i> , 389 F.3d 332 (2nd Cir.2004)	14
<i>Ash v. Reilly</i> , 431 F.3d 826 (D.C.Cir.2005)	15
<i>Curtis v. Chester</i> , 626 F.3d 540 (10th Cir.2010)	15
<i>Egerstaffer v. Israel</i> , 726 F.2d 1231 (7th Cir.1984)	18
<i>United States v. Ferguson</i> , 752 F.3d 613 (4th Cir.2014)	14
<i>United States v. Hall</i> , 419 F.3d 980 (9th Cir.2005)	15
<i>United States v. Kelley</i> , 446 F.3d 688 (7th Cir.2006)	15
<i>United States v. Kirby</i> , 418 F.3d 621 (6th Cir.2005)	14
<i>United States v. Rondeau</i> , 430 F.3d 44 (1st Cir.2005)	14
<i>United States v. Lloyd</i> , 566 F.3d 341 (3rd Cir.2009)	14
<i>United States v. Ray</i> , 530 F.3d 666 (8th Cir.2008)	15

State Cases

<i>Blanks v. State</i> , 228 Md. App. 335, 137 A.3d 1074 (2016)	14
<i>State v. Caron</i> , 334 A.2d 495 (Me. 1975)	17

<i>State v. Harding</i> , 2024 ME 67, 322 A.3d 1175.	26
<i>Ingerson v. State</i> , 491 A.2d 1176 (Me.1985)	18
<i>State v. James</i> . 2002 ME 86, 797 A.2d 732	18
<i>State v. Labbe</i> , 617 A.2d 1023 (Me.1992)	18
<i>State v. Nobles</i> , 2018 ME 26, 179 A.3d 910)	26
<i>State v. Rameau</i> , 685 A.2d 761 (Me.1996)	18
<i>State v. Rega</i> , 2005 ME 5, 863 A.2d 917	26
Federal Rules of Criminal Procedure	
Fed. R. Crim. P. 32.1	20
Maine Rules of Evidence	
M.R. Evid. 801(d)(1)(B)	22
M.R. Evid. 803(4)	27
Maine Revised Statutes	
16 M.R.S § 357	27

STATEMENT OF THE CASE

Procedural History

On June 8, 2022, the Appellant had his Initial Appearance on charges of Domestic Violence Assault Based on Priors (Class C) and Assault on a Child Under the Age of Six (Class C). (A. 5.) On February 8, 2024, the Appellant plead guilty to Count One as noted above and Count Two was dismissed. (A. 10-11.) The case was continued for sentencing to March 14, 2024. (A. 12.) The Appellant was sentenced to a term of 3 years to the department of corrections, all but ninety (90) days suspended, and was placed on 2 years of probation with several conditions, some of which included that he have no contact with the named victim, K.G., that he participated in a certified batterer's intervention program, and that he not engage in new criminal conduct. (*Id.*)

On February 7, 2025, the Appellant had his Initial Appearance on the first probation revocation motion where he entered a denial. (A. 14.) The Appellant later admitted to that first probation violation motion and was sentenced to thirty (30) days with probation to continue. (A. 15-16.) A second probation revocation motion was filed on March 20, 2025, and the Appellant entered a denial on March 21, 2025. (A. 16-17.) After several continuances, a probation violation hearing was held on September 30, 2025. (A. 23.) The matter was taken under advisement by the District Court (J. Dietrich), and a decision was entered on October 3, 2025, finding that a

probation violation had been committed and sentenced the Appellant to 180 days with probation to continue. (A. 24.) The District Court did not provide any written findings and neither party filed a motion seeking the District Court to do so. (A. 24-28.) A notice of appeal was timely filed on October 6, 2025. (A. 24.)

Statement of Facts

On February 1, 2025, Officer Scott MacMaster of the Gardiner Police Department was called to 83 Winter Street, Apt. 1, Gardiner, Maine for a domestic disturbance. (*See* State's Exhibit 6.) When Officer MacMaster arrived, he spoke to K.G., the named victim associated with this matter, and she indicated she and the Appellant had been arguing that evening over their ex-romantic partners. (*Id.*) K.G. articulated she had asked the Appellant to leave, at some point he took her keys to her motor vehicle, and that caused her to throw his keys out of the house into the snow. (*Id.*) Officer MacMaster began looking for the Appellant and discovered that he was on probation with special conditions not to have contact with K.G. (*Id.*) The Appellant was located later that evening and was arrested for having contact with K.G. in violation of his probation. (*Id.*) As noted above, the Appellant admitted to this probation violation on February 27, 2025. (A. 16.)

On February 6, 2025¹, K.G. provided a statement to the Gardiner Police Department detailing an assault she suffered at the hands of the Appellant on January 31, 2025. (*See* State’s Ex. 2.) Pursuant to that document, K.G. certified that any statement she made was based on “truthful facts and information.” (*Id.* at 1.) In that statement, K.G. outlines she and the Appellant met up to look at a motor vehicle for her due to safety concerns regarding her current car. (*Id.*) After looking at the motor vehicle, K.G. and the Appellant returned to her home, where both K.G.’s mother and children were as well. (*Id.* at 1, 5.) Once they returned to the residence, they began verbally arguing. (*Id.* at 1.) In an effort to avoid a confrontation, K.G. went to sleep. (*Id.*) Around 2:30 A.M., K.G. went through the Appellant’s phone and discovered he was communicating with an ex-romantic partner. (*Id.*) K.G. woke the Appellant up to confront him and things began to escalate. (*Id.*) K.G. articulated that she would try and remove herself from the Appellant, but he would pursue her, using vulgar language, and kept ripping a blanket off her or digging his shins into her. (*Id.* at 1-2.) Additionally, the Appellant would drag her off the bed numerous times and even picked her up by the neck. (*Id.* at 2.) K.G. stated she suffered from rug burns due to how many times the Appellant dragged her off the bed and that her legs were purple. (*Id.*) K.G. outlined that throughout the night the Appellant choked her

¹ In State’s Exhibit 2, the date the statement was signed states “2-6-24.” (*See* State’s Exhibit 2.) Based on the content of the statement, the State asserts this is a typographical error and the correct date of 2025 is depicted in the body of the statement. This is also corroborated by State’s Exhibit 6, a report from Gardiner Police Department, that indicates K.G. provided her written statement on February 6, 2025. (*See* State’s Exhibit 6.)

on and off. (*Id.*) K.G. stated she and the Appellant were generally “fighting” all night, and he even held her down to the point where she had to struggle to get loose. (*Id.* at 1-3.)

K.G. asked the Appellant to leave her home numerous times. (*Id.* at 2.) At one point, K.G. went outside with her children to shovel snow and the Appellant began texting her asking to speak. (*Id.* at 5.) K.G. again instructed the Appellant to leave the residence. (*Id.*) In an effort to get the Appellant to leave her house, she grabbed his items and car keys and threw them outside. (*Id.* at 2-3.)

After throwing his items outside did not work, K.G. admitted she used a surge bar to hit the Appellant in the face. (*Id.* at 3.) After that, the fighting stopped for a period of time and K.G.’s mother asked the Appellant to leave. (*Id.* at 3, 6.) Eventually, K.G. called Gardiner Police. (*Id.* at 3.) During the call, K.G. said the Appellant had spent the night and punched her in the eye. (*See* State’s Ex. 1.) K.G. goes on to say she does not want police involved because she was concerned child protective services (hereinafter “CPS”) would get called, but she did not know what else to do. (*Id.*) The Appellant fled the residence prior to police arrival. (*See* State’s Ex. 2 at 4.) K.G. spoke to the police and again stated she did not want CPS involved, as she stated in the 911 call. (*See* State’s Ex. 6.)

In May of 2025, K.G. reached out to Detective Christian Behr with the District Attorney’s Office and disclosed that the injuries she sustained from January 31, 2025

had worsened. (*See* State’s Ex. 3.) On May 6, 2025, K.G. wrote a supplemental statement, again swearing that the statement being made was “true” and “voluntary.” (*Id.*) In that supplemental statement, K.G. reiterated that the Appellant had been yelling at her, hit her in the face, and pulled her off the bed. (*Id.*) K.G. also noted that at some point during the assault, the Appellant kicked her in the lower stomach. (*Id.*) K.G. asserted after the assault she went to her doctor due to concerns regarding her IUD, which is an internal contraception device. (*Id.*) K.G. had to have her IUD removed due to it being lodged in her uterus. (*Id.*) K.G.’s new IUD was placed on May 5, 2025, a day before she reached out to Detective Behr with this supplemental statement. (*Id.*)

Based on K.G.’s May 6, 2025 statement, Detective Behr requested copies of her medical records in an effort to corroborate her statements. K.G.’s medical records from Maine Health give a detailed timeline of her treatment and care regarding her IUD. (*See* State’s Ex. 5.) On July 17, 2024, K.G. was seen for an infection and disclosed that she had concerns about her IUD placement. (*Id.* at 45.)² K.G. was seen for a follow up to her IUD concerns on August 2, 2024. (*Id.* at 42.) During that exam, the medical records indicate that the IUD was in “satisfactory

² In an effort to cite as accurately as possible, the page numbers referenced in State’s Exhibit 5 are what is on the bottom right of the document rather than the physical number of pages. For example, if the bottom right of the exhibit indicates “Page 1,” the State has cited the pin cite as “1.”

position.” (*Id.*) On January 21, 2025 or January 23, 2025³, K.G. was seen again due to concerns of vaginal bleeding associated with her IUD. (*Id.* at 26.) During that appointment, it is noted that the IUD strings were not visualized and there was some bleeding, but the IUD was in place. (*Id.* at 22, 26.)

On February 11, 2025, after the assault occurred, K.G. was seen for a follow up and disclosed she had been the victim of a “significant domestic violence attack where her ex-partner caused serious harm with a strangulation attempt and multiple blows to the abdomen.” (*Id.* at 22.) During this exam, it was discovered that the IUD was “rotated off axis in the uterus with both arms and the stem extending into the myometrium.” (*Id.* 23.) It was recommended that the IUD be removed. (*Id.*) This impression of the IUD placement was different than when the IUD was placed in July 2024 and when K.G. was examined prior to the assault in January 2025. (*Id.* at 22, 26, 45.) It was not until after the assault that medical professionals recommended that her IUD be removed. (*Id.*) The IUD was removed on February 18, 2025. (*Id.* at 18-20.)

On September 30, 2025, during the probation violation hearing, the Appellant testified as to his recollection of what occurred on January 31, 2025. (PV Hearing Tr. 46-61 (Sep. 30, 2025).) The Appellant agreed that on January 31, 2025 he was

³ In reviewing the medical records, it appears that the appointment was documented initially on January 21, 2025, but later was noted to have occurred on January 23, 2025. (*See* State’s Ex. 5 at 22.) Regardless of the date, that appointment occurred prior to the assault on January 31, 2025.

with K.G. and they had initially gone to go look at motor vehicles because her current car was not safe. (*Id.* at 45.) The Appellant further outlined they returned to K.G.'s home and that her mother and children were there. (*Id.* at 46.) Around 2:30 A.M., as noted in K.G.'s initial statement, the Appellant testified K.G. woke up. (*Id.* at 48.) The Appellant goes on to say that later in the morning, he notices K.G. is upset regarding text messages he had sent to an ex-partner. (*Id.* at 49-53.) The Appellant corroborated that K.G. had asked him to leave and he continued to text her asking to speak while she was with her children shoveling snow. (*Id.* at 53-54.) Eventually, the Appellant decided to leave when K.G.'s mother asked him to. (*Id.* at 54.) During cross-examination, the Appellant confirmed that due to his prior domestic abuse of K.G. CPS had been involved with her children, consistent with her previous statements to law enforcement. (*Id.* at 60-61); (*see also* State's Ex. 1, 2 and 6.) Additionally, the Appellant admitted on cross to having contact with K.G. and that he lied to officers on February 1, 2025. (*Id.* at 56-58.) Specifically, the Appellant stated that he "lied to avoid" getting in trouble for violating his probation. (*Id.* at 58.)

In addition to the facts established as to the assault on January 31, 2025 and February 1, 2025, there was also evidence at the probation hearing regarding the Appellant's discharge from a required domestic violence intervention program. (*See* State's Ex. 7.) Probation Officer John LaPlante testified that the Appellant had been discharged from the domestic violence intervention program.

(PV Hearing Tr. 41-43 (Sep. 30, 2025).) Said discharge was a separate and individual violation of the Appellant's probation. (*Id.*)

ISSUES PRESENTED

- I. Whether the reliability test incorporated in *State v. James* is unconstitutional?**
- II. Whether the District Court erred by admitting reliable hearsay statements pursuant to *State v. James*?**

ARGUMENT

I. The holding in *State v. James* regarding confrontation rights in probation revocation hearings is not unconstitutional

It is well established, across virtually every jurisdiction in the nation, that the right to confrontation as illustrated in *Crawford v. Washington* is not a protected right under the Sixth Amendment for non-criminal proceedings, such as probation revocation hearings. *Crawford v. Washington*, 541 U.S. 36, (2004); see *Blanks v. State*, 228 Md. App. 335, 137 A.3d 1074, 1083–84 (2016); citing (*United States v. Rondeau*, 430 F.3d 44, 47 (1st Cir.2005) (“Nothing in *Crawford* indicates that the Supreme Court intended to extend the Confrontation Clause's reach beyond the criminal prosecution context”); *United States v. Aspinall*, 389 F.3d 332, 343 (2nd Cir.2004) (“Nothing in *Crawford*, which reviewed a criminal trial, purported to alter the standards set by *Morrissey*/[*Gagnon*] or otherwise suggested that the Confrontation Clause principle enunciated in *Crawford* is applicable to probation revocation proceedings”); *United States v. Lloyd*, 566 F.3d 341, 343 (3rd Cir.2009) (“The limited right to confrontation [afforded in a revocation proceeding] stems from the Fifth Amendment's Due Process Clause, not from the Confrontation Clause of the Sixth Amendment”); *United States v. Ferguson*, 752 F.3d 613, 619 (4th Cir.2014) (probation revocations do “not involve the Sixth Amendment”); *United States v. Kirby*, 418 F.3d 621, 627 (6th Cir.2005) (*Crawford* does not apply to probation revocations because the Sixth Amendment is not applicable to non-

criminal matters); *United States v. Kelley*, 446 F.3d 688, 691 (7th Cir.2006) (“*Crawford* changed nothing with respect to [probation] revocation hearings” because the right to confrontation is “explicitly grounded in considerations of due process, not the Sixth Amendment”); *United States v. Ray*, 530 F.3d 666, 668 (8th Cir.2008) (*Crawford* is not applicable to termination of supervised release); *United States v. Hall*, 419 F.3d 980, 985 (9th Cir.2005), *cert denied*, 546 U.S. 1080, 126 S.Ct. 838, 163 L.Ed.2d 714 (2005) (“due process standard[s] [are] used to determine whether hearsay evidence” is admissible, not *Crawford*); *Curtis v. Chester*, 626 F.3d 540, 544 (10th Cir.2010) (*Crawford* confrontation rights under the Sixth Amendment do not apply in parole revocation proceedings); *Ash v. Reilly*, 431 F.3d 826, 829 (D.C.Cir.2005) (*Crawford* is not applicable in probation revocations, rather a probationer’s rights are solely connected to due process).

With that, the United States Supreme Court has established there are certain minimum due process rights that must be met in probation revocation hearings. *Morrissey v. Brewer*, 408 U.S. 471, 488–89 (1972). Specifically, the Supreme Court held that the minimum due process requirements are:

(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

Id.

The Supreme Court addressed the rights of a probationer again in *Gagnon v. Scarpelli*, reiterating that probation revocation hearings are not criminal in nature, but due to the risk of lost liberty, still warrant due process protections as detailed above. 411 U.S. 778, 782 (1973). Additionally, in *Gagnon* the Supreme Court clarified their findings as to the right of confrontation and cross-examination in probation revocations as follows:

An additional comment is warranted with respect to the rights to present witnesses and to confront and cross-examine adverse witnesses. Petitioner's greatest concern is with the difficulty and expense of procuring witnesses from perhaps thousands of miles away. While in some cases there is simply no adequate alternative to live testimony, ***we emphasize that we did not in Morrissey intend to prohibit use where appropriate of the conventional substitutes for live testimony, including affidavits, depositions, and documentary evidence.*** Nor did we intend to foreclose the States from holding both the preliminary and the final hearings at the place of violation or ***from developing other creative solutions*** to the practical difficulties of the Morrissey requirements.

Id. at 782 n.5 (emphasis added).

In 1975, after the findings made by the Supreme Court in *Morrissey* and *Gagnon*, this Court addressed the use of hearsay in probation revocation hearings. *State v. Caron*, 334 A.2d 495, 497 (Me. 1975). In *Caron*, this Court found:

the use of “hearsay” evidence is, per se, consistent with constitutional fundamental fairness “due process” guarantees as applicable to a proceeding to revoke a probation granted as an incident of the imposition, and suspension of the execution, of a sentence for guilt of crime (or a proceeding for revocation of parole).

Id. at 498.

Furthermore, this Court held that a “minor use of hearsay testimony” is consistent with the informality of probation revocation hearings, again due to the non-criminal nature of those proceedings. *Id.* However, this Court did add the “caveat” that if “the hearsay evidence is unreasonably abundant and its substantive

reliability highly suspect, a decision founded on it may be subject to vitiation for violation of ‘due process of law’ fairness standards.” *Id.*

In 2002, this Court revisited the admissibility of hearsay evidence in probation revocation hearings in *State v. James*. 2002 ME 86, 797 A.2d 732. In *James*, this Court again embraced the findings of *Morrissey* and *Gagnon*, and within that framework, found there was jurisprudence that “the need to show good cause vanishes ‘if the proffered evidence itself bears substantial guarantees of trustworthiness.’” *Id.* ¶ 12 (quoting *Egerstaffer v. Israel*, 726 F.2d 1231, 1234 (7th Cir.1984)).

This Court based its finding on prior case law where reliable hearsay was deemed admissible in probation revocation hearings post the decisions in *Morrissey* and *Gagnon*. *Id.* ¶ 12, n.8; *see, e.g., State v. Rameau*, 685 A.2d 761, 765 (Me.1996) (finding that admission of a victim’s previous trial testimony at a probation revocation hearing was proper because the victim’s statement was reliable after being subject to cross at trial); *State v. Labbe*, 617 A.2d 1023, 1025 (Me.1992) (holding that a letter from a defendant’s counselor was admissible because the content of the letter was corroborated by defendant’s own statements at the probation revocation hearing); *Ingerson v. State*, 491 A.2d 1176, 1181 (Me.1985) (affirming admissibility of hearsay through a police officer of a victim’s statement due to its reliability and later ability to cross said victim); and, *Caron*, 334 A.2d at 498 (finding that if the use

of hearsay was minimal and the testimony was reliable, hearsay provided by police of a victim's statement was permissible).

Pursuant to the above case law, this Court created the following test to determine admissibility of hearsay in probation revocation hearings pursuant to due process:

The first step in analyzing the reliability of proffered evidence is to determine whether the evidence would be admissible under the rules of evidence; that is, whether the evidence is excluded from hearsay under the rules or falls within a firmly rooted hearsay exception. This is the first step because '[e]vidence which would be admissible under standard evidentiary rules is presumptively reliable.' . . .

When the proffered evidence would not be admissible under the rules of evidence, its reliability must be independently examined. A variety of factors may be considered at this level of analysis, including: (1) whether the hearsay evidence is corroborated, in whole or part, by live testimony presented at the probation violation hearing or an admission by the probationer, (2) the source of the hearsay, including the potential for bias or motive to fabricate; and, (3) whether the hearsay evidence is sufficiently detailed.

James, 2002 ME 86, ¶ 15, 797 A.2d 732 (citations omitted).

As of the date of this brief, there is no finding by this Court, or the United States Supreme Court, that the use of a reliability test violates due process. Appellant is asking this Court to follow what he considers to be the "majority" of other jurisdictions and embrace a balancing test. (Blue Br. 26.) Appellant notes in his brief that all federal circuits now use a balancing test. (Blue Br. 26-27.) However, it should

be noted the reason for those adoptions occurred due to a rule change in 2002, not a unanimous agreement between the circuits. (*Id.* 26); *see also* Fed. R. Crim. P. 32.1.

Appellant further argues that there are twenty-two states that have adopted some form of a balancing test, so this Court should as well. (Blue Br. 27.) However, as the Appellant acknowledged in his own legal research, the true “majority” are the twenty-eight other jurisdictions that have *not* adopted the balancing test, which include: Alabama, Arizona, Colorado, Delaware, District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, West Virginia, and Wisconsin. (Blue Br. 28-30.) Despite Appellant’s arguments, the balancing test is not the law of the land and further, it is not the law of the majority of states. (*Id.*)

Furthermore, this Court should pay close attention to the fact that of the twenty-two states who use a balancing test, twelve of those cases were decided prior to *James* in 2002. (*Id.*) The existence of the balancing test, and the choice of whether to embrace such a doctrine, was known by this Court in 2002. *James*, 2002 ME 86, ¶ 12 n.9, 797 A.2d 732. This Court made note of that in *James* and made an intentional decision to *reject such a test. Id.*

For the last twenty-four years, this Court has followed the precedent it set in *James* and authorizes the use of a reliability test for the admission of hearsay in

probation matters. *Id.* ¶¶ 12-15. Appellant implores this Court to find that holding unconstitutional. (Bl. Brief. at 17-34.) There is no legal basis requiring such a finding, there is no majority of states reflecting such a finding, and this Court has already plainly rejected a balancing test. Based on precedence of this Court, the Appellant's request should be denied.

II. The District Court did not err when it admitted reliable hearsay statements pursuant to the guidelines in *State v. James*.

As noted above, this Court established a two-prong test in *James*, requiring first a determination if the offered hearsay evidence fits under an already accepted hearsay exception. *James*, 2002 ME 86, ¶ 15, 797 A.2d 732 (citations omitted). If the evidence does not meet any codified hearsay exception, the court must independently determine reliability using the following factors:

(1) whether the hearsay evidence is corroborated, in whole or part, by live testimony presented at the probation violation hearing or an admission by the probationer, (2) the source of the hearsay, including the potential for bias or motive to fabricate; and, (3) whether the hearsay evidence is sufficiently detailed.

Id.

This Court did not indicate that one factor was worth more than another when outlining what should be considered under *James*. *Id.* Here, there was sufficient

evidence in the record to allow the District Court to admit the non-objected to hearsay evidence under the *James* test, as analyzed below.⁴

a. State's Exhibit 2: K.G.'s statement dated February 6, 2025

Starting with step one of the *James* test, the State agrees this statement is a form of hearsay that would not be admissible under the rules of evidence.⁵ *Id.* Therefore, review of the factors in step two is necessary to determine the reliability and admissibility of this statement. *Id.* Looking to the first factor in *James*, this statement was corroborated by live testimony and admission of the probationer. *Id.* Focusing first on the latter, the Appellant previously admitted to being in violation of his probation for having contact with K.G. on the night of the assault, therefore corroborating that he was present with K.G. the evening she called Gardiner Police, as outlined in her statement. (A. 15-16; PV Hearing Tr. 56-58 (Sep. 30, 2025).)

Additionally, as noted in the above Statement of Facts, the Appellant testified at the probation hearing and corroborated several details of K.G.'s February 6, 2025 statement. The Appellant testified that on January 31, 2025 he and K.G. went to look

⁴ At the probation revocation hearing, the State admitted seven exhibits. (PV Hearing Tr. 2 (Sep. 30, 2025).) The record is clear that the Appellant did not object (and even offered the evidence himself as it relates to exhibit 6) to State's Exhibit 1, 4, 6, and 7. (*Id.* 9, 18, 40, 42.) While the State will argue that the Appellant also agreed to the admittance of State's Exhibit 5, a brief argument will still be made. (*Id.* at 19-20.) Otherwise, the State will not be doing an individual analysis regarding admission of the reliable hearsay not objected to in State's Exhibits 1, 4, 6 and 7 except for the purposes of how those exhibits also show indicia of reliability in the challenged statements detailed above.

⁵ At trial, the State believes that M.R. Evid. 801(d)(1)(B) may allow for the admittance of this statement depending on how certain evidence came in. However, as this Court knows, that statement would not be considered hearsay, but rather a prior consistent statement. With that, the State did want to at least acknowledge that the rules of evidence may permit admittance of this statement at trial in certain circumstances.

at a truck due to her car being unsafe. (PV Hearing Tr. 45 (Sep. 30, 2025).) He testified that he spent the night at her home and around 2:30 A.M. she woke up. (*Id.* at 46, 48.) The Appellant outlined that he and K.G. argued about him speaking to an ex-partner after K.G. had looked at his phone. (*Id.* at 49-53.) He admitted that K.G., and her mother, asked him to leave the residence multiple times. (*Id.* at 53-54.) He even testified to the nuanced fact that at one-point K.G. was outside shoveling snow with the children as he texted her to come and speak to him. (*Id.*)

The *James* factors ask if the hearsay was corroborated “in whole or in part” when determining its reliability. *James*, 2002 ME 86, ¶ 15, 797 A.2d 732 (citations omitted). The record is **clear** that the Appellant confessed to being with K.G. on January 31, 2025 when he admitted to being in violation of probation. (A. 15-16; PV Hearing Tr. 56-58 (Sep. 30, 2025).) Additionally, the Appellant himself, under oath while he testified at the hearing, corroborated essentially every part of K.G.’s statement. If you were to put State’s Exhibit 2 and the Appellant’s testimony transcript side by side, they would match **almost exactly**, other than the assault itself. (State’s Ex. 2; PV Hearing Tr. 45-61 (Sep. 30, 2025).) If that is **not corroboration** “in part,” the State is unsure what else could be. *James*, 2002 ME 86, ¶ 15, 797 A.2d 732 (citations omitted). The overwhelming record satisfied the first *James* factor by corroborating K.G.’s statement with the testimony and admission of the Appellant.

Focusing on the second factor of *James*, State's Exhibit 2 is a written statement of K.G. that was signed on a Gardiner Police Department voluntary statement form. (See State's Ex. 2.) As noted above, this document was signed by K.G. with the following language incorporated in the statement "I, 'K.G.' . . . certify that I am making this written statement on my own free will, with nothing promised in return. I will only state truthful facts and information, based on my own personal knowledge." (*Id.*) That phrase alone, on a law enforcement form, shows indicia of reliability and a lack of bias and motive to fabricate because of K.G. swearing to the veracity of the statement. (*Id.*)

In addition, at the hearing a 911 call was admitted as State's Exhibit 1 without objection. (PV Hearing Tr. 9 (Sep. 30, 2025).) In that 911 call, K.G. clearly states she did not want to call police due to concerns about CPS getting involved. (See State's Ex. 1.) K.G. reiterated her concerns regarding CPS in State's Exhibit 2 and State's Exhibit 6, showing her ongoing reluctance involving police, but feeling she had no other options. (See State's Ex. 2, 6.) This shows that the hearsay statement lacks "bias or motive to fabricate" because of K.G.'s ongoing concern about CPS. Interestingly enough, K.G.'s CPS concerns were further corroborated again by the Appellant *himself*, in his live testimony, when he admitted that CPS was involved previously due to his past assault of K.G., the crime he was on probation for. (PV Hearing Tr. 59-61 (Sep. 30, 2025).) Again, the record at the probation revocation

hearing did not illustrate any bias or desire to fabricate by K.G.; rather, in many ways, through the Appellant himself, the record shows the risk K.G. took regarding custody of her children by calling police and writing her statement.

Finally, looking at factor three in *James*, State's Exhibit 2 is very lengthy and contains significant details. The District Court was able to review that document and have a comprehensive understanding of what happened on January 31, 2025. Reviewing State's Exhibit 2 under the lens of *James*, the hearsay statement was inherently reliable and its admission was not in error.

b. State's Exhibit 3: K.G.'s statement dated May 6, 2025

Similar to above, the State agrees that Exhibit 3 is not a form of hearsay that would be admissible under the rules of evidence.⁶ *James*, 2002 ME 86, ¶ 15, 797 A.2d 732 (citations omitted). Therefore, again the factors in step two of *James* are applicable to State's Exhibit 3. *Id.* The State incorporates the same arguments above as to this similar statement. As for factor one, again the Appellant testified and admitted to being at the residence and getting into an argument with K.G. as she summarizes in Exhibit 3. (State's Ex. 2, 3; PV Hearing Tr. 45-61 (Sep. 30, 2025).) For factor two, this is also a signed statement on law enforcement letterhead with language where K.G. swears to the truthfulness of her statement, continuing to show her lack of bias and motive to lie. (See State's Ex. 3.) Finally, the State does

⁶ The State maintains its argument detailed in footnote 5.

acknowledge that this exhibit is much shorter than State’s Exhibit 2, but it still contains sufficient details regarding the night in question and the medical issues K.G. later suffered. (*Id.*) With that, like State’s Exhibit 2, this statement meets the necessary factors of the *James* test and its admission was not in error.⁷

c. State’s Exhibit 5: Maine Health Records

Unlike State’s Exhibits 2 and 3, admissibility of State’s Exhibit 5 should stand for multiple reasons. First and foremost, the Appellant waived any argument as to State’s Exhibit 5 when he agreed to its admission. (PV Hearing Tr. 19-20 (Sep. 30, 2025).) This Court has found that “[i]f a defendant explicitly waives the delivery of an instruction or makes a strategic or tactical decision not to request it, we will decline to engage in appellate review, even for obvious error.” *State v. Harding*, 2024 ME 67, ¶ 21, 322 A.3d 1175 (quoting *State v. Nobles*, 2018 ME 26, ¶ 34, 179 A.3d 910); *see also State v. Rega*, 2005 ME 5, ¶ 17, 863 A.2d 917 (finding “[w]hen a party affirmatively agrees to a court action, that party has failed to preserve the action for appellate review.”) Here, the Appellant agreed to the admission of State’s Exhibit 5, after taking a moment to review said exhibit, and then later argued “some” of the exhibit was not covered by a hearsay exception. (PV Hearing Tr. 19-20 (Sep.

⁷ If this Court were to find that State’s Exhibit 3 did not meet the second prong of the *James* test, its admissibility under the totality of the evidence at hearing would be harmless and should not result in the District Court’s finding being vacated.

30, 2025).) By agreeing to the admittance of the exhibit, the Appellant waived any argument to challenge on appeal.

If this Court chooses to set aside the Appellant's initial agreement to admissibility of State's Exhibit 5, the medical records were properly admitted under both prongs of the *James* test. *James*, 2002 ME 86, ¶ 15, 797 A.2d 732 (citations omitted). Looking to step one, State's Exhibit 5 are medical records that detail the treatment of K.G. in connection to the assault she suffered by Appellant. (See State's Ex. 5.) The statements encompassed in those records fall under M.R. Evid. 803(4), the hearsay exception as to medical diagnosis and treatment. Appellant's counsel even conceded that at least "some" of the statements in the exhibit were covered by the medical hearsay exception. (PV Hearing Tr. 20 (Sep. 30, 2025).) Because the records meet a hearsay exception, such inherent reliability is met under the first prong of *James* and further analysis was not needed. *James*, 2002 ME 86, ¶ 15, 797 A.2d 732 (citations omitted).⁸

If this Court is not satisfied with the Appellant's waiver or the fact that State's Exhibit 5 fits under a codified hearsay exception, the records still meet the factors in step two of *James*. Again, the records indicating that K.G. was with the Appellant on the date of the assault was corroborated by the Appellant himself as detailed

⁸ In addition to medical records being admissible under Rule 803(4) as a hearsay exception, 16 M.R.S. § 357 requires admissibility of certified medical records. In this case, it does not appear that the records were certified, but the existence of such a statute is indicative of the inherent reliability of medical records generally.

above. (PV Hearing Tr. 45-61 (Sep. 30, 2025).) Second, the medical records were not written by K.G., but by a medical professional who has no reason to fabricate or misdiagnose K.G. for the purposes of prosecution of the Appellant. (*See* State’s Ex. 5.) Additionally, statements made by a declarant for the purpose of medical treatment, here K.G., are inherently reliable due to the well-known notion that a person seeking medical care will be truthful for their own best interest. Here, the records simply outline the history of K.G.’s treatment as to her IUD and establish that after her assault the need to remove her IUD became necessary. (*Id.*) Finally, the records are very detailed and track the ongoing treatment of K.G., again showing inherent reliability. (*Id.*) Under multiple lenses, whether it be waiver, a hearsay exception, or a full *James* analysis, State’s Exhibit 5 was properly admitted below and in no way violated the Appellant’s right to due process.

CONCLUSION

The Appellant has failed to show that this Court’s jurisprudence in *State v. James* is unconstitutional in nature and has failed to prove that the reliability test it supports is now the minority law in the nation. Additionally, the Appellant failed to establish that the District Court erred in admitting the statements detailed above under *James*. For those aforementioned reasons, the State requests this Court affirm the District Court’s findings consistent with the arguments made above.

Respectfully Submitted,

Date: 6/4/2026

_____/s/Shannon Flaherty_____
Shannon Flaherty, Esq.
Attorney for the State
Bar No. 6188

Kennebec County District Attorney's Office
95 State Street
Augusta, Maine 04330
(207) 623-1156
sflaherty@kennebecda.com

Maeghan Maloney
District Attorney
Bar Number: 8792
Prosecutorial District IV

CERTIFICATE OF SERVICE

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

Sanders Wommack
53 Ridgewood Lane
North Yarmouth, Maine 04099
wommack@wescustagolaw.com

Rory A. MacNamara
P.O. Box 143
York, Maine 03909
rory@drakelawllc.com

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

Respectfully Submitted,

Date: 6/4/2026

_____/s/ Shannon Flaherty_____
Shannon Flaherty, Esq.
Attorney for the State
Bar No. 6188

Kennebec County District Attorney's Office
95 State Street
Augusta, Maine 04330
(207) 623-1156
sflaherty@kennebecda.com

Maeghan Maloney
District Attorney
Bar Number: 8792
Prosecutorial District IV