

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Ken-25-458

STATE OF MAINE
Appellee

v.

CHAD T. McDOUGAL
Appellant

ON APPEAL from the Kennebec County
Unified Criminal Docket

REPLY BRIEF OF APPELLANT

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Table of Contents

Argument.....	4
<i>First Assignment of Error</i>	
I. <i>James</i> is unconstitutional.	4
<i>Second Assignment of Error</i>	
II. Even were it constitutional, <i>James</i> is so unpersuasive as to warrant reconsideration.	6
<i>Third Assignment of Error</i>	
III. Even applying <i>James</i> , this Court should reverse.....	7
A. One could drive a train through the State’s conception of “corroboration.”	7
B. The State’s choice of letterhead does not override the right to confront.	8
C. Which is “detailed” – a seven-page statement or a contradictory one-page statement?	9
D. The State overlooks the very reliability prong which, elsewhere in the brief, it defends.	9
Conclusion.....	10
Certificate of Filing & Service	11

TABLE OF AUTHORITIES

U.S. Supreme Court Cases

<i>Alleyne v. United States</i> , 570 U.S. 99 (2013)	4
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004)	4, 6, 9
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973)	4, 5
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	4, 6, 7
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972)	4

Cases

<i>Adams v. Buffalo Forge Co.</i> , 443 A.2d 932 (Me. 1982)	4
<i>State v. Caron</i> , 334 A.2d 495 (Me. 1975)	10
<i>State v. Casiano</i> , 667 A.2d 1233 (R.I. 1995)	8
<i>State v. James</i> , 2002 ME 86, 797 A.2d 732	passim
<i>State v. Labbe</i> , 617 A.2d 1023 (Me. 1992)	8
<i>United States v. Taveras</i> , 380 F.3d 532 (1st Cir. 2004)	5

Rules

Fed. R. Crim. P. 32.1	5
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Constitutional Provisions

Fourteenth Amendment	4, 5
Sixth Amendment	5

ARGUMENT

First Assignment of Error

I. *James* is unconstitutional.

The State's argument for upholding *James*¹ rests on an appeal to stare decisis and an assertion that *James* sits within the ballpark of *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) and *Morrissey v. Brewer*, 408 U.S. 471 (1972). Neither of these arguments carry the day.

Stare decisis has minimal applicability here. The “force of *stare decisis* is at its nadir in cases concerning procedural rules that implicate fundamental constitutional protections.” *Alleyne v. United States*, 570 U.S. 99, 116 n. 5 (2013). Our case demonstrates the “dangers of a blind application of the doctrine merely to enshrine forever earlier decisions of this court.” *Adams v. Buffalo Forge Co.*, 443 A.2d 932, 935 (Me. 1982).

Twenty-two years after *Crawford v. Washington*, 541 U.S. 36 (2004) gutted the doctrinal underpinnings of *James*, the State would have Maine remain frozen in time (A) classifying “firmly rooted hearsay exceptions,” long after the ultimate arbiter of the Fourteenth Amendment – the Supreme Court – discarded that ossified science; (B) ignoring the procedural nature of confrontation, despite the fact that *Morrissey*, *Scarpelli* and *Mathews*² are all procedural due process cases; and (C) dangling in front of probationers the promise of confrontation if only they can somehow demonstrate

¹ *State v. James*, 2002 ME 86, 797 A.2d 732.

² *Mathews v. Eldridge*, 424 U.S. 319 (1976).

unreliability without according them the very process necessary to do so. It would have this Court interpret “confrontation” under the Fourteenth Amendment to mean something radically different than “confrontation” in the Sixth Amendment.

And, yes, the State would have Maine persist against the national headwinds in the minority. Some math is in order: 12 federal courts of appeal³ + 51 state courts = 63 jurisdictions. Take away eight jurisdictions (documented at Blue Br. 29) that have uncertain tests, yielding 55 jurisdictions. Balancing tests are employed in 22 states. *See* Blue Br. 27 (collecting cases). Together with the twelve federal courts, that’s 34 out of 55, representing 62%. But it’s not like all the remaining 21 embrace reliability tests. Only 11 do – just 20% of the nation’s jurisdictions. *See* Blue Br. 28 (collecting cases). Other jurisdictions appear to not even consider *Scarpelli*; this Court obviously knows better. *See* Blue Br. 29-30 (collecting cases). It’s not close; *James’* is a disfavored interpretation of federal due process.

³ The drafters of Fed. R. Crim. P. 32.1 enacted that provision to resolve a circuit-split over whether the Fifth Amendment, à la *Scarpelli*, necessitates a balancing test or is instead satisfied by a reliability test. *United States v. Taveras*, 380 F.3d 532, 536 (1st Cir. 2004). Inexplicably, the State does not count these jurisdictions.

Second Assignment of Error

II. Even were it constitutional, *James* is so unpersuasive as to warrant reconsideration.

The State has not made any argument in defense of the wisdom of *James*. But see *Order Granting Certificate of Probable Cause* (Mar. 2, 2026) (Ordering briefing on, *inter alia*, “[D]oes *James* remain persuasive law in light of the federal balancing standard regarding admissibility of hearsay at probation revocation hearings?”). The State’s waiver is understandable given the intractable discordance between *James* and conceptions of due process, embodied in *Mathews*, and confrontation, embodied in *Crawford*.

Third Assignment of Error

III. Even applying *James*, this Court should reverse.

The Court cannot affirm, even adhering to *James*' profoundly lenient standard.

Before detailing why, however, defendant remarks on the State's telling application of the *James* standard. As instructed by *James*, the State exclusively analyzes the *admissibility* of the complainant's out-of-court statements. It does not ponder the detriment to defendant of the denial of his opportunity to *confront* the complainant. For a case that purports to construe a probationer's constitutional right to confront, *James*'s focus is thus oddly detached from a probationer's interests in confrontation – *e.g.*, the opportunity to demonstrate bias, highlight inconsistencies, or win a credibility contest, etc. The analysis *James* enshrines doesn't even mention these interests. In this manner, *James* and reliability tests everywhere overlook probationers' rights and what those rights might engender, instead laser-locking on how the State can override them. Given procedural due process' focus, such as in *Mathews*, on both sides of the equation, this is confounding.

A. One could drive a train through the State's conception of "corroboration."

The State asserts that defendant "corroborated essentially every part" of complainant's statement, and that their two descriptions of the events "match ***almost exactly***, other than the assault itself." Red Br. 23 (emphasis in original). The qualifying words – "essentially" and "almost

exactly” – jump off the page. What matters is whether testimony concerning the alleged *probation violations* are confirmed in whole or in part such that their reliability can be assessed. *See James*, 2002 ME 86, ¶ 15; *State v. Labbe*, 617 A.2d 1023, 1025 (Me. 1992) (holding that hearsay evidence regarding defendant’s failure to participate in counseling was corroborated by admissible statements he made to his probation officer); *State v. Casiano*, 667 A.2d 1233, 1240 (R.I. 1995) (upholding admission of hearsay evidence concerning the source of bruising because it was sufficiently corroborated by defendant’s statements, two medical experts opinions, photographs, and the number of times it was stated by the young declarant). Otherwise, “corroboration” that the sky is blue, that the courtroom is on Earth, or that chocolate is delicious would defeat the right to confrontation.

B. The State’s choice of letterhead does not override the right to confront.

As for step two in *James*, motivation for bias, the State does not address complainant’s initial statement that she had just gone through his phone and found evidence he was “meeting” another woman, (SX 2 at 1), or counter defendant’s testimony that complainant told him she was “fuming” and told him she was going to have him arrested and put in jail, (Tr. 55), or discuss complainant’s effort to falsify her medical records to add strangulation. Instead, it points to boilerplate on law enforcement’s witness statement forms. *See* Red Br. 24. Stationery, in its view, circumscribes the right to confrontation. *Id.* at 25 (“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.”). This is dubious.

C. Which is “detailed” – a seven-page statement or a contradictory one-page statement?

As for *James*’ third factor, the State’s argument could have been cited in *Crawford* as an unfortunate example of the nebulousness and illogicality inherent in reliability tests. *Crawford*, 541 U.S. at 63 (noting that some courts have found hearsay reliable for being “detailed,” while others have credited hearsay because it was “fleeting.”). The State asserts that both an excruciatingly detailed, seven-page statement and a pithy one-pager about the same event – which sparingly addresses the allegations at issue and at times contradicts the first statement – must both be taken at their word because they contain “sufficient details.” Red Br. 26. Even were the Court to decline to follow *Crawford*’s guidance and stick with *James*’ test, these statements cannot both demonstrate the detail necessary to ensure reliability. In fact, do not contradictory “details” undermine reliability?

D. The State overlooks the very reliability prong which, elsewhere in the brief, it defends.

The State asserts that defendant waived the opportunity to challenge the admissibility of State’s Exhibit 5. But don’t forget: *James* purports to not only establish procedural rules governing the admissibility of evidence at probation revocation hearings, it places substantive limits on the quantity and quality of such evidence upon which courts may base their revocation rulings. *James*, 2002 ME 86, ¶ 13 (“It is only when the hearsay is unreasonably abundant and its substantive reliability highly suspect, that a

decision resting upon such evidence will violate due process”) (internal quotation marks omitted); *State v. Caron*, 334 A.2d 495, 498 (Me. 1975). Regardless of whether they can be admitted under the first step of *James*, or whether they were objected to at the appropriate time, the complainant’s out-of-court statements are nonetheless subject to *Caron* and *James*’ limitation on unreliable hearsay. See Blue Brief n. 1 (noting that the separate tests in *Caron* and *James* have collapsed into each other). Thus, where, as here, the evidence is “unreasonably abundant,” the analysis for all evidence remains a review for reliability under *James*’ step 2.

For all reasons stated in the Blue Brief, including the complainant’s lack of injuries on February 4, her failure to mention getting hit in the stomach or back in her February 6 statements, and her statements on January 21 indicating concern that her IUD was already out of place, these hearsay statements are not reliable enough to form the basis for a revocation.

CONCLUSION

As this case illustrates, *James* has swung the due process pendulum too far away from protecting defendant’s rights in favor of governmental efficiency. To prevent this sort of injustice and to ground its doctrine on solid legal principles, this Court must expound a broad balancing test to determine when live testimony of witnesses might be dispensed with.

Defendant was atypically lucky that complainant generated such a thick catalogue of conflicting statements, that her lack of injuries was professionally documented so soon after these alleged events, and that her medical providers documented her attempt to embellish the record.

Somehow, even this could not save him below. Even if the Court does not rebalance probation hearing confrontation doctrine, it should at least correct this error.

For the foregoing reasons, and those discussed in the Blue Brief, the Court should vacate defendant's probation revocation and remand for proceedings consistent with its mandate.

June 26, 2026

Respectfully submitted,

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CERTIFICATE OF FILING & SERVICE

I have filed this brief, and served opposing counsel, as listed on the service list, in compliance with M.R. App. P. 1D(c), 1E and 7(c).

/s/ Rory A. McNamara