

Supreme Judicial Court sitting as the Law Court  
Law Court Docket number ARO-26-13

State of Maine v. Scout D. Sylvester

Appeal from Unified Criminal Docket in  
Aroostook County

Reply Brief for Appellant

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## Argument

### **I. The jury was incorrectly instructed on causation.**

The trial court determined that a concurrent causation instruction was warranted based on the facts presented to it and gave the instruction to the jury. (Tr. T. (vol. 4) at 54). The State has argued in its brief that “[t]he issue of concurrent causation was not generated by the evidence and the trial court erred when it instructed the jury on concurrent causation.” (Red Brief at 11). As the instruction was given, and the jury made a determination while deliberating based on the instruction, it cannot be said how the instruction influenced their verdict. The error in the instruction, either way, had a significant impact on the manner in which the jury performed its fact finding duty and should be analyzed.

Moreover, the collision of Mr. Sylvester’s snowmobile resulted in minimal injury to him. (Tr. T. (vol. 1) at 128, 229, 248, 254-256, 265-266, 304); (Tr. T. (vol. 2) at 133, 194, 210-211, 220-221); (Tr. T. (vol. 3) at 102-104). Mr. Sylvester’s brother suffered no injuries from his collision. (Tr. T. (vol. 1) at 125-126, 140-141, 146, 148). It was the impact of Mr. Sittler’s body with Mr. Sylvester’s brother’s snowmobile that resulted in Mr. Sittler’s injuries.<sup>1</sup> (Tr. T. (vol. 1) at 125, 141-142, 147); (Tr. T. (vol. 3) at 241-242). As such, Mr. Sylvester

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<sup>1</sup> The doctor conducting the autopsy noted that he would not have expected the basilar skull fracture to have occurred from the impact with Scout’s snowmobile, as he was ejected as a result and did not hit that snowmobile. (Tr. T. (vol. 3) at 241-242). The cause of death was determined to be a basilar skull fracture and multiple blunt force trauma. (Tr. T. (vol. 3) at 230).

asserts that the concurrent causation instruction was generated by the facts and stands by his argument that the wording of the instruction, as given to the jury, did not follow the statute and, as such, invited the potential for juror misunderstanding, was favorable to the State, prejudicial to Mr. Sylvester, and did not correctly and fairly define concurrent causation for the jury. See (Blue Brief at 33).

The jury was given the instruction and it was flawed, as addressed in Mr. Sylvester's primary brief. (Blue Brief at 27-33). This gives rise to the potential for the jury's verdict to be in error because of the instruction, regardless of the State's argument in its brief that the court should not have given the instruction. (Red Brief at 11).

## **II. The trial court did not properly instruct on the elements of Count 2, Operating a Snowmobile Under the Influence.**

The State has argued that the error in instructing the jury on Count 2 does not prejudice Mr. Sylvester because there was no evidence pertaining to his blood alcohol level. (Red Brief at 17). The State specifically alleges that

Scout's specific blood alcohol content was not a fact in issue on which evidence was offered. There was no risk that the jury found Scout had a "0.00" blood alcohol content and convicted on that basis because there was no evidence presented that Scout had a "0.00" blood alcohol content (or any other specific blood alcohol content). It was not just the trial court that overlooked this detail, the prosecution and the defense did as well. Neither of the parties was focused on Scout's specific blood alcohol level because while the trial involved evidence that Scout had been impaired by alcohol (and marijuana) at the time of the fatal crash, no evidence of Scout's specific blood alcohol level was introduced. Because there was no evidence that Scout had a "0.00" blood alcohol level (or evidence of

any other specific blood alcohol level), the trial court's misstatement was not prejudicial to Scout and did not affect the outcome of proceedings.  
(Red Brief at 17).

While no blood alcohol level was entered into evidence, the instruction was still given referencing blood alcohol levels and there exists the possibility that the jury would infer that since the instruction was given that such a finding was something that they were entitled to make. There was evidence entered that field sobriety tests at the scene suggested alcohol impairment, as the State has highlighted in its brief, stating: "Scout submitted to field sobriety testing at the request of law enforcement while at the crash scene and the results of that testing suggested Scout was impaired by alcohol and marijuana. (2 TR 166-71)." (Red Brief at 10). Additionally, before the court excluded the blood test taken by the hospital, a copious amount of testimony was presented about the taking of a blood sample by hospital personnel and the retrieval of the blood samples from the hospital by an officer pursuant to a warrant, which leaves concern that the jury would infer that while the level was not entered into evidence that a damaging blood test exists. (Tr. T. (vol. 2) at 64-106, 116-125) (Tr. T. (vol. 3) at 136-146, 162-174, 189, 204-206, 208-209). There was also testimony about the law enforcement blood draw that was entered into evidence, which contained information about marijuana compounds in Mr. Sylvester's blood. (Tr. T. (vol. 1) at 287-288); (Tr. T. (vol. 2) at 176-182); (Tr. T. (vol. 3) at 149-161, 162-189,

190-203, 209-210).<sup>2</sup> It was also clear that the jury focused on the blood alcohol level instruction during its deliberations, as the jury sent a note asking if there was evidence of a blood alcohol level.<sup>3</sup> (Tr. T. (vol. 4) at 123). Since the jury was instructed that it was entitled to make a finding based on Mr. Sylvester's blood alcohol level, it cannot be said what the jury did with, or how they interpreted, that instruction. As such, there was evidence presented at trial on which the jury could have based their finding of guilt and, as such, there was a prejudicial error that did not "inform[] the jury correctly and fairly in all necessary respects of the governing law[,]'" resulting in the "potential for juror misunderstanding." State v. Hanscom, 2016 ME 184, ¶ 10, 152 A.3d 632, 635 (Me. 2016)(citation omitted); State v. Gauthier, 2007 ME 156, ¶ 14, 939 A.2d 77, 81 (Me. 2007)(citations omitted); (Blue Brief at 25).

### **III. The cumulative effect of the flawed jury instructions did not adequately inform the jury on the governing law.**

In addressing the cumulative effect of the jury instructions, the State has asserted that the concurrent causation instruction should not have been given and

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<sup>2</sup> This blood test was mentioned in the State's opening statement to the jury. (Tr. T. (vol. 1) at 48). Additionally, in its closing statement to the jury the State appeared to argue that the jury could base its finding on a blood alcohol determination: "And then, finally, sort of unrelated to the other offenses, it's-- you have to, um, reach a conclusion about whether you believe Scout Sylvester was impaired, impaired by alcohol, impaired by drugs, impaired by a combination of drugs and alcohol, or alternatively operated with a blood alcohol content above .00." (Tr. T. (vol. 4) at 71).

<sup>3</sup> The jury was informed that "the evidence does not include an alcohol level analysis." (Tr. T. (vol. 4) at 124).

the fact that it was given was beneficial to Mr. Sylvester. (Red Brief at 18). The State argues that “[t]o the extent the concurrent causation instruction had an effect on the proceedings, that effect was beneficial to Scout in that the State was required to prove more facts than it otherwise should have.” (Red Brief at 18). As argued, *Supra* at 4-5, Mr. Sylvester asserts that the evidence generated the concurrent causation instruction and that there was no error in providing the instruction. He still asserts that cumulative errors exist in the jury instructions because of the wording of the concurrent causation instruction given to the jury over his objection. See (Blue Brief at 27-33, 35-36).

**IV. The Exclusion of Potential Juror Number 6 was an abuse of the trial court’s discretion and violated Mr. Sylvester’s Sixth Amendment right to a fair trial.**

Mr. Sylvester asserts again that the trial court abused its discretion when it excluded Potential Juror Number 6 from the jury and that his Sixth Amendment right to a fair trial was infringed upon by the exclusion of the potential juror.

The State, citing to State v. Fischer, 238 A.2d 210, 215 (Me. 1968), asserts that Mr. Sylvester has waived his right to appeal the trial court’s ruling to exclude Juror Number 6 from the jury pool.<sup>4</sup> (Red Brief at 20). Mr. Sylvester believes that his objection is clear on the record and the trial court’s ruling to exclude the juror is clear on the record and this Court is able to review that decision based on the

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<sup>4</sup> The State further argued that “[w]hen Scout indicated that he was satisfied with the jury selected, he waived any objection he may have had based on the exclusion of Juror 6.” (Red Brief at 20).

contents of the record.<sup>5</sup> In Fischer, no objection was made at the trial level and this Court stated that “[t]his court has consistently held that the failure to raise such an objection when the basis of the objection is known to the party constitutes a waiver.” State v. Fischer, 238 A.2d 210, 215 (Me. 1968). Mr. Sylvester did raise an objection when it was known to him and the trial court ruled to exclude the potential juror. (Jury Sel. T. at 33-34). That is a different situation than what occurred in Fischer. Nowhere on the record is it clear that Mr. Sylvester intended to waive or abandon the objection. After the jurors were selected to sit on the jury,

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<sup>5</sup> During jury selection, when Juror Number 6 was excused for cause, the following exchange took place when excusing the potential juror:

THE COURT: All right. Juror Number 6 answered in the questionnaire, I am one of the Jehovah's Witnesses and I do not want to judge another person. Um, hear from either side on Juror Number 6.

MR. HUNTER: I would move to eliminate them for cause.

MR. SWANSON: Your Honor did a general voir dire of everyone in the courtroom asking if there was any reason that they could not be fair and impartial in a case or if there was a reason that they could not serve as a juror, and they did not stand.

THE COURT: True.

MR. SWANSON: So, I don't believe that they need to be struck for cause.

THE COURT: All right. Uh, request granted. Juror 6 is out. That's in a private questionnaire. I am concerned that they answered that way and didn't answer consistently in the courtroom. That individual also themselves had been charged with an OUI, um, not that that's a big issue, but not answering the question the same is a problem from the judge's perspective. So, 6 is out.  
(Jury Sel. T. at 33-34).

the trial court did inquire whether the constitution of the jury was satisfactory to the parties.<sup>6</sup> However, Mr. Sylvester suggests that this inquiry pertains more to the jurors that were just chosen to sit on the jury and not a waiver of his prior objection to the exclusion of Juror Number 6.

Moreover, this Court has, more recently than in Fischer, addressed issues in the jury selection process that were raised on appeal for the first time. In State v. Nigro, 2011 ME 81, ¶ 14, 24 A.3d 1283, 1288 (Me. 2011), this Court noted that

Nigro argues that he was deprived of a fair trial because, during voir dire, the court did not ask potential jurors whether they harbored any anti-Islamic prejudice. Although we generally review a court's management of voir dire for an abuse of discretion, see State v. Holland, 2009 ME 72, ¶ 49, 976 A.2d 227, 241, Nigro failed to raise this issue during jury selection. Thus, our review is limited to obvious error. See State v. Burdick, 2001 ME 143, ¶ 29, 782 A.2d 319, 328.

An unraised jury selection process issue was also reviewed under an obvious error standard of review in State v. Foy, 662 A.2d 238, 242 (Me. 1995) and State v. Ifill, 349 A.2d 176, 180-181 (Me. 1975). An obvious error standard of review was also applied when this Court noted that

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<sup>6</sup> The following exchange took place:

THE COURT: State satisfied with the jury?

MR. HUNTER: Yes.

THE COURT: Defense?

MR. SWANSON: Yes.  
(Jury Selection T. at 92).

Rather than objecting to the presiding justice's picking the alternate by a nonrandom method, defense counsel, informed before trial how the alternate would be picked, stated that he found the 13-member panel satisfactory, and at the end of the trial made no objection to the justice's choice of the alternate. In these circumstances, we on appeal review that procedure only for 'obvious error.' See M.R. Crim. P. 52(b). State v. Houston, 534 A.2d 1293, 1295-1296 (Me. 1987).

Mr. Sylvester made his objection known to the trial court and the court ruled against him. The objection and decision making process of the court in denying Mr. Sylvester's objection are on the record. This is not a situation where the issue was unknown to the lower court. Mr. Sylvester believes that an abuse of discretion standard of review should apply. In the alternative, if this Court feels that a renewed objection should have been asserted at the time of the impanelment of the jury, then at the least, Mr. Sylvester believes that his objection has not been waived and that there is precedent for reviewing his claim under an obvious error standard of review. However, there is a clear, final decision by the trial court on the record for this Court's review, which he requests to be subjected to an abuse of discretion standard of review.

Mr. Sylvester additionally stands by his assertion that it is impossible to know whether Juror Number 6 would have been able to serve on the jury because he was never questioned appropriately by the trial court to make that determination. (Blue Brief at 41-45). The State has argued that

Finally, it was not an error to exclude Juror 6 because Juror 6 disclosed they could not perform an essential function required of the jury. The answers to the juror questionnaire are competent evidence supporting the trial court's decision. *State v. Carey*, 2019 ME 131, ¶ 14. The fact that conflicting evidence existed does not undermine that finding. *Id.*" (Red Brief at 21).

Mr. Sylvester believes that it cannot be said whether or not the juror would be able to sit on the jury because the information on the record is conflicting and his ultimate ability to serve cannot be determined without further inquiry by the trial court.<sup>7</sup>

The State has further argued that Mr. Sylvester has "not tie[d] this purported inadequacy of voir dire to any impairment of his constitutional rights and appears to concede that he had a fair and impartial jury comprised of a fair cross-section of the community." (Red Brief at 20). Mr. Sylvester has argued in his primary brief, first, that the trial court abused its discretion in the way it conducted voir dire by excluding potential Juror Number 6 and by not conducting a voir dire of the juror after Mr. Sylvester raised an objection to the juror. (Blue Brief at 41-45).

Secondly, Mr. Sylvester argued in his primary brief that his Sixth Amendment right was violated by an unfair jury selection process, which affects the fairness of the

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<sup>7</sup> The State has also argued that: "Scout did not ask to conduct additional voir dire Juror 6 and the trial court did not deny Scout the opportunity to conduct additional voir dire of Juror 6. (Jury Selection TR 34)". (Red Brief at 19). During the selection process, the trial court was reviewing the jurors with counsel and determining whether further voir dire was necessary. It is clear from the record that Mr. Sylvester objected to the exclusion of the juror and he suggests that it was the trial court's duty to ensure that potential jurors are adequately examined during voir dire to determine whether a juror is bias. See (Jury Selection T. at 33-34); (Blue Brief at 37).

trial process. (Blue Brief at 37-39; 45-46). The State has asserted that the fact “that a potentially impartial potential juror was excluded from the jury panel has no bearing on whether the jurors *actually selected* were fair and impartial and represented a fair cross-section of the community.”<sup>8</sup> (Red Brief at 20). Contrary to the State’s argument, Mr. Sylvester asserts that the decision to exclude Juror Number 6 affects the jury selection process and potentially the ultimate jury that was seated. The underlying process in excluding Juror Number 6 deprived him of a fair jury selection process, regardless of the final outcome.

### **Conclusion**

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

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<sup>8</sup> The State also asserted that “Scout had a right to a fair and impartial jury, but not a right to have any particular juror selected including Juror 6.” (Red Brief at 21). Mr. Sylvester is not asserting that he was entitled to have any particular juror sit on his jury, but that the process in which the juror was excluded from the jury pool was unfair. The State also asserted that: “[t]he exclusion of Juror 6, even if it had been done erroneously, does not implicate Scout’s right to a fair and impartial jury because Scout still had a fair and impartial jury.” (Red Brief at 21). Mr. Sylvester again would point out that he should be entitled to a fair jury selection process regardless of the final composition of the jury; unfairly excluding a juror affects the fairness of the process.

Dated: July 28, 2026

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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 Reply Brief of Appellant, later to be followed by one printed copy, via the U. S. Postal service, to Matthew Hunter, Esq., Office of the District Attorney, 27 Riverside Drive, Presque Isle, ME 04769.

Dated: July 28, 2026

/s/ Jeremy Pratt  
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