

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket Number. KEN-25-572

STATE OF MAINE v. CHRISTOPHER CONNORS

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

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PROCEDURAL HISTORY

On October 18, 2023, the Kennebec County Grand Jury returned a true bill against Christopher Connors alleging two counts: Gross Sexual Assault (Class A), 17-A M.R.S. § 253(1)(C), and Unlawful Sexual Contact (Class B), 17-A M.R.S. § 255-A(1)(E-1). (A.3.) The named victim in both counts was a minor with the initials JB. (A.16.) A warrant for Connors' arrest was issued the same day, and it was executed by law enforcement on October 20, 2023. (A.3.) On October 24, 2023, Connors entered pleas of not guilty on both charges. (A.4-10.) On the same date of his arraignment, Attorney Jennifer Cohen was appointed to represent Connors. (A.4.) She subsequently withdrew as his attorney just prior to the first docket call in September 2024. (A.5.) Attorney Daniel Dube was then appointed to represent Connors. (A.6.)

Following the March 2026 docket call, this case was specially set for trial in June of 2025. (A.6-7.) However, in May of 2025, the parties learned of new discovery that involved a second victim and Connors requested a continuance that was granted by agreement. (A.7.) Ultimately, this matter proceeded to a jury trial on September 16 through September 18, 2025. (A.7-8.) After the jury deliberated, Connors was found guilty of both counts of the indictment. (*Id.*)

As it relates to this appeal, one of the pre-trial motions filed by the State was a motion in limine to allow the admission of the Child Advocacy Center interview

of the named victim. (A.5.) The trial court (*Mitchell, J.*) granted this motion on the first day of trial after hearing arguments from both sides and reviewing the interview in its entirety. (A.20.) Trial counsel stipulated that all requirements of 16 M.R.S. § 358 were met, except as to whether the “[s]tatements made by the protected person during the forensic interview were not made in response to suggestive or leading questions.” (*Id.*) Trial counsel acknowledged that the interview speaks for itself and the Court had already reviewed the interview carefully. (*Id.*) The trial court determined “looking at the interview it is not one that the Court would characterize as impermissible under the statute in terms of the leading nature of the questions” and granted the State’s motion. (*Id.*)

A sentencing hearing was held on November 25, 2025, and Connors was sentenced to twenty-eight years of incarceration with lifetime supervised release on Count 1; and as to Count 2, a sentence of ten years of incarceration, concurrent to Count 1. (A.9-14.) Connors timely filed this appeal. (A.11.)

STATEMENT OF FACTS

JB grew up in a small trailer park in Clinton, Maine where he lived with his mother, father, and two younger brothers. (Tr. I¹, p. 37-39.) When JB was eleven years old, he became fast friends with another boy in the trailer park, RL. (Tr. I, p. 39-40.) JB and RL spent their days like any other children their age – spending every day together after school playing basketball, swimming in RL’s pool, and going to the park just down the road. (*Id.*) RL’s friendship brought new people into JB’s life, specifically Connors. (*Id.*) Connors was friends with RL’s parents and lived next to them. (Tr. I, p. 40-41.) Connors would join JB and RL in playing basketball, would watch JB for his mom, Sarah, when she had to run to the store, and communicated with her about plans the boys had made. (Tr. I, p. 40.)

JB was invited to his first sleepover with RL at Connors’ house. (Tr. I, p. 39-42.) On June 9, 2023, JB got home from school excited for this new opportunity. (Tr. I, p. 43.) He stopped by his house, told his mom he was going straight to Connors’ residence, and ran to the defendant’s home. (*Id.*) Sarah followed 15-20 minutes later with his overnight bag. (*Id.*) Sarah dropped off JB’s bag, talked to Connors and his husband, and saw where the boys were going to be sleeping in the game room before

¹ The jury trial transcripts are identified in this brief as follows:

9/16/25 - the first day of the trial – Tr. I

9/17/25 – the second day of the trial – Tr. II

9/18/25 – the third day of the trial – Tr. III

walking back across the street to her home. (Tr. I, p. 41-43.) Additionally, Sarah and Connors texted briefly that evening about what JB had for dinner. (Tr. I, p. 43-44.)

When JB first got to Connors' house with RL, the boys played video games and were allowed to order fast food for dinner. (State's Ex. 3.) Later that evening, RL had fallen asleep on the floor of the game room and JB went out into the living room to ask Connors if he could play more video games. (*Id.*) Connors told JB he could if JB let Connors touch his penis. (*Id.*) At this time, Connors touched JB's penis and then placed his mouth on JB's penis. (*Id.*) JB was sitting on the couch, and Connors was in front of JB on his knees. (*Id.*) At the time of the oral contact, Connors pulled JB's pajama pants down and his shirt was pulled up. (*Id.*) Connors told JB "don't tell anybody and I'll give you any game you want." (*Id.*) JB ran and locked himself in the bathroom of the residence. (*Id.*) While JB stood by the bathroom door, Connors was on the other side of it saying "come on, JB, I'll give you anything, please just don't tell." (*Id.*) JB waited until he heard the bedroom door close and then ran back to the game room. (*Id.*) JB ultimately fell asleep that evening in the game room and woke up the next morning when his mom arrived to pick him up. (*Id.*) JB went back to the game room that evening instead of going to his house across the street because he was afraid of the dark. (Tr. II, p. 16.)

The following morning, Sarah received a text from Connors that JB was having a hard time waking up. (Tr. I, p. 43-44.) Between 7 and 7:30 am, Sarah went

to Connors' house to pick JB up and bring him to his baseball game and photos. (*Id.*) Once JB saw Sarah, he started to wake up and together they got into Sarah's van where JB changed out of his pajamas he wore overnight and changed into his baseball uniform. (*Id.*) JB was quiet and withdrawn for the 15-minute drive to the baseball game. (*Id.*) Later that morning, on the car ride home, JB told his mom that Connors sexually assaulted him.. (Tr. I, p. 45.) After speaking to him about how serious what he told her was, Sarah drove the remaining distance home and woke up her husband who was sleeping from working the overnight shift. (Tr. I, p. 45-46.) Together, they called law enforcement. (*Id.*)

Sgt. Roger Smith with the Clinton Police Department responded to JB's residence. (Tr. I, p. 46-47.) After arriving and speaking to JB's father, Sgt. Smith recommended that JB go to the hospital to have a sexual assault forensic examination done. (Tr. I, p. 82-83.) Prior to leaving, Sgt. Smith gathered the pajamas that JB was wearing during the assault from the floor of the van and placed them into a bag. (*Id.*) JB's parents transported him to the Maine General Medical Center. (*Id.*)

The sexual assault forensic examination was conducted by certified SAFE nurse, Laura Racine. (Tr. I, p. 65-66.) As part of the examination, Nurse Racine spoke to both Sarah and JB separately regarding what brought them to the hospital.²

² These statements were captured and subsequently admitted as part of the medical records as State's Exhibit 1 at trial.

(Tr. I, p. 68-70.) Using swabs from a sealed “sex kit,” Nurse Racine swabbed the area above JB’s penis with one swab and then swabbed JB’s penis with the second swab. (Tr. I, p. 72-73.) These swabs were then sealed back in the “sex kit,” along with the bag of clothes that JB was wearing during the assault and brought to the Maine State Police Crime Lab by Officer James Leathers. (Tr. I, p. 75-76, p. 97.) Sgt. Smith later obtained known DNA samples from Connors and JB, which were likewise brought to the Maine State Police Crime Lab for testing. (Tr. I, p. 97.)

The underwear that JB was wearing the night of the assault and the swabs obtained as part of the sexual assault forensic examination were analyzed by the Maine State Police Crime Lab. (Tr. I, p. 124.) The items were first tested by the chemistry section of the lab, where alpha amylase was located on JB’s penial swab, the swab of the skin above the penis, and the interior crotch of JB’s underwear. (Tr. I, p. 125-127.) Alpha Amylase is a component of human saliva. (*Id.*) The items were next tested by the forensic biology section of the lab, where they compared the DNA on the items with a known sample of Connors’ DNA. (Tr. I, p. 139-141.) Connors’ DNA was located on the swab of JB’s penis, the swab of the area above JB’s penis, and the interior crotch of JB’s underwear. (*Id.*)

The day after JB reported the assault, Connors called into the Clinton Police Department to speak about the allegations he had heard were reported. (Tr. I, p. 88.) During this conversation, Connors told Sgt. Smith that he was not concerned because

he had security cameras in the residence. (*Id.*) As a result of that conversation, Sgt. Smith requested and was granted a search warrant for any security systems of Connors' home for the time frame of the sexual assault. (*Id.*) Prior to executing the search warrant, Sgt. Smith had a conversation with Connors. (Tr. I, p. 89.) During that conversation, Connors admitted that JB was at his residence and showed Sgt. Smith photographs of JB sleeping in the game room from the night of the assault. (*Id.*)

Sgt. Smith and other members of the Clinton Police Department then spent three hours searching for electronic devices. (Tr. I, p. 90.) At the end of the search, Sgt. Smith informed Connors that he was going to be seizing the cell phone with the photos on it as well, and Connors informed him that he had since misplaced it. (Tr. I, p. 91.) Sgt. Smith had made the decision not to initially seize the phone because he was concerned the situation was about to become hostile. (*Id.*) Sgt. Smith applied for and was granted a second search warrant, specifically for Connors' phone. (*Id.*) When Sgt. Smith went to execute that warrant, Connors initially denied having the phone, but when informed that Sgt. Smith would be doing the search regardless, Connors ultimately showed Sgt. Smith that the phone was hidden in a heating grate in the back bedroom. (Tr. I, p. 92.) When the phone was analyzed, the photos of JB previously shown to Sgt. Smith were no longer on it. (Tr. I, p. 96.) At trial, Connors

admitted to repeatedly and intentionally lying to the police with the intent of misleading them. (Tr. II, p. 125-126.)

ISSUES PRESENTED FOR REVIEW

- I. Whether the trial court erred in admitting the interview of the minor victim conducted at the Child Advocacy Center?
- II. Whether the prosecutor erred in the closing argument when comparing the named victim's testimony to the Appellant's testimony?
- III. Whether trial court appropriately relayed in the Appellant's lack of remorse and uncharged conduct to aggravate the sentence, while declining to mitigate the sentence based on the Appellant's own victimization as a child?

ARGUMENT

- I. The trial court made no error in admitting the interview of the minor victim conducted by the Child Advocacy Center given that all statutory elements of 16 M.R.S. § 358(3)(B) were met.**

A. Standard of Review

Although this Court has not directly addressed the standard of review applicable to the admission of Child Advocacy Center interviews under 16 M.R.S. § 358(3)(B), it should apply the same standard governing the admission of other hearsay evidence. “We review for an abuse of discretion a trial court's decision to admit evidence over a hearsay objection”. *State v. Pelletier*, 2026 ME 52, ¶ 9, ___ A.3d ___. This Court has consistently reviewed a trial court’s decision to admit hearsay evidence for an abuse of discretion. *State v. Sykes*, 2019 ME 43, ¶ 15, 204 A.3d 1282. Section 358 creates a statutory exception to the general prohibition against hearsay contained in M.R. Evid. 802, allowing the admission of an interview of a protected party. *See* 16 M.R.S. § 358.

The Appellant’s argument that digital evidence demands a de novo standard of review should be rejected. This Court routinely reviews the admission of recorded hearsay statements for abuse of discretion. *Sykes*, 2019 ME 43, ¶ 16, 204 A.3d 1282 (addressing admission of a recorded 911 call under M.R. Evid. 803(2)). The medium through which a statement is preserved does not alter the nature of the standard of review. If the mere existence of a recording warranted de novo review because an

appellate court can independently view the evidence, the standard of review for numerous evidentiary rulings involving recorded hearsay would likewise change. Accordingly, this Court should review the trial court's decision to admit the Child Advocacy Center interview for an abuse of discretion, as it has done for other challenges to admission of hearsay.

Furthermore, if this Court were to find that abuse of discretion is the incorrect standard of review, the record is clear that this challenge by Appellant was not preserved and obvious error review is warranted. Trial counsel failed to preserve this issue by affirmatively stating “no objection” when the trial court sought confirmation of the evidence’s admission at trial. (Tr. II. p. 11.) A ruling from the trial court on a motion in limine does not relieve trial counsel of the obligation to object when the same issues arise at trial. *Sykes*, 2019 ME 43, ¶ 13, 204 A.3d 1282 (*citing* Field & Murray, *Maine Evidence* § 103.7 at 28-29 (6th ed. 2007).) While the State acknowledges that in certain circumstances the requirement to renew a pretrial objection during trial can be relieved, that is true only if the ruling on the record is a clear final ruling. *See* M.R. Evid. 103(e). Here, the trial court did not indicate that this was a final ruling but rather stated “I will grant the State’s Motion in Limine to permit the use of the CAC interview provided that there aren’t any other issues that arise. . .” (A. 20.)

This Court has reserved ruling on the question of whether affirmatively stating “no objection” at trial – rather than referring to previous rulings – removes a pretrial preservation. *Sykes*, 2019 ME 43, ¶ 14, 204 A.3d 1282. Where the standards of review are non-consequential to the final decision, this Court has “assumed” the issues were preserved without directly ruling on that preservation. *Id.* (holding “[i]n the end, however, we will assume, without deciding, that Sykes preserved his objection for appeal by having articulated his opposition to the admission of the recording at the pretrial hearing on the State's motion in limine, even though he ostensibly abandoned that objection at trial.”). *See also State v. Haji-Hasson*, 2018 ME 42, ¶ 14, 182 A.3d 145 (determining that this Court will “assume, without deciding, that Haji–Hassan's arguments and the court's ruling at the hearing on the State's motion in limine served to preserve the objection, and we therefore apply the clear error and ‘abuse of discretion’ standard[s] of review, which [are] more beneficial to [Haji–Hassan] than the obvious error standard.”); *State v. Allen*, 2006 ME 21, ¶ 9, 892 A.2d 456 (finding that while “the applicable standard of review is generally dependent upon whether the alleged error is preserved, we do not need to determine whether Allen preserved his objection to the photograph. We assume that Allen's motion in limine served to preserve the objection, and we apply the abuse of discretion standard of review, which is more beneficial to Allen than the obvious error standard.”) If this Court concludes that trial counsel’s affirmative “no

objection” abandoned the pretrial position, the issue is unpreserved and obvious error review would apply.” *State v. Lobo*, 1998 ME 228, ¶ 8, 719 A.2d 108.

B. Admission of the interview under 16 M.R.S. § 358.

While 16 M.R.S. § 358 sets out multiple requirements for admission of a forensic interview of a protected party, the parties stipulated to all elements except 16 M.R.S. § 358(3)(B) — that statements made during the interview were not made in response to suggestive or leading questions. Prior to the argument, the trial court reviewed the video interview in its entirety. (A. 20.) Trial counsel made no specific objections to any question he viewed as suggestive or leading, but rather stated “I would note at points of inconsistency, the interviewed 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. . . .” (*Id.*) Counsel identified no specific question as suggestive or leading. His concern went only to the interviewer's clarifying language — not to the form of any question that elicited a substantive response. If trial counsel had raised specific questions as leading then the court would have done a specific line by line analysis. Trial counsel was not specific in his objection.

The trial court addressed those observations directly and characterized them as "looping." (A. 20.) (“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.”) Looping - a technique in which the interviewer repeats the child's prior answer to invite clarification - is not prohibited by the statute. *See* 16 M.R.S. § 358(3)(B). The State acknowledges that if a court determines a statement was offered for the truth of the matter asserted and was made in response to a suggestive or leading question, the statute would require that portion excluded. *Id.* However, any statement offered for a non-hearsay purpose is not subject to that requirement regardless of the form of the question, as the hearsay rule is simply inapplicable. *See* M.R. Evid. 801(c).

Here, after indicating that it had reviewed the video carefully, the trial court did refer to the video “as the whole.” (A.20.) The trial court reviewed the video in its entirety and made a specific finding that the questions used in the interview were not leading or impermissible under the statute. (A.20.) (“It is not one that the Court would characterize as impermissible under the Statute in terms of the leading nature of the questions. . .”) The trial court made a specific finding that the questions used in the interview were not leading. *Id.* That finding is entitled to deference and is fully supported by the record.

Even applying de novo review as the Appellant urges, the record does not support the conclusion that the disputed portions of the interview were made in response to suggestive or leading questions. (*See* State's Ex. 3.) The Appellant identifies two portions as rising to the level requiring exclusion: the position of the

child's clothes during the assault and the date of the assault. (Blue Br. 25–28.) As to both, a review of the interview reflects that the child's answers were not elicited by suggestive or leading questions but were responsive to open-ended or clarifying prompts consistent with forensic interview protocol. (*See* State's Ex. 3.) The Appellant argues that failure to exclude these portions was changed the outcome of the trial because the case turned on the named victim's credibility, and that striking them would have undermined the believability of the allegations. (Blue Br. 25.) That argument, however, overlooks a critical fact: the child was subject to cross-examination and defense counsel did not challenge him on either statement. (Tr. II. p. 16-17.) This directly undermines the claim that these portions cast any meaningful doubt on the complainant's credibility.

Furthermore, Appellant's argument that the State's case would be deficient without these portions of the interviews being admitted is inconsistent with the record. (*See* Blue Br. 25.) As to the element of a sexual act occurring, a colloquy occurs in the interview – which has not been contested on either appeal or during the trial – where JB tells the interviewer that Connors both touched his penis and put his mouth on his penis, where components of human saliva and Connors' DNA was subsequently located. (*See* State's Ex. 3); (Tr. I, p. 125-127, 139-141.) Obviously an 11-year-old child stating that an adult male touched his penis and placed his mouth on his penis, if believed by a jury and further supported by forensic evidence, is

enough to establish that a sexual act occurred. Moreover, as to the argument regarding the date of the offense, the record is clear this offense was alleged to have happened a single time during the *only* sleepover the child attended at Connors' residence. (*See* State's Ex. 3.) During unchallenged portions of the interview, the child discusses the sex act occurring during this specific and distinct sleepover. (*Id.*) The date of this sleepover was confirmed during his mother's trial testimony, and again happened only once, so the chance for confusion leading to a credibility issue is unfounded. (Tr. I. p. 39-40.) Furthermore, the date of an offense is not even an element of the crime.

Notwithstanding that the State's case was *not* deficient without the contested portion of the interviews, neither of the contested portions were required to be excluded by 16 M.R.S. § 358(3)(B). In regard to where the clothing was, the following portion is disputed:

Interviewer: And when he put his hand on your penis, was it over your clothes? Under your clothes or something else?

JB: Over my clothes.

Interviewer: Over your clothes, okay. Alright. 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?

JB: Above.

Interviewer: Okay, so I just want to make sure I understand. So you had pants on and underwear.

JB: [Nods]

Interviewer: Okay. Where were your pants and underwear when he put his mouth on your penis?

JB: [gestures to his upper thigh] Pants on and underwear there. [moving hand upwards]

Interviewer: So they were pulled down.

JB: [nods]

Interviewer: Okay. And did Chris pull them down?

JB: [Nods]

Interviewer: Okay. And what about your shirt? Was your shirt pulled up or was it off or do you remember?

JB: It was up.

Interviewer: It was up. Okay. Alright. And did Chris pull them down, pull your pants down?

JB: [nods]

(See State's Ex. 3 19:45-20:55).

There is no leading or suggestive question in that colloquy. (*Id.*) The National Children's Advocacy Center defines a leading question as one that “introduces information not previously provided by the child, sometimes referred to as externally-derived information.” Nat'l Children's Advocacy Ctr., *Child Forensic Interview Structure* 11 (2019) (citing Lamb et al., 2008; Orbach & Pipe, 2011; Saywitz et al., 2011). A leading question suggests the answer sought to the person being questioned. *See Leading Question*, Black's Law Dictionary (11th ed. 2019). Throughout this segment, the interviewer repeats back what the child has already stated, asks the child to clarify single-word answers, and prompts elaboration without supplying any new information. (*See* State's Ex. 3.) At no point does the interviewer suggest a correct or incorrect answer, introduce any facts not already provided by the child, or direct the child toward any particular response. (*Id.*) This is precisely the looping technique the trial court identified — repeating the child's

own words to invite clarification — which is categorically different from the externally-derived suggestion that the statute is designed to exclude. *See* 16 M.R.S. § 358(3)(B); (A. 20.).

In regard to the date of the sleepover, the following portion is contested in this appeal:

Interviewer: So tell me, when did this happen, [JB]? Was it a month ago? A few days ago. Something in between?

JB: Two days ago.

Interviewer: Two days ago? Okay. So today is Wednesday, so two days ago. What day would that have been?

JB: Um. [pause] I don't remember.

Interviewer: But you said it was you think two days ago from today?

JB: Maybe.

Interviewer: Maybe. Is it possible it could have been a little longer ago.

JB: Could been three or four.

Interviewer: Three or four, okay. But it happened within the past, few days?

JB: nods

Interviewer: Okay.

(*See* State's Ex. 3 10:51-12:00).

Again, the interviewer in this portion of the interview does not ask leading or suggestive questions. (*Id.*) When told this occurred two days ago, he tries to clarify what day of the week that was. (*Id.*) When the child is unable to do that, he asks follow up questions. (*Id.*) Never is the interviewer suggesting answers, implicating that an answer is correct or incorrect, or introducing new information. (*Id.*) Appellant argues that leading questions are synonymous with clarifying questions or looping

methods, without any supporting authority. (Blue Br. 28.) Here, while the interviewer is using a looping method and clarifying the child's statement, he is not using leading or suggestive questioning. (*Id.*)

Regardless of the applicable standard of review or whether the objection was properly preserved, the trial court did not err in admitting the entire interview because the challenged portions did not contain statements that were made in response to suggestive or leading questions. Even if this Court were to conclude that the two contested portions contained either suggestive or leading questions, any error in admitting those portions of the interview was harmless considering the substantial addition evidence presented both during the interview and throughout the trial, including but not limited to the **Appellant's DNA** being on JB's penis.

II. The State's closing argument was proper, and even if error occurred, it does not warrant reversal under the obvious error standard.

A. Standard of Review

When there is no objection to the State's closing argument, this Court reviews the issue for obvious error. *State v. Schooley*, 2025 ME 84, ¶ 33, 345 A.3d 78. In reviewing claims for prosecutorial error, this Court first assesses whether any error occurred. *Id.* If it is found that error does exist, this Court will next look at the conduct in its entirety – both considering each instance of error individually and in combination with the entire trial. *Id.* Further, this Court has held “[w]hen a prosecutor's statement is not sufficient to draw an objection, particularly when

viewed in the overall context of the trial, that statement will rarely be found to have created a reasonable probability that it affected the outcome of the proceeding.” *Id.*; *citing State v. Dolloff*, 2012 ME 130, ¶ 38, 58 A.3d 1032. “To demonstrate obvious error, the defendant must show that there is (1) an error, (2) that is plain, and (3) that affects substantial rights. Even if these three conditions are met, we will set aside a jury's verdict only if we ‘conclude that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings.’” (citations and quotations omitted) *Dolloff*, 2012 ME 130, ¶ 35, 58 A.3d 1032. Appellant concedes that there was no objection that preserved this issue during the trial. (Blue Br. 29.)

B. There was no error.

This Court has repeatedly held that a prosecutor holds a unique position in a courtroom during trial because of the authority that comes with the prosecutions office. *State v. Farley*, 2024 ME 52, ¶ 39, 319 A.3d 1080. It is prosecutorial error to use that authority to vouch for witnesses, or to insert personal opinions regarding the credibility of the accused or other witnesses. *Id.* “However, a prosecutor may attack credibility by analyzing the evidence and highlighting absurdities or discrepancies in a witness's testimony.” *Farley*, 2024 ME 52, ¶ 39, 319 A.3d 1080 (*citing State v. Schmidt*, 2008 ME 151, ¶ 17, 957 A.2d 80).

In *State v. Tripp*, this Court analyzed a fact pattern that illustrated a circumstance when a prosecutor’s injection of personal opinion during closing

arguments, combined with impermissible cross examination, constituted reversible error when the evidence was primarily limited to the testimony of a named victim. 634 A.2d 1318, 1321 (Me. 1994). In that case, the prosecution told the jury during closing arguments that the named victim “told [the jury] the truth” and followed that statement by declaring that it all came down to the named victim and the defendant “because one of them wasn't telling the truth. *One of them was lying here to all of us.*” *Id.* at 1321. Those statements were compounded by the prosecution's improper cross-examination of the defendant - after he denied the victim's account – repeatedly asking whether the victim had lied. *Id.* at 1320. Even before reaching the closing argument, this Court found obvious error in that questioning, highlighting there was essentially no evidence of the defendant's guilt beyond the victim's testimony. *Id.* This Court then concluded regarding the specific statements made during closing arguments that “[t]he clear implication is that the prosecutor believed that the victim told the truth, but defendant lied. In a close case such as we have here, this constitutes serious obvious error and requires reversal.” *Id.* at 1321.

The record in this case is noticeably different. To start, there was no improper questioning during cross examination inquiring whether the defendant believed the named victim had lied. (Tr. II. p. 109-133.) Although Appellant references a single question of - “why on earth would [JB] make all of this up?” – the brief omits both the context surrounding that question and the fact that, even after the objection was

overruled, the prosecution did not repeat or pursue it. (Tr. II. p. 131.) Specifically, the Appellant admitted that JB liked spending time with, admitted that after JB disclosed the sexual assault he was no longer allowed to hang out with RL, admitted that JB had a SANE kit completed, and was asked questions about JB being bullied at school and by the other adults in their community. (Tr. II. p. 129-131.) The question, that again was overruled but not repeated, referencing JB making up these allegations directly followed this line of questioning. (*Id.*) No other cross-examination questions are raised on appeal. Furthermore, unlike in *Tripp*, this was not a case involving limited other evidence. In addition to JB and the Appellant's testimony, the jury also heard DNA evidence that a component of human saliva and the Appellant's DNA was located on JB's penis. (Tr. I. p. 125-127, 139-141.)

The portion of the State's closing argument at issue here likewise bears no meaningful resemblance to *Tripp*. The prosecutor's statement – “this is not a case where you can believe both [JB] and the defendant, it is just not. Only one of them can be telling the truth” - contains no personal opinion as to the credibility of either witness, no vouching, and critically, was a direct reference to the evidence the Jury had heard. Rather, the statement does nothing more than direct the jury's attention to an objective logical reality: JB described a specific, intentional sexual act performed on him, and the Appellant flatly denied that any such act occurred. Both accounts cannot simultaneously be true - not because the prosecutor declared one witness a

liar, but because the two accounts are factually irreconcilable. Unlike in *Tripp*, the jury here was not invited to render a verdict based on the prosecutor's personal assessment of credibility; it was simply reminded that the evidence required it to make a factual determination. That is not error.

There is even less basis for finding error when reviewing the entire record of the trial. The trial court here appropriately instructed the jury that closing arguments are not evidence and that the jury are the sole finders of fact, as highlighted by this Court's cases of prosecutorial error during closing arguments. *Schooley*, 2025 ME 84, ¶ 40, 345 A.3d 78 (“Particularly when the court, just before the parties’ closing arguments, instructed the jury that the arguments were not evidence and that witness credibility was for the jury to determine, any prosecutorial error in defending the credibility of the State's key witness is not plain error affecting Schooley's substantial rights.”); *State v. Fahnley*, 2015 ME 82, ¶ 40, 119 A.3d 727 (“Moreover, given the court's instructions regarding the jury's role in determining the facts, any error did not affect Fahnley's substantial rights”); *Dolloff*, 2012 ME 130, ¶ 75, 58 A.3d 1032 (“Furthermore, the court carefully instructed the jury as to the appropriate legal standard and evidence to be considered. The court specifically told the jury that the closing arguments of counsel were not evidence and that “ultimately it is your recollection of the evidence and the perspective that you develop during your deliberations that counts.”).

First, the jury was specifically instructed immediately proceeding the closing arguments that the arguments themselves are not evidence. (Tr. III. p. 4.) These jury instructions are not challenged on appeal. The jury was then again instructed that the “closing arguments of the attorneys are not evidence. They simply represent their views on evidence and what they see as the proper conclusions you should draw from it. During your deliberations if your memory of the evidence of the evidence differs from what the attorneys say, it is your memory that controls. They have every right, indeed they are expected, to argue about the facts of the case and credibility of witnesses. However, you are to make your own decisions on those matters.” (Tr. III. p. 56-57.) The jury was then specifically instructed on credibility determinations. (*Id.*)

Appellant references multiple instances of the closing argument where he views the prosecutor continually relayed to the jury that the State believed the named victim in this case. Specifically, Appellant notes the prosecutor highlighting the circumstances where JB’s testimony was repeatedly contrasted with the Appellants, when the prosecutor inquired the jury to compare consistencies of the Appellant’s testimony with those of JB, requested the jury to make credibility determinations of the witnesses and reviewed the different factors of credibility outlined in the jury

instructions, including what motivation or interest witnesses had. (Blue Br. 31-33.)³

All of these situations are permissible arguments.

In every instance of an impermissible argument, “the core element of the offending statement is that it urges or encourages the jury to make its decision based on something other than the facts that have been properly presented at trial and reasonable inferences that can be drawn from those facts.” *Dolloff*, 2012 ME 130, ¶ 43, 58 A.3d 1032. Furthermore, “[a]lthough unable to assert personal opinion, a prosecutor may attack credibility by analyzing the evidence and highlighting absurdities or discrepancies in a witness's testimony.” *Schmidt*, 2008 ME 151, ¶ 17, 957 A.2d 80. Here, the prosecutor did not impermissibly argue anything. The State simply stated a logical fact that cannot be disputed based on the *evidence at trial*; two diametrically opposed renditions of what happened cannot both be true. Thereafter, the State highlighted how the *evidence* should lead the jury to make a finding of guilt which is permissible advocacy by a prosecutor in a closing argument. Again, when considering the entire record of the trial and closing, there was no error.

³ Appellant references a statement made in closings of “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. . .” Immediately proceeding those statements are references to defense counsel’s closing where he stated the prosecution and all the State’s witnesses believe “if a child says it, it is true.” (Tr. III. p. 21). This theme continued throughout Appellant’s entire closing. The “everything he did” statement was referring to ample evidence in the record referencing severe bullying and life repercussion following his disclosure to the police. (Tr. III. p. 9).

C. If there was error, it was not plain.

“An error is plain if the “error is [so] clear under current law,” that “the trial judge and prosecutor were derelict in countenancing it, even absent the defendant's timely assistance in detecting it.” *Dolloff*, 2012 ME 130, ¶ 36, 58 A.3d 1032. The caselaw of prosecutorial misconduct is extensive, and as discussed above, is focused on prosecutors urging juries to make their determination based on something that is not within the evidence presented at trial – whether that be because of incorrect vouching for witnesses, injection of personal beliefs, or relaying on evidence not admitted. *Id.* ¶ 43. None of that is present here; if there was an error, it was not plain.

D. If there was error, it was harmless.

Even assuming the statement constituted error - which the State disputes - the Appellant cannot demonstrate a reasonable probability that it affected the outcome of the trial. *Id.* ¶ 37. To warrant relief, the error must have been so prejudicial as to have influenced the verdict. *Id.* That burden is heightened when trial counsel does not object, as applies here. *Id.* ¶ 38. As this Court has recognized, “[w]hen a prosecutor's statement is not sufficient to draw an objection, particularly when viewed in the overall context of the trial, that statement will rarely be found to have created a reasonable probability that it affected the outcome of the proceeding. The fact that the defense did not object also may suggest that, in the conditions of the

courtroom, the [prosecutor's statements during rebuttal] passed by as mere rhetoric.”

Id. That principal applies here.

The single statement at issue – that the jury could not believe both JB and the Appellant - drew no objection and prompted no intervention by the trial court. When considered in the context of the entire trial - especially the instructions to the jury and the closing arguments - the statement was a straightforward observation about the logical consequence of conflicting testimony, not an appeal to passion or an expression of personal opinion. There is no basis to conclude that this statement influenced the jury. The Appellant has not met the burden of showing a reasonable probability of a different outcome, and his appeal on this ground should be denied.

E. Any error was insufficient to seriously affect the fairness, integrity, or public reputation of judicial proceedings.

Even if the Court determines that the first three prongs of the obvious error test are satisfied, the Appellant does not prevail here. A verdict will be set aside under the fourth prong only if the error “seriously affects the fairness and integrity or public reputation of judicial proceedings.” *Id.* ¶ 35. This is a high standard, and the cases in which prosecutorial error during closing argument have met it involve conduct far more pervasive and inflammatory than anything present here.

In *State v. McDonald*, this Court vacated a conviction where the prosecutor used closing argument to broadly disparage the legal principles underlying the

insanity defense, dismissing it as “a very common excuse”, “red herrings”, “and smoke screens.” 472 A.2d 424, 426 (Me. 1984). This Court rightly found that the “entire thrust of the prosecutor’s closing argument was prejudicial.” *Id.* Similarly, in *State v. White*, the Court vacated convictions where prosecutorial error permeated the proceedings from an argumentative opening statement through a prejudicial closing argument and included improper references to the defendant's right to remain silent, repeated diversion of the jury from its central task, and implicit racial and ethnic stereotyping. 2022 ME 54, ¶ 41, 285 A.3d 262.

The alleged error here bears no resemblance to the sustained and multifaceted misconduct in either *McDonald* or *White*. One isolated remark — observing that the jury could not credit both accounts simultaneously — does not come close to the kind of conduct that seriously undermines the fairness, integrity, or public reputation of judicial proceedings. If any error is found, such error is insufficient to warrant vacating the conviction.

III. The sentence was appropriate and supported by the record.

A. Lack of remorse

Given that the Appellant is alleging a constitutional violation to his right against self-incrimination, this Court would review the claim de novo. *State v. Coleman*, 2024 ME 35, ¶ 24, 315 A.3d 698. However, this argument is being raised for the first time on appeal and as such, the standard of review should be obvious

error, requiring vacating the sentence only if the error was obvious and created a manifest injustice for the Appellant. *Id.* Appellant in his brief claims that the issue was preserved by trial counsel stating the following:

I believe the State is correct that my client testifying is an aggravating factor. I don't think that outweighs the strong mitigating factors, and I think it also raises a question of disproportionate sentence as well. 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. We can penalize the -- Court can for testifying untruthfully, presumably, to the fact finders, the jurors.

(S. Tr. 27; Blue Br. 27.)

When reading the entire context of trial counsel's argument – not just the middle sentence – he is referencing any weight given to the trial testimony, not the allocution during sentencing. This cannot be preserving the lack of remorse during the Appellant's allocution because the allocution *had not happened yet*. (S. Tr. 27, 29.) The trial court makes two different analyses based on the weight of the trial testimony compared to the allocution during sentencing. (S. Tr. 38, 40.) On appeal, the only claim raised is to the lack of remorse expressed during the allocution at sentencing, and this claim was not preserved.

This Court has held that lack of remorse is a proper aggravating factor at sentencing. *Coleman*, 2024 ME 35, ¶ 23, 315 A.3d 698. When a defendant voluntarily chooses to allocate, including by denying any wrongdoing, the trial court stands in the same position as the jury -- to weigh those statements against the

evidence and may properly consider what they reveal about a defendant's remorse. *Id.* ¶ 26. In *Coleman*, the defendant made statements that distanced himself from the murder and recast the entire situation as a personal loss which he had suffered. *Id.* ¶ 11. This Court upheld the sentence, holding that the trial court was able to consider the content of the allocution and conclude that the defendant demonstrated no remorse. *Id.* ¶ 20.

The trial court here did precisely the same. After hearing the Appellant's allocution, the trial court concluded the Appellant had shown a lack of genuine concern for the named victim and no meaningful remorse for his actions. (S. Tr. 40.) Rather, the Appellant's allocution in its entirety was as follows: "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." (*Id.* 27.)

This is not a case in which the Appellant maintained his innocence - he pleaded for mercy and told the court that he could "say sorry" all day long. (*Id.*) That statement, far from demonstrating remorse, revealed its absence. Notably, the Appellant never actually apologized - to the victim, or to anyone affected by his conduct. Instead, he preemptively dismissed the value of an apology and redirected the focus entirely to himself: what he would do with his sentence, how he would

better himself, what he would learn. Like the defendant in *Coleman*, who recast a murder as a personal loss he had suffered, the Appellant's allocution here centered his own circumstances rather than the harm he caused. The trial court was entitled to conclude that an allocution that expressed no remorse for the victim and asked only for mercy for the speaker reflected exactly that — no remorse. *Coleman*, 2024 ME 35, ¶ 26, 315 A.3d 698.

B. Appropriate notice was given of the uncharged conduct as required by due process.

There is no requirement in Maine for the State to provide notice to the Appellant of its sentencing argument or to file a sentencing memorandum. *See* M.R.U. Crim. P. 32(c)(1); *see also State v. Rosario*, 2022 ME 46, ¶ 39, 280 A.3d 199. Due process requires notice of the conduct that will be used against the defendant, not notice of the legal arguments the State intends to make. *Id.* The Appellant cannot create a due process violation from the timing of a filing that no rule or statute requires in the first place. While the memorandum formalizing the argument may not have been filed until the days leading up to the contested sentencing, every fact and report referenced in that memorandum had been included in discovery since the inception of the case, more than two years prior to the sentencing hearing. (S. Tr. 29-30.) The uncharged conduct at issue was not only disclosed in discovery - it was communicated as a specific basis for the State's plea offers and was raised at every dispositional conference throughout the life of this

case. *Id.* This was not uncharged conduct sprung on the Appellant at the eleventh hour. It was conduct of which he had specific, repeated, and continuous notice for the entirety of these proceedings. A defendant who has been told that specific conduct is driving the State's plea offers - and who received that communication at every stage of the case - cannot stand before this Court and claim he lacked notice of it.

The Appellant argues this Court would not hesitate to exclude trial evidence of which a defendant had no notice of and urges this Court to apply that same logic here. But the analogy collapses on its face. The Appellant is not asking for exclusion of evidence he never saw - he is asking this Court to exclude conduct that was sitting in his discovery file for two and a half years, simply because the State did not simultaneously announce the precise legal use it intended to make of that material. That is not a notice argument; it is a demand that the State preview its sentencing strategy, which Maine law does not require. *Rosario*, 2022 ME 46, ¶ 39, 280 A.3d 199.

Reviewed de novo, the Appellant's due process claim has no merit. Notice was provided through discovery, through the plea offers, and through every dispositional conference. Filing of the State's non-mandatory sentencing memorandum at a time not acceptable to the Appellant does not transform actual, repeated notice into a constitutional violation.

C. The trial court appropriately considered the uncharged conduct included in various police reports.

When the issue is preserved, like it is here, this Court reviews a sentencing court's factual findings for clear error to determine whether competent evidence in the record supports the finding. *State v. Goncalves*, 2025 ME 70, ¶ 43, 340 A.3d 639. Trial courts have broad discretion to decide what information they rely upon at sentencing, as long as the information is “factually reliable and relevant.” *State v. Bennett*, 2015 ME 46, ¶ 22, 114 A.3d 994. The sentencing court is in the best position to determine what procedure is necessary, if any, to ensure the uncharged conduct meets that standard. *State v. Whitten*, 667 A.2d 849, 852 (Me. 1995). “When a defendant challenges the accuracy or reliability of information that a court considered in its sentencing analysis, we examine the record to determine whether, consistent with due process, the defendant was afforded an opportunity to contest the facts or present an alternate version of events . . . and then ultimately whether the sentencing judge relied on inaccurate, unreliable, or questionable information.” *State v. Miller*, 2026 ME 37, ¶ 25, 355 A.3d 706. This Court has vacated sentences where the trial court relied on an anonymous letter alleging uncharged conduct received the day before sentencing or found facts without any support in the record. *See Whitten*, 667 A.2d 849, 852; *Goncalves*, 2025 ME 70, ¶ 42, 340 A.3d 639. The reports at issue here bear no resemblance to either of those circumstances.

Those reports document three males between the ages of 14 and 16 who each experienced sexual abuse by the Appellant in a manner substantially similar to the conduct described by JB in this case. (A. 53-71.) That in and of itself is indicative of reliability. *Id.* An ex-partner of the Appellant, interviewed in one of the reports, further corroborated the pattern. *Id.* He described the Appellant's conduct with teenage boys generally, as well as his specific interactions with one of the reporting males, in terms that directly mirror the Appellant's conduct toward JB. *Id.* It was the Appellant's behavior with teenage boys that started a confrontation between the Appellant and his ex-partner, that led to the Appellant's arrest and conviction for Domestic Violence Assault against that ex-partner. This provided independent, contemporaneous corroboration that these reports reflect a documented, consistent pattern of behavior rather than isolated or unverified allegations. *Id.*

These were not random or tangential police reports. They were specific, internally consistent records that documented the Appellant's *modus operandi*, his repeated grooming behaviors, and direct observations from individuals close to him at the time those reports were generated, over the course of years. Under the broad discretion afforded to sentencing courts, these reports were both factually reliable and relevant, and the sentencing court was well within its authority to consider them. Moreover, the Appellant was given the opportunity at sentencing to challenge the

accuracy or reliability of these reports and chose not to do so. The sentencing court committed no error in relying on the reports at sentencing.

D. It was within the court's discretion to decline to consider the Appellant's history with sexual abuse.

When the challenge to a sentence concerns the maximum period of incarceration, this Court reviews for abuse of discretion. *State v. Reese*, 2010 ME 30, ¶ 23, 991 A.2d 806. A sentencing court is afforded great deference in weighing aggravating and mitigating factors to individualize a sentence. *State v. Weir*, 600 A.2d 1105, 1106 (Me. 1991). At sentencing, the Appellant raised his reported sexual assault at Job Corps at age fifteen as a mitigating factor. (A. 74; S. Tr. 25.) Trial counsel argued this victimization should be considered in mitigation, while simultaneously acknowledging on the record that prior victimization is “a two-edged sword” — that someone who has been a victim “obviously understands very keenly what he or she may be doing to a new victim.” (S. Tr. 26.) The sentencing court considered these arguments and concluded that the Appellant's reported prior abuse was neither aggravating nor mitigating. (S. Tr. 40.) That determination was squarely within the court's discretion.

The Appellant now argues this Court should recognize childhood sexual abuse victimization as a mitigating factor as a matter of law, relying primarily on *Penry v. Lynaugh*, 492 U.S. 302 (1989). First, *Penry* is a capital case and its constitutional framework does not extend to the noncapital sentence at issue here. Furthermore, the

mitigating factors discussed there turn on cognitive, intellectual, or developmental impairments – conditions that are “inherently mitigating” because they go directly to culpability. *Goncalves*, 2025 ME 70, ¶ 40, 340 A.3d 639. The Appellant's reported prior victimization is not that kind of condition. The trial court was not required to treat it as mitigating, and its determination that it was neither aggravating nor mitigating was a proper exercise of discretion.

The Appellant further argues it is hypocritical to recognize the devastating effects of child sex abuse for purposes of enhanced sentences while declining to treat a defendant's own prior victimization as automatically mitigating. (Blue Br. 46.) The Legislature's determination that child sexual abuse causes severe harm — and therefore warrants severe sentences for those who perpetrate it — is entirely consistent with a sentencing court's determination that a defendant who inflicts that same harm on new victims does not automatically receive a sentencing discount for his own past suffering. These are not contradictory principles. The sentencing court was entitled to weigh the Appellant's reported history, conclude it did not mitigate his conduct toward his victims, and sentence accordingly. That is not hypocrisy - it is exactly the individualized sentencing discretion that is required of the sentencing court.

CONCLUSION

The child advocacy interview of JB was properly admitted at trial. The record clearly demonstrates JB's answers were not the product of suggestive or leading questioning. The State's closing argument stayed within proper bounds, drawing reasonable inferences from the evidence without vouching for any witness or improperly attacking the defense. And the sentence imposed reflects the sentencing court's appropriate weighing of the aggravating and mitigating factors presented. For those reasons, this Court should affirm both the conviction and the sentence.

Date: June 24, 2026

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CERTIFICATE OF SERVICE

I, Amanda Seekins, Assistant District Attorney, hereby certify that this appellee brief was filed and that the service requirements were complied with by copying opposing counsel on the email filing with the Court, and upon approval of the email filing will be provided the required number of copies of this appellate brief and appendix pursuant to the Maine Rules of Appellate Procedure.

Date: _____

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