

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

LAW COURT DOCKET NO. Ken-25-572

STATE OF MAINE
Appellee

v.

CHRISTOPHER A. CONNORS
Appellant

ON APPEAL from the Kennebec County
Unified Criminal Docket

BRIEF OF APPELLANT

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INTRODUCTION

Defendant was charged with touching and sucking on an 11-year-old boy's genitals. The State argued in its closing that the question for jurors was whether they believed the complainant or defendant: "Only one of them can be telling the truth."

As it now does in virtually all child-sex offenses, the State offered the complainant's version of events almost exclusively via a recorded forensic interview. Defendant objected that certain portions were inadmissible as a matter of statute because they resulted from leading or suggestive questioning. Despite agreeing that there was some such "looping," the court overruled defendant's objection. It reasoned that "on the whole," the entire interview was not "unnecessarily" leading.

Below, defendant argues that the court's statutory analysis – considering the interview in its entirety rather than question by question, and querying whether the leading was "unnecessarily" suggestive – constitutes legal error. At least two statements resulted from leading questioning. In fact, not just leading, both of them actually "corrected" the complainant's statements, redirecting the boy to fit the State's theory of the case. One resulting statement salvaged *an element* of the lead-offense, and the other corrected the complainant's "misstatement" about when the offense occurred.

STATEMENT OF THE CASE

After a jury trial, defendant was convicted of one count each of gross sexual assault, 17-A M.R.S. § 253(1)(C) (Count I) (Class A), and unlawful sexual contact, 17-A M.R.S. § 255-A(1)(E-1) (Count II) (Class B).¹ Thereafter, the Kennebec County Unified Criminal Docket (Daniel Mitchell, J.) principally imposed a carceral sentence of 28 years, and lifetime supervised release. This appeal, which has been consolidated with defendant's M.R. App. P. 20 appeal, follows.

I. The State's case

In June 2023, the male complainant was eleven. 1Tr. 37-39. At the time, he enjoyed playing with a new friend ("friend") who resided down the street. 1Tr. 37, 39-40. The two boys planned a sleepover for the Friday night of June 9. 1Tr. 37, 39. The friend's parents were very close with defendant, also their neighbor, whom the friend referred to as "[U]ncle Chris." 1Tr. 40-41. Defendant was often the adult who supervised the boys as they played together. 1Tr. 41. After receiving assurances about defendant's character and meeting with defendant, the complainant's mother felt safe permitting the sleepover at defendant's house. 1Tr. 42.

Defendant and his husband lived in a mobile home. 2Tr. 43-44. The trailer was not in the best shape, having been built in the 1980s. 2Tr. 55. The bathroom door, for instance, would not stay shut unless held in place.

¹ Both §§ 253 and 255-A, but neither of the subsections or paragraphs at issue in our case, have been amended since the date of the allegations against defendant. See P.L. 2023, c.280 §§ 2-4 (effective Oct. 25, 2023).

2Tr. 54-55. If “someone farted” in the bathroom, it would be audible to anyone in the bedroom. 2Tr. 55. The door to the game-room, too, was in disrepair, its hinges often slipping out of place. 2Tr. 95, 109-10. Though the residence contained indoor surveillance cameras, defendant’s husband had recently stopped paying for the subscription necessary to record data, so they merely streamed to the couple’s cellphones in real time. 2Tr. 92-93, 115-16.

After getting off the school bus that Friday, the complainant was so excited that he immediately ran down the street to meet his friend. 1Tr. 43. His mother had to follow him down the road a while later to drop off his sleepover gear. 1Tr. 43, 50.

The next morning, the complainant’s mother picked him up from the sleepover. 1Tr. 44. They went to complaint’s baseball game. 1Tr. 44. On the way home, complainant reported to his mother that defendant had “inappropriately touched him.” 1Tr. 45. The mother recounted that the complainant told her that defendant had offered to let the complainant stay up late and play video games if the complainant would “let him suck his cock.” 1Tr. 45. When they arrived home, the mother consulted with the complainant’s father. 1Tr. 46. They contacted the police. 1Tr. 46.

A police officer responded to the family’s home. 1Tr. 47. They gave the officer the pajamas and underwear that the complainant had worn the night before, placed in a plastic bag. 1Tr. 47, 57-58, 125. On their way to a hospital, the officer, in his own cruiser, had to attend to matters elsewhere, so he returned the plastic bag of clothing to the family. 1Tr. 47-48. They continued to the hospital. 1Tr. 47-48.

There, the complainant was examined by a forensic nurse. 1Tr. 48, 64-66. Despite its hearsay nature, at trial, the nurse read into evidence the mother's statement about what the complainant had reported to her about the incident. 1Tr. 69-70. She also read into evidence the complainant's own statement. 1Tr. 70. The nurse swabbed the complainant's penis and just above it. 1Tr. 73.

The penile swab, ones from the vicinity of the penis, and other swabs gathered from the "interior front" of the underwear later tested positive for "alpha amylase." 1Tr. 127. Alpha amylase, according to the forensic chemist, is a component of human saliva, though it is also present in human feces and breastmilk. 1Tr. 127-28. The testing performed cannot differentiate between saliva and feces. 1Tr. 131-32. Those same swabs also yielded DNA profiles which "matched" defendant's. 1Tr. 139-41.

At trial, the State presented a copy of the forensic interview undertaken four days after the complainant's first-report. *See* SX 3. In it, the complainant recounted, "At the sleepover, [defendant] touched my private parts." SX 3 ca. 8:20; *see also id.* ca. 15:20. He clarified that he meant penis. SX 3 ca. 8:45. The complainant recalled how the boys had played video games until about 9 p.m. when the friend went to bed. SX 3 ca. 9:50.

At that point, the complainant asked defendant whether he could play more, defendant responding, "Yeah, if you let me touch your – private part." SX 3 ca. 9:55. When the complainant refused, defendant "forced himself on [the complainant]." SX 3 ca. 10:00; *see also id.* ca. 15:30 ("forced himself"). "He started touching [the complainant's penis], and then he put his mouth

on it.” SX 3 ca. 19:00. The touching occurred “over” the complainant’s clothes. SX 3 ca. 19:45.

Asked, “Can you tell me about your clothes when he put his mouth on your penis?” the complainant responded, “Above.” SX 3 ca. 20:00. The interviewed redirected, “So I just want to make sure I understand, so you had pants on and underwear?” SX 3 ca. 20:10. The complainant then explained that his bottoms were “pulled down.” SX 3 ca. 20:30.

As recounted to the interviewer, the complainant then retreated to the bathroom, returning to the room where the friend was sleeping only once defendant withdrew. SX 3 ca. 20:10. Defendant implored the complainant to not tell anyone what happened. SX 3 ca. 21:00.

The complainant reported to the interviewer that these events occurred “two days ago.” SX 3 ca. 20:50. Apparently not liking the answer, the interviewer redirected: “So today is Wednesday; so two days ago, what day would that have been?” SX 3 ca. 11:05. After a long pause, the complainant answered, “I don’t remember.” SX 3 ca. 11:15. “But you said it was, you think, two days ago from today?” the interviewer interjected. SX 3 ca. 11:35. When the complainant started to answer, “maybe,” the interviewer interrupted, “Is it possible it could have been a little longer ago [shifting his hands back and forth]?” SX 3 ca. 11:45. “Maybe three or four days,” the complainant ventured, the interviewer again speaking over him, “Three or four, okay.” SX 3 ca. 11:50. “But it happened within the past few days,” the interviewer declared. SX 3 ca. 11:55. The interviewer quickly moved on to a different subject.

At the beginning of the trial, defendant objected that portions of the interviewer were inadmissible because they were the product of suggestive or leading questioning. 1Tr. 6-8; *see* 16 M.R.S. § 358(3)(B). The court overruled the objection, for reasons discussed in more detail below. 1Tr. 8.

II. The defense

The police officer who collected the complainant's pajamas and underwear regretted having given them back to the complainant's family. 1Tr. 84. Such was not "best practice." 1Tr. 84. He also agreed it was unwise to combine the clothing items in one plastic bag, "all lumped together." 1Tr. 107-08. Such could cause "cross-contamination." 1Tr. 131; 2Tr. 30-31. This was problematic, because the tests for bodily fluids are "quite sensitive." 2Tr. 34. All results indicating saliva and defendant's DNA could have been nothing more than "trace amounts of fecal matter." 2Tr. 39. Such could come from a picogram or two – mere *trillionths* of a gram. 2Tr. 23-24, 42. That is, a trillionth of a packet of sugar such as one might pour into a coffee at Dunkin. 2Tr. 23-24. It is five cells. 2Tr. 22. This amount might be on numerous items within a home. 2Tr. 42.²

Defense counsel argued that there was a reasonable doubt, therefore, that the saliva and DNA results were nothing more than an instance of trace

² In a memorable study, University of Arizona researchers found that 72% of handles on grocery-store shopping-carts contained fecal matter in detectable amounts. *See* CBS News, *Study: Fecal Bacteria Found on Most Supermarket Shopping Carts* (Mar. 7, 2011) <https://www.cbsnews.com/losangeles/news/study-fecal-bacteria-found-on-most-supermarket-shopping-carts/>

transfer. 3Tr. 23-28. “Pink eye, anybody[?]” counsel asked the jury. 3Tr. 25. “[F]ecal matter is around.” 3Tr. 25.

As for the complainant, defense counsel asked the jury to consider what he “might have had for influences, what might have been motives.” 3Tr. 30-31. He contended that the interviewer asked “leading questions” and “prompted” the complainant to amend any “wrong answer.” 3Tr. 31-32. He argued that these two facets of the case generated reasonable doubts. 3Tr. 37-39.

III. Sentencing

The court set the basic sentence at 20 years’ prison, the bottom-line number mandated by statute. STr. 37; 17-A M.R.S. § 253-A(2).

But it next concluded that “the aggravating factors far outweigh the mitigating factors to the extent that there are mitigating factors.” STr. 37.

The first aggravator it identified was victim impact. STr. 37-38.

In its view, “the second most important aggravating factor” was “defendant’s untruthful testimony at trial.” STr. 38. The court continued,

He testified. I find that that testimony was not truthful. And I -- I --- I weigh that has a significant aggravating factor. That, to be very clear, is not penalizing him for his right, his [c]onstitutional right, which is sacrosanct[,], to have a trial and to --- to go through that process. Absolutely not penalizing him for that, but I am penalizing him for not being honest at trial. I think that’s a substantial aggravating factor.

STr. 38.

The court then mentioned a few interrelated concerns: “defendant’s grooming behavior in this particular case;” “his prior criminal history;” and “uncharged conduct,” (allegedly involving other victims) presented via police reports. STr. 39-40.

Defendant had objected to the court’s consideration of “uncharged conduct,” arguing that (1) the police reports providing the basis for such conduct were not sufficiently reliable; and (2) the State had not given adequate notice that it intended to marshal those allegations at sentencing, indicating its intent to do so only the day before sentencing.

The court discussed another aggravating factor:

And lastly, I want to say that I think an aggravating factor is the lack of remorse that Mr. Connors has shown to my hearing so far in this matter. I have yet to hear him express any concern about the victim in this matter. I have yet to hear him express any remorse about what he did with respect to the victim in this matter. And I think lack of remorse is a significant aggravating factor in this case.

STr. 40. This was after defendant had given the following, three-sentence address to the court:

I want to ask the Court for mercy. I could sit here all day and say sorry for everything that’s going on, but I don’t think that will impact much. But all I can ask is that in my time that you sentence me, I will work my hardest to be a better person and to learn from the mistakes that I’ve made in my life, and that’s all I can do.

STr. 29.

Defendant requested that the court decrease his sentence due to his own victimization. A74. He was raped when he was 15, after running away from home. STr. 25. He “was found naked, bleeding, and disoriented in a closet....” A74. Defendant then moved in with his mother but had to move out after conflict with her boyfriend. A75. He was forced to move back in with his father, who had physically abused him years earlier. STr. 25, 26, 28; A75. The father, who could never “accept that [defendant] was gay,” kicked him out, and defendant attempted suicide – the first of many such attempts during his life. STr. 28; A75. Defendant spent a month at a mental/behavioral-health hospital. A75; STr. 25, 28, 29.

The court gave defendant’s own victimization zero weight:

I don’t find that that’s a mitigating factor in this case. I think that an argument could be that an individual who experienced that should be on notice of the harm that that can cause to – to another person. I don’t count it as an aggravating factor, but I think it’s at most a neutral factor.

STr. 40.

Thus, the court increased defendant’s maximum sentence – really, his final sentence, given the statutory bar on suspended prison-time, *see* 17-A M.R.S. § 253-A(2) – to 28 years’ prison. STr. 41. It imposed supervised release for the remainder of defendant’s life. STr. 41.

Further details are developed, below.

ISSUES PRESENTED FOR REVIEW

I. Did the trial court erroneously construe the statutory bar on admission of interviews conducted by a Children's Advocacy Center when "statements" within those interviews have been "made in response to suggestive or leading questions," 16 M.R.S. § 358(3)(B), to apply only when the interview "on the whole" is suggestive or leading, rather than on a statement-by-statement basis, and only when they are "unnecessarily" leading or suggestive?

II. Did the prosecutor err by arguing, "[T]his is not a case where you can believe both [the complainant] and the defendant, it is just not. Only one of them can be telling the truth"?

III. Did the sentencing court commit multiple improprieties and illegalities, including: (1) aggravating defendant's sentence because he exhibited a "lack of remorse"; (2) aggravating defendant's sentence based on uncharged allegations that, for the first time the day before sentencing, the State contended should be a basis for aggravation; (3) admitting police reports containing those uncharged allegations, despite defendant's objection that they were not reliable; and (4) declining to mitigate defendant's sentence because of his own sexual and physical victimization suffered during childhood?

ARGUMENT

First Assignment of Error

- I. **The trial court erroneously construed the statutory bar on admission of interviews conducted by a Children's Advocacy Center when "statements" within those interviews have been "made in response to suggestive or leading questions," 16 M.R.S. § 358(3)(B), to apply only when the interview "on the whole" is suggestive or leading, rather than on a statement-by-statement basis, and only when they are "unnecessarily" leading or suggestive.**

- A. **Argument summary**

In order to obtain leave to introduce "all or a portion of a recording of a forensic interview" must establish that:

Statements made by the protected person during the forensic interview were not made in response to suggestive or leading questions[.]

16 M.R.S. § 358(3)(B). Confronted with a defense objection that "at points of inconsistency," the interviewer crossed into suggestive or leading questioning, the court made a legal error. A20; 1Tr. 8. After supportably finding that, indeed, "there were some instances of looping [by the interviewer]," the court nonetheless overruled defendant's objection because "on the whole" the interview was not "unnecessarily" so. A20; 1Tr. 6, 8.

The court's construction of § 368(3)(B)'s plain language is erroneous. Any statement – considered independently – resulting from "suggestive or leading" questioning shall be excluded. That is both plain from the text of § 358(3) and in accord with how other hearsay-exceptions work. While it may *also* be true that the entirety of an interview could be rendered inadmissible

by only a few instances of suggestive or leading questioning – the court’s conception of § 358(3)(B) – each individual statement must, too, be evaluated on its own.

Moreover, the court’s construction of § 358(3)(B) affords leeway for interviewers that are not, in its subjective view, “impermissibl[y]” or “unnecessarily” leading, and for suggestive questioning that it feels would be otherwise “difficult to avoid.” None of that added filtering represents the law. Rather, *any* answers resulting from suggestive or leading questioning must be excluded, regardless of other considerations.

The remedy for the court’s error is to vacate and remand.

B. Preservation and standard of review

The following exchange preserved this argument, as it apprised the court of the action defendant sought and the basis for it. *See* M.R. U. Crim. P. 51. At the beginning of trial, the court and parties placed on the record the highlights of a discussion they had just had in chambers. A20; 1Tr. 5-6. Defendant was contesting the State’s proof that statements in the interview were not the product of suggestive or leading questioning. A20; 1Tr. 6-8. Defense counsel argued,

I think the interview largely speaks for itself, Your Honor. The [c]ourt has reviewed it carefully. I would note that at points of inconsistency, the interviewer did tend to make statements such as, ‘let me make sure I understand,’ and so on, that would have made it, I think, fairly clear to a child that it was potentially a wrong answer or an inconsistent answer, and I think the [c]ourt would have noted those and factored those points into its analysis.

A20; 1Tr. 7-8 (inverted commas added for clarity).

The court ruled:

I think that there were some instances of some looping, to some extent, in terms of questions, but I think that under the circumstances would have been pretty difficult to avoid.

I have reviewed the video carefully. I do think on the whole it is not unnecessarily suggestive or unnecessarily or unfairly leading. I think [defense counsel] makes some fair points, but I think on the whole looking as the interview it is not one that the [c]ourt would characterize as impermissible under the [s]tatute in terms of the leading nature of the questions.

A20; 1Tr. 8.

This Court has not yet announced by what standard it will evaluate rulings on § 358(3). Defendant proposes an appropriate standard: The trial court, being in no better position than this Court to evaluate the videotaped interview, is due no deference. This Court may just as capably determine what is a leading or suggestive question; the videos are replicable historical facts. *See Commonwealth v. Hoyt*, 958 N.E.2d 834, 841 (Mass. 2011) (Because an appellate court is “in the same position as the motion judge in viewing the videotape,” “lower court findings based on documentary evidence available to an appellate court are not entitled to deference.”) (cleaned up). Moreover, de novo review of consequential legal standards avoids “varied results” that are “inconsistent with the idea of a unitary system of law.” *See Ornelas v. United States*, 517 U.S. 690, 697 (1996). This Court “has a special responsibility to exercise its independent judgment to determine the validity of legal conclusions that are dispositive of a

defendant's claim that he has been denied fair treatment in a criminal proceeding.” *State v. Cefalo*, 396 A.2d 233, 239 (Me. 1979).

In this case, there is also an issue of statutory interpretation. Such is reviewed de novo. *State v. Conroy*, 2020 ME 22, ¶ 19, 225 A.3 1011.

C. Analysis

1. The court’s statutory construction is erroneous.

A hearsay statement is not admissible merely because it is adjacent to another hearsay statement that is admissible per an exception to the hearsay rule. Here, though, the court admitted all parts of the CAC interview because portions of it were not the product of suggestive or misleading questioning.

Williamson v. United States, 512 U.S. 594 (1994) is illustrative of the basic proposition that hearsay statements are not admissible merely because of their proximity to other, admissible hearsay. There, the Court considered the admissibility of another’s statement against penal interest per Fed. R. Evid. 804(b)(3). It considered whether “collateral statements,” in addition to the actual statements against interest, were also admissible. 512 U.S. at 600. The Court answered in the negative, reasoning that neither the text of 804(b)(3) nor “the general theory of the hearsay Rules suggests that admissibility should turn on whether a statement is collateral to a self-incriminatory statement.” *Id.*

The *Williamson* Court rejected the notion that “an entire narrative” was admissible simply because “it is in the aggregate” consistent with the admissible portions of the hearsay statements. *Id.* at 601. Rather, the

admissible statements were those “ma[d]e more credible” by the policy considerations ungirding the hearsay exception. *Id.* at 599.

This begs the question, in our case: What is the motivating principle of § 358? This Court has already answered: “ensuring reliability of evidence admitted at trial,” which, as “social science and psychological research” indicates, is undermined by children’s “suggestibility.” *State v. Engroff*, 2025 ME 83, ¶ 57, 345 A.3d 91. In other words, the policy assumption underlying § 358 is that suggestive and leading questioning yields less reliable evidence. Following *Williamson*, then, the logic of § 358 does *not* support admission of “collateral statements.” Hearsay statements are not admissible merely because of the company they keep.

The text of § 358(3)(B) dictates as much. First, the Legislature explicitly specified that “all *or portion of* a recording of a forensic interview” might be admitted. (emphasis added). Second, Paragraph B provides, in pertinent part, “*Statements* made by the protected person....” (emphasis added). If it meant to apply to the entirety of the interview, regardless of the characteristics of individual statements, this would be an odd choice of words. The Legislature plainly intended courts to conduct a statement-by-statement analysis.

Consider the context, too. Paragraph A conditions admission upon the requirement that the interview “was conducted by a forensic interviewer.” Surely, the Legislature did not intend to permit admission of interviews *in their entirety* so long as they were mostly conducted by a qualified examiner, but, during other portions, a trusted family-friend or Ms. Rachel popped in

to lob friendly questions. Likewise, the requirement that the recording “has not been altered.” 16 M.R.S. § 358(3)(B). Surely, the *whole* recording is not admissible if “just” a few portions of it have been selectively dubbed or edited. Clearly, those portions would be inadmissible, even if the other portions might³ be admitted.

Tangentially, the court determined that, though there were “looping” questions, the interview “on the whole ... is not one that the [c]ourt would characterize as *impermissible*.” (emphasis added). The statute does not prohibit only those portions “made in response to *impermissibly* suggestive or leading questions.” (emphasis added on added word). It does not make allowances for suggestive or leading questions that “under the circumstances would have been pretty difficult to avoid.” All of that is the court’s innovation. The statute plainly provides for exclusion of *any* suggestive or leading questioning, not just that which, in the court’s subjective estimation, is “impermissible,” “unnecessary” or otherwise “difficult to avoid.” The court granted a buffer-zone of leeway that is supported by nothing in the statute. It is not the law enacted by the Legislature.

³ This point bears repeating. Defendant contends that, clearly, individual portions must be excluded if those portions are the product of suggestive questioning. However, it is possible that, in some circumstances, the entirety of an interview might be the product of suggestive pressures, even were it not the case that each and every question was, on its own, leading. In other words, an entire video might be inadmissible when only some of the questions are leading.

2. The consequences of the court's legal error were significant.

Had just two such statements been excluded, there is a legitimate possibility of a different verdict. There are two reasons.

First, as the State noted in its closing argument, this case came down to the complainant's credibility. 3Tr. 8 ("[T]he only question before you is whether or not you believe him."). Striking these portions of the interview could have cast doubts on the allegation's believability.

Second, the two most prominent suggestive question-and-answers related to vital evidence. One is *an element* of the lead offense: Was the sexual act undertaken, as it needed to be in order to establish the offense, *underneath* the complainant's clothing? The other concerns whether the alleged assault occurred at a time consistent with the State's theory of the case. Without the interviewer's intervention, the State's case would have been deficient on both accounts.

Here is the first exchange, regarding whether the complainant was wearing clothing at the time:

Q. And when he put his hand on your penis, was it over your clothes, under your clothes, or something else?

A. Over my clothes.

Q. Over your clothes? Okay.

And you said he put his mouth on your penis, too. Can you tell me about your clothes when he put his mouth on your penis?

A. Above.

Q. I just want to make sure I understand. So you had pants on and underwear?

A. [Nods]

Q. Okay, where were your pants and underwear, when he put his mouth on your penis?

A. [Gestures to upper thighs] So here and kind of there. There [moving hand upwards].

Q. So, they were pulled down?

A. [Nods]

Q. Okay. And did [defendant] pull them down?

A. [Nods]

Q. And what about your shirt? Was your shirt pulled up or was it off, or do you remember?

A. It was up.

Q. It was up. Okay. Alright. And did [defendant] pull them down – pull your pants down?

A. [Nods]

Q. Yeah.

SX 3 ca. 19:45.

Here, we have the complainant telling the interview that defendant touched his penis “over” his clothes, and put his mouth on his penis “above” his clothes – until redirected by the interviewer. The interviewer then offers his own interpretation of what the complainant means by indicating near his upper thighs, proposing his preferred answer for the complainant to adopt.

Again, notice also how the interviewer led the complainant to his nods – still, not even words – that defendant pulled down his pants. These are obviously hugely impactful redirections. To constitute a “sexual act,” the contact had to have been “direct” rather than “through clothing.” *Compare* 17-A M.R.S. § 251(1)(C) *with* (1)(D). The complainant was led to an element of the lead-offense.

Another example: When did all this supposedly happen?

Q. So, tell me, when did this happen, [complainant]? A month ago? A few days ago? Something in between?

A. Two days ago.

Q. Two days ago? Okay.

So today is Wednesday; so two days ago – what day would that have been?

A. Umm. [approximately 20-second pause]

Umm. I don’t remember.

Q. But you said it was, you think, two days ago from today?

A. Maybe [inaudible].

Q. Maybe. Is it possible it could have been a little longer ago [shifting hands side-to-side]?

A. It could’ve been like three or four –

Q. [Speaking over complainant] Three or four.

A. – days.

Q. Okay.

But it happened, like, within the past few days. Okay.

And, umm, tell me where [defendant] lives.

SX 3 ca. 10:55.

These represent not just *leading* questioning; they are *corrective* questioning – “looping,” in the words of the court. Without the interviewer’s intervention, the State’s theory of the case would have been missing an element of the offense and incompatible with the complainant’s own testimony. The court’s errors are prejudicial.

Second Assignment of Error

- I. The prosecutor erred by arguing, “[T]his is not a case where you can believe both [the complainant] and the defendant, it is just not. Only one of them can be telling the truth.”**

A. Summary of the argument

Maine law recognizes that it “constitutes serious obvious error and requires reversal” when a prosecutor argues that the jury must believe that either the defendant or the complainant has lied in his testimony. *State v. Tripp*, 634 A.2d 1318, 1321(Me. 1994). Here, the State traversed this prohibition, and, in context, its error appears to vouch for the complainant.

B. Preservation and standard of review

Defendant acknowledges that there was no objection to this portion of the State’s closing argument. Thus, this Court will review for obvious error. *State v. Moulton*, 2026 ME 6, ¶ 27, ____ A.3d _____. Accordingly, it will determine whether there is an error that is plain, affects substantial rights, and warrants remedy. *Id.*

C. Analysis

Given the case-law, just two of the obvious-error prongs are realistically in play. That is, there is undoubtedly error that is plain. The only question is whether the third and fourth elements are satisfied. Nonetheless, defendant briefly addresses prongs one and two, before turning to the others.

1. The State’s argument was erroneous.

“Improperly questioning a defendant about whether other witnesses lied requires reversal except when there is ‘overwhelming’ evidence of guilt.”

Tripp, 634 A.2d at 1320 (cleaned up). “Whether conveyed in cross-examination or in final argument,” it is error for a prosecutor to “create the impression that the jury could believe the defendant only if the jury found another witness lied.” *State v. Goodwin*, 1997 ME 69, ¶ 5, 691 A.2d 1246. Such “clearly implie[s] [a prosecutor’s] opinion that the victim told the truth and the defendant lied.” *State v. Comer*, 644 A.2d 7, 10 (Me. 1994).

In *Tripp*, the argument that crossed this line was: “It does all come down to the victim and the defendant, because one of them wasn’t telling the truth. One of them was lying here to all of us.” 634 A.2d at 1321. Here, the argument was substantively identical: “This is not a case where you can believe both the complainant and the defendant, it is just not. Only one of them can be telling the truth.” 3Tr. 8 (cleaned up). Both are error.

B. It was plainly so.

An error is “plain” whenever it “is so clear under existing law that the court and prosecutor were required to address the matter even in the absence of a timely objection.” *State v. Bilodeau*, 2020 ME 92, ¶ 15, 237 A.2d 156. Such “clear and binding” case-law as *Tripp*, *Comer* and *Goodwin* et al. demonstrate that “existing law” does not permit the State’s argument. See *United States v. Melo*, 954 F.3d 334, 345 (1st Cir. 2020) (An error is “obvious” – the federal equivalent of “plain” – when case-law contains a holding that is “clear and binding precedent.”).

C. The error affected substantial rights.

Immediately preceding the State’s error, the prosecutor framed the case for the jury: “[T]he only question before you is whether or not you

believe [the complainant].” 3Tr. 8. Defendant agrees; this case was all about credibility.⁴ *Tripp* has already taught us that error such as the State’s here constitutes “serious obvious error” that “requires reversal” when a case has “turned on the credibility of [the] defendant and the victim.” 634 A.2d at 1320. That box is checked, and the prosecutor’s error here therefore “requires reversal.”

The context of the erroneous argument, moreover, creates a clear implication of vouching by expression of the prosecutor’s opinion about credibility. *Cf. id* at 1321 (“The clear implication is that the prosecutor believed that the victim told the truth but defendant lied.”). The who-is-lying theme was central to the State’s presentation. For instance,

- The prosecutor was permitted to inquire of defendant – over his objection (“outside personal knowledge”) – “Why on earth would [the complainant] make all this up?”, 2Tr. 131;
- The State repeatedly contrasted the complainant’s testimony with defendant’s, prodding jurors to decide which one was “telling the truth,” 3Tr. 8-10;
- The prosecutor drew jurors’ attention to “the most important job you have today. Your job is to determine the credibility or the believability of the witnesses in this case,” 3Tr. 10-11;

⁴ The physical evidence, after all, plausibly consisted of nothing more than a trillionth of a sugar-packet’s worth of bodily fluid in a less-than-spotless bathroom.

- It told the jury, “It is clear what interest the defense witnesses have in this case,”⁵ 3Tr. 12;
- It asked, “What motivation does the defendant have to lie in this case? What interest does the defendant have in the outcome of this case?”, 3Tr. 12;
- “Compare the consistency of [defendant’s] statements to the statements that [the complainant] made and the interest that [the complainant] has in the outcome of this case,” the prosecutor requested,” 3Tr. 13;
- “What motivation does [the complainant], an eleven, now thirteen-year-old child have to lie?”, the prosecutor asked rhetorically, 3Tr. 13;
- After playing a portion of the CAC interview, the prosecutor asked jurors, “Does that child look like he is lying? Does that child look like he is exaggerating what happened to him? Does that child look like he is making all of this up for what purpose?”, 3Tr. 13;
- “Why would [the complainant] lie? Why would he make this up?”, the prosecutor beseeched, 3Tr. 14;
- “Is that something an eleven-year-old would make up?”, the prosecutor asked, 3Tr. 15;

⁵ Though the Court has not previously identified such to be improper, it is always true that a defendant has motivation to avoid false conviction. The implication is irrelevant, and it diminishes the presumption of innocence: *All defendants have a motive to lie by simple virtue of their party-status.*

- She told jurors to consider whether it was “reasonable” to believe that the complainant “lied” or instead “told the truth,” 3Tr. 18;
- In rebuttal, the prosecutor argued, “What I would encourage you to do is to think about what a child’s motivation is, and that is why you are required to do when determining credibility. What is their motivation to lie? What is their motivation to tell the truth?”, 3Tr. 41-42;
- The State’s attorney continued, “We are talking about an eleven-year-old child who went through everything he did. We are talking about what [his] motivation is to lie about these specific allegations. We are talking about what [the complainant’s] is to make all of this up,” 3Tr. 42;
- She pressed, “The evidence shows that [the complainant] has no motivation to lie. He has no motivation to make this up,” 3Tr. 50.

The context reveals the prosecutor’s message, as it did in *Tripp*: ““The clear implication is that the prosecutor believed that the victim told the truth but defendant lied.”. 634 A.2d at 1321. In a case in which, as the prosecutor agreed, the “only question” was whether jurors believed the complainant, the prosecutor’s argument is not harmless. As in *Tripp*, again, the remedy is vacatur.

4. The Court should reverse.

By the time it arrives at this juncture, the Court will have recognized plain error affecting substantial rights. Defendant contends that, when it

comes to prosecutorial error, there is no conceivable occasion in which appellate courts should decline to reverse if the first three prongs are satisfied. In other words, it is rarely, if ever, appropriate to excuse prejudicial prosecutorial error. There are two reasons, one affecting the integrity of criminal justice, and the other necessary to public faith in, and fairness of, court proceedings.

As this Court recognized in *State v. White*, 2022 ME 54, ¶ 35, 285 A.3d 262, its decisions about whether to reverse “send a message” to prosecutors. Declining to reverse even though a prosecutor’s error has affected substantial rights will only embrace future, repeat errors. That outcome tends to erode lines drawn by this Court, not uphold them. *See generally* Josh Bowers and Paul H. Robinson, *Perceptions of Fairness and Justice: The Shared Aims and Occasional Conflicts of Legitimacy and Moral Credibility*, 47 WAKE FOREST L. REV. 211 (Spring 2012) (error-correction is necessary to legitimacy).

Second, it simply does not look good to abstain from doing anything about a prosecutor’s substantial-right-affecting error. When courts use “vigorous language” to denounce prosecutorial error, yet refrain from granting a remedy, such evinces a sense of “helpless piety” and “breeds a deplorably cynical attitude towards the judiciary.” *United States v. Antontelli Fireworks Co.*, 155 F.2d 631, 661 (2d Cir. 1946) (Frank, J., dissenting). Forget litigants; what is the public supposed to think of a court system that tolerates a “minister of justice” violating the law in the course of

prosecuting others for violating the law? The stakes are simply higher when it is a prosecutor who errs.

Third Assignment of Error

IV. The sentencing court committed multiple improprieties and illegalities, including:

- (1) aggravating defendant's sentence because he exhibited a "lack of remorse";**
- (2) aggravating defendant's sentence based on uncharged allegations that, for the first time the day before sentencing, the State contended should be a basis for aggravation;**
- (3) admitting police reports containing those uncharged allegations, despite defendant's objection that they were not reliable; and**
- (4) declining to mitigate defendant's sentence because of his own sexual and physical victimization suffered during childhood.⁶**

A. Summary of the argument

Though there is currently no categorical bar on determining that a defendant who has allocuted at sentencing "lacks remorse," here, there is nothing to support such a finding. Defendant's three-sentence allocution was reflective and conciliatory. The upshot: the court appears to have instead punished defendant for not admitting his guilt and taking his case to trial.

Defendants are entitled to know in advance on their sentence might be based. They are entitled to know what the State will propose, or the court might adopt, as aggravating factors. Here, the record indicates that such notice was not provided.

⁶ In his *Supplemental Application for Leave to Appeal Sentence*, defendant additionally argued that the court had unlawfully aggravated his sentence for what the court felt was "defendant's untruthful testimony." See STr. 38-39. Since that time, however, the undersigned has come to understand that trial counsel waived this argument, noting: "I believe the State is correct that my client testifying is an aggravating factor." STr. 27. Counsel apologizes for his mistake.

Regardless of notice, the evidence of the uncharged conduct for which defendant's sentence was significantly increased is unreliable. The sentencing court erred by admitting it.

Defendant was raped as a teenager. He had an indisputably difficult childhood. The court erred in principle by concluding that such was in no way mitigating.

B. Preservation and standard of review

After the State repeatedly, *e.g.*, STr. 7, 19; SSM at 17, argued that defendant failed to demonstrate remorse, and that such was an aggravating factor, defense counsel objected, "You cannot penalize for trial – for exercising one's right to trial. We can reduce for acceptance of responsibility, but we cannot penalize for trial." STr. 27. This served to preserve the argument that it was unlawful for the court to conclude that defendant's "lack of remorse is a significant aggravating factor in this case." STr. 40. This Court will therefore review de novo. *State v. Ellis*, 2025 ME 56, ¶ 22, 339 A.3d 794.

Defendant also objected to the court's consideration of allegations that defendant committed uncharged offenses. STr. 21-22. This means, the Court will review de novo. *See United States v. Garcia*, 797 F.3d 320 (5th Cir. 2015) (review of ruling on objection to lack of notice that sentencing court would consider testimony from a separate criminal trial is de novo). Relatedly, defendant's argument that the police reports are too unreliable is subject to de-novo review. A claim that evidence is unreliable, after all, invokes a "due process requirement." *State v. Pendleton*, 2025 ME 40, ¶ 53,

334 A.3d 752 (quotation marks omitted); *see also State v. James*, 2002 ME 86, ¶ 13, 797 A.2d 732 (in probation-revocation hearing, evidence the “substantive reliability” of which is “highly suspect” violates due process). And this Court “review[s] due process challenges de novo.” *Dubois v. Dep’t of Agric.*, 2018 ME 68, ¶ 8, 185 A.3d 743.

Defendant’s argument that his own victimization is a mitigating factor was preserved by both his sentencing memorandum and presentation at sentencing. A74-A75, A77; STr. 26 (“[A]the end of the day, the prior victimization has to be considered mitigating.”). Historically, in M.R. App. P. 20 appeals, this Court has reviewed a court’s identification of aggravating and mitigating factors for abuse of discretion. *E.g., State v. Gaston*, 2021 ME 25, ¶ 36, 250 A.3d 137. However, defendant requests de novo review for misapplication of principle, just as are basic sentences vetted. *Id.* at ¶ 34. Defendant is aware of no principled reason why maximum sentences, in contrast, should be subject to a less thorough standard of review. Given the Legislature’s expansive remit to this Court, *see* 15 M.R.S. §§ 2154 & 2155, defendant requests de novo review, so as to better unify objective sentencing criteria.

C. Analysis

Defendant separately addresses each of the court’s constituent errors.

1. There is no lawful basis to find a “lack of remorse.”

It is true, defendant allocuted:

I want to ask the Court for mercy. I could sit here all day and say sorry for everything that’s going on, but I don’t think that

will impact much. But all I can ask is that in my time that you sentence me, I will work my hardest to be a better person and to learn from the mistakes that I've made in my life, and that's all I can do.

STr. 29. While defendant understands that, because he allocuted, the sentencing court *might* properly consider the content of that allocution, he nonetheless contends that “the content of that allocution” does not support the court’s finding of “lack of remorse.” *Cf. State v. Coleman*, 2024 ME 35, ¶ 27, 315 A.3d 698. The “content of that allocution” is that defendant is sorry, acknowledges his mistakes, and seeks to become a better person. Rather, the court’s “lack of remorse” finding must be a punishment for defendant’s decision not to admit his guilt. Such is unconstitutional. *See Griffin v. California*, 380 U.S. 609, 614 (1965).

Two federal cases are illustrative of this point. In *Ketchings v. Jackson*, 365 F.3d 509 (6th Cir. 2004), a defendant was convicted at trial, and at sentencing, the defendant allocuted, making “a lengthy statement expressing his remorse.” 365 F.3d at 513. But the sentencing judge wanted more, explaining that he would more leniently sentence Ketchings were Ketchings to admit to guilt. *Id.* at 513-14. Ketchings declined to do so, though he did state he was sorry for the victim’s family’s loss. *Ibid.* Years later, on federal habeas corpus, the Sixth Circuit reversed, concluding that the defendant’s Fifth Amendment right had clearly been violated because his sentence was aggravated as a result of his refusal to concede guilt.

More recently, the Sixth Circuit decided *United States v. Whitson*, 77 F.4th 452 (6th Cir. 2023). In *Whitson*, the defendant allocuted, but, according to the sentencing court, his “remarks about remorse were too general.” *Id.* at 456, 458. The Sixth Circuit remanded for resentencing, reasoning that the sentencing judge was clearly punishing the defendant for refusing to admit guilt. *Id.* at 459-60. “This is penalizing the defendant.” *Id.* at 460. The judge had unlawfully “cloaked” his punishment in otherwise permissible terms. *Id.* at 457 (cleaned up, quotation marks omitted).

Can a defendant ever allocute and, at the same time, refrain from admitting guilt? Put somewhat differently: Can a court find “lack of remorse” anytime a defendant has lost at trial, so long as he says *anything* at all in allocution? The court’s “finding” suggests a categorical rule, yet, on the facts, the record does not support a “lack of remorse.” The only “competent” basis for such a “finding” was defendant’s decision to have a trial.

2. The court unlawfully relied upon “uncharged conduct,” despite the lack of advance notice that such was to be used as a basis for increasing defendant’s sentence.

A defendant retains a “right to notice of the information on which the district court will base a sentence.” *United States v. Ramos-Carreras*, 59 F.4th 1, 7 (1st Cir. 2023). Such a due-process right requires “that the defendant is made aware of the evidence to be considered and potentially used against him at sentencing, and is provided an opportunity to comment on its accuracy” – in the federal system, via a presentence investigation report. *United States v. Ausburn*, 502 F.3d 313, 322 (3d Cir. 2007)

(quotation marks omitted); see *Burns v. United States*, 501 U.S. 129, 138 (1991) (Given Fed. R. Crim. P. 32, Court need “not confront the serious question whether notice is mandated by the Due Process Clause.”).

Unfortunately, in Maine, however, “there is no requirement for a presentence investigation and report” or even a “sentencing memorandum.” *State v. Rosario*, 2022 ME 46, ¶ 39, 280 A.3d 199. Thus, it is as a matter of due process that the State, or the court⁷, must provide fair notice of its intent to seek, or its intent to impose, a sentence aggravated based on specified circumstances.

“A defendant has the right to fair notice of the specific sentence enhancement allegations that will be invoked to increase punishment for his crimes.” *People v. Tirado*, 502 P.3d 941, 947 (Calif. 2022) (quotation marks omitted). In other words, “a defendant has a cognizable due process right to fair notice of the specific sentence enhancement allegations that will be invoked to increase punishment for his crimes.” *People v. Mancebo*, 41 P.3d 556, 563-64 (Calif. 2002). Thus, the State (or the court) must *specify* in advance what it alleges are aggravating circumstances. When it has not done so, and a defendant objects, due process does not permit resultant aggravation.

⁷ In federal court, where U.S. Probation and Pretrial Services drives the selection of a sentence, in effect it is often the sentencing court itself that “must provide adequate notice to the parties of both the factual and legal grounds for departure from the Guidelines range.” *United States v. Garcia-Renteria*, 229 Fed.Appx. 595, 597 (9th Cir. 2007).

This only makes good sense, especially when the basis for aggravation is uncharged conduct. Defendants may want to subpoena the complainants as witnesses, perhaps to demonstrate their unreliability or outright recantation. They may want to call the report-taking officers to clarify ambiguous statements or plumb why further investigation was not undertaken. They may want to provide evidence that would contradict the “uncharged conduct.” None of this is practicable unless defendants know, in advance, of the need to do so.

Courts would not hesitate to exclude trial evidence of which a defendant was not on notice of the need to confront, even when “only” a few days of jail time are at stake – *e.g.*, in a misdemeanor prosecution. Here, defendant’s sentence increased by *eight years*, based to some degree on evidence which he did not know he needed to address. That violates baseline expectations of fairness, and it is rather the opposite of sensible procedure.

3. The police reports documenting the “uncharged conduct” are not sufficiently reliable to ensure defendant’s due-process rights.

“Due process requires” that information upon which a court bases a criminal sentence “be factually reliable.” *State v. Dumont*, 507 A.2d 164, 166 (Me. 1986). “Not every police report satisfies the reliability floor.”⁸ *United*

⁸ The court’s ruling is categorical: “I think that reasonable people in the conduct of their normal affairs can put some stock in the truth of information contained in police reports.” STr. 39.

This Court, respectfully, should disabuse the trial court of such an across-the-board presumption. *See Padilla*, 793 Fed. Appx. at 757 (“[B]ecause police reports—as a category of evidence—are not inherently reliable, it follows that courts cannot resolve a disputed sentencing fact

States v. Padilla, 793 Fed. Appx. 749, 756 (10th Cir. 1999). They are multi-layered hearsay. *Cf. State v. James*, 2002 ME 86, ¶¶ 1, 13, 797 A.2d 732 (finding multi-level hearsay to be unreliable). They are not corroborated in any way. *Cf. id.* ¶¶ 16-17 (criticizing State for “not present[ing] any corroborating evidence”). In some instances, they evince declarants’ animus towards defendants for reasons other than the allegations against them. *Cf. id.* ¶ 15 (bias and motive to fabricate affect reliability). In the circumstances, they were not sufficiently reliable for sentencing purposes.

Take the police report about D.L. It recounts how a mother of 15-year-old male D.L. called police to report that D.L. “is being sold to men by [defendant].” A57. But the mother did not know that for sure, “because she was just told this by [another son].” A57. That other son, handed the phone by his mother, told the officer that defendant is “openly gay”; the brother believes D.L. “is a closet gay”; and the brother believes D.L. “hasn’t admitted to being gay because he is afraid [his brothers] will make fun of him.” A57. As for D.L., the mother told the officer, “he said that ‘no one has been touching him.’”. A58. He has, however, recently been “pooping his pants’ on a regular basis.” A58. When the officer “confronted” D.L., D.L. said the allegations were “a lie and never happened.” A58.

Eventually, the officer’s investigation led him to B.P.. A59-A60. B.P. claimed that, when he was 16, defendant “would talk sexually” to him, “which [B.P.] did not like and was telling [defendant] that he was not gay and did

simply by assuming that information contained in a police report meets the due-process ‘reliability floor.’”).

not like men.” A59. On one occasion, B.P. told the officer, B.P. woke up to find defendant giving him oral sex. A59. This occurred approximately four years prior to the report. A59. A person whom B.P. told the officer would corroborate this account, however, “in fact told [the officer] nothing.” A59.

Then, yet later in the rambling report, the officer recounts how he met with another of D.L.’s brothers, T.W. T.W. “does not like [defendant] and thinks he’s a ‘freak’ and doesn’t like him.” A59-A60. Once, according to the officer’s telling of the account given by T.W., T.W. “woke up to [defendant] touching his penis with his hand.” A59. T.W. told his brother (*i.e.*, who is also D.L.’s brother) and nobody else. A60. T.W. “was 14-15 years old at the time.” A60.

Finally, the report details the complaints and jealousies of defendant’s former (adult) romantic partner. A60-A61.

The State also proffered a second report, authored in July 2014 about an allegation said to have occurred on July 4, 2013. A63. In the stream-of-consciousness report, an officer recounts his interview of S.L., who claimed that defendant “molested” him at age 16. A64, A68-A69. After the officer “told [S.L.] if he really was into [defendant] that’s fine and if he was into doing what [defendant] was doing at first” but later changed his mind “that’s fine,” S.L. suddenly added a previously undisclosed second allegation: “long before” the July-4 incident defendant subjected S.L. to oral sex. A70-A71.

These are rife with multi-layered hearsay, much of it contradicted from one layer to the next. There is nothing corroborative. There are actually several indicia of *unreliability*: motives to fabricate (*e.g.*, dislike for

homosexuals; jilted former lover, thinks he's "a freak," etc.) and at least one outright denial that anything happened. Except for the allegation levelled by T.W., all of the allegations seem to have occurred *after* the age of consent. We know nothing about why, if these reports are so reliable, they have evidently led to no prosecutions. Somebody – perhaps the interviewees themselves, perhaps the investigators, perhaps the State's attorneys – have deemed the allegations unworthy of prosecution.⁹

These red flags do not permit the court's conclusion that the reports constitute reliable evidence.

4. The court improperly determined that defendant's own victimization is not mitigating.

Sentencing law readily embraces the concept that certain factors – *e.g.*, premeditation, pecuniary gain, multiple victims, victim impact, etc. – are *universally* aggravating. While a judge might have discretion to determine just *how* aggravating it is in a given case, no judge would ever fail to recognize the existence of any of these factors as anything other than aggravating. For some reason, unfortunately, sentencing law has tolerated considerable inconsistency about the converse: what is mitigating as a matter of law (actually, as a matter of *principle*, given our Rule-20 posture).

This Court should affirm the "the belief, long held by this society, that defendants who commit criminal acts that are attributable to a

⁹ In contrast, some "uncharged conduct" is not pursued because of a lack of jurisdiction, expiration of statutes of limitations, or unavailability of essential witnesses. Nothing indicating these impediments is established on our record.

disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (quotation marks omitted). The court below, rather, suggests that the opposite is true: *Because a former victim knows what it is like to be victimized, he should not victimize*. That turns "the belief, long held by this society," upside-down. It also controverts the Criminal Code's directive to treat crime victims with compassion.

Moreover, it demonstrates a lack of understanding of the dynamics of sexual abuse. Traumatic sexualization explains why victims of childhood abuse disproportionately commit sex-offenses: "This dynamic represents the consequence of a process by which children's sexual feelings and attitudes become distorted in response to abuse. The process leads to the manifestation of a sexuality that is developmentally inappropriate and interpersonally problematic." Ethan B. McCallum *et al.*, *Validation of the Traumatic Sexualization Survey for Use with Heterosexual Men*, JOURNAL OF SEX RESEARCH (Vol. 49, Issue 5; 2012). The court's reasoning that defendant "should be on notice of the harm" such abuse wreaks is not borne out by science. Defendant's own victimization has blurred "notice."

The court's reasoning is also hypocritical, with all respect. The Legislature mandates that domestic violence and sex-assaults on children yield particularly severe sentences. *E.g.*, 17-A M.R.S. §§ 1501(8)(A), (9), 17-A M.R.S. § 1604(6). No doubt, this is because of the devastating effects of abuse committed against family members, especially those of tender years. To then turn around, in the same courts of law, and pursuant to the same

sentencing scheme, and downplay the impact of such abuse is to confuse principles so much as to misapply them. Those who have been abused as children are *less* culpable, and the trial court's opposite reasoning deserves correction. See Mirko Bagaric *et al.*, *Trauma and Sentencing: The Case for Mitigating Penalty for Childhood Physical and Sexual Abuse*, 30 STAN. L. & POL'Y REV. 1, 4 (2019) (“[C]hildhood trauma stemming from physical or sexual abuse reduces the culpability of victims who subsequently offend and should therefore be reflected in the form of a sentencing discount for those offenders.”). The integrity of court systems requires intellectual consistency; simultaneously pointing in two different directions undermines it.

CONCLUSION

For the foregoing reasons, this Court should vacate defendant's convictions, or, in the alternative, vacate defendant's sentence, then remand for proceedings not inconsistent with its mandate.

Respectfully submitted,

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CERTIFICATES 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).

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