STATE OF MAINE
PENOBSCOT, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: PEN-23-461

STATE OF MAINE,
Appellee

v.

ANGELENA L. QUIRION,
Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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Attorney General

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PROCEDURAL HISTORY

On March 23, 2022, the Penobscot County Grand Jury returned an indictment charging Angelena Quirion ("Quirion") with three counts of Aggravated Trafficking of Scheduled Drugs, Class A[1], one count of Unlawful Possession of Scheduled Drugs, Class C[2], and seven Criminal Forfeitures. (*State of Maine v. Angelena Quirion*, PENCD-CR-2021-03804, Appendix, 64 (A.___)). A jury was selected on October 6, 2023. (A. 9). The jury trial commenced on October 13, 2023. (A. 9). The jury returned a verdict of guilty on the substantive charges on October 18, 2023. (A. 11). The Court then granted all of the forfeiture counts, finding the property to be subject to forfeiture. (A. 11). A sentencing hearing was held on November 1, 2023. (A. 12). The Court sentenced Quirion to 30 years, all but 25 years suspended, with four years probation and a $400 fine on Counts 1 and 2; 15 years all but 10 years suspended with four years probation and a $400 fine on Count 3; and 364 days and a $400 fine on Count 4, all concurrent. (A. 12-15). Notice of Appeal was filed on November 17, 2023. (A. 16).

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[1]One count of 17-A M.R.S. §§ 1105-A(1)(M) (2017), one count of 17-A M.R.S. §§ 1105-A(1)(G) (2011), and one count of 17-A M.R.S. §§ 1105-A(1)(D) (2021).

[2] 17-A M.R.S. §§ 1107-A(1)(C) (2015)

STATEMENT OF FACTS

On the evening of December 1, 2021, Officer Dayerrick Ireland of the Bangor Police Department was patrolling an area with many complaints of drug use and trafficking, as well as apparent drug overdoses. (Trial Transcript, 54-55, October 13, 2023, hereinafter cited as "Trl. Tr. __."). He noticed a Volkswagen with loud exhaust enter the road, and watched it drive less than one hundred feet. (Trl. Tr. 55-56). He stopped it in a parking lot for the exhaust violation. (Trl. Tr. 55). He identified Quirion as the driver, along with two other occupants. (Trl. Tr. 57). Ofc. Ireland saw a glass pipe with white residue in the back seat, consistent with ingestion of drugs. (Trl. Tr. 58). Officers then searched the vehicle, which led to the discovery of $3,104 (separated by denomination in money bands), a glass pipe, a needle, a ticket bag (a common packaging material for small quantities of drugs), and 32 hydromorphone pills in a purse in Quirion's lap. (Trl. Tr. 59, 62). The trunk was searched, revealing a bag with a scale, many unused ticket bags, approximately 34 grams of fentanyl, 7 grams of methamphetamine, and 1.4 grams of cocaine. (Trl. Tr. 66-74, 516-517). Quirion was then searched by a female officer, revealing a firearm concealed in her crotch. (Trl. Tr. 77). Quirion was Mirandized and interviewed, and admitted all of the drugs were hers. (Trl. Tr. 84).

William Simmons was arrested in July 2021 during a different incident and had been in custody since then. (Trl. Tr. 406). On January 20, 2022, Quirion passed a counterfeit $50 note in the course of posting $1,000 cash bail for Simmons at the Androscoggin County Jail. (Trl. Tr. 127-132, 153). The bail commissioner reported the counterfeit note to police, and directed them to the vehicle he saw Quirion go to. (Trl. Tr. 133). Officer Drouin located the vehicle and found Quirion in the driver seat, as well as an Adam Jalbert, who was seen outside the vehicle and rummaging around on the driver side, before getting into the passenger seat. (Trl. Tr. 154-155). Ofc. Drouin decided to perform a bail search on them and ordered them out of the vehicle. (Trl. Tr. 155-156). Quirion's bail conditions indicated she resided at 4 Bower Street in Bangor. (Trl. Tr. 157). The vehicle was also registered to that same address, in the name of a Brian Dyer. (Trl. Tr. 166). He discovered a small corner-tie bag between the passenger seat and center console, as well as a bag under the passenger seat containing 1.4 grams of cocaine which Jalbert later claimed ownership of. (Trl. Tr. 158, 214, 523). Around this time, Quirion was offered the opportunity to replace the counterfeit bill with real funds, and Ofc. Drouin noticed that she appeared to have a considerable amount of cash in her wallet. (Trl. Tr. 160). Returning to the search, Ofc. Drouin found another two small containers between the passenger seat and center console containing 2.4 grams of

methamphetamine and 3.4 grams of fentanyl. (Tr. Tr. 161, 163, 518). Officers then searched the rear and trunk of the vehicle, and found a significant amount of drugs stored in various bags and containers, totaling 498 grams of methamphetamine, 302 grams of fentanyl powder, and 245 grams of cocaine, with a total estimated street value exceeding $115,000. (Trl. Tr. 208, 339). The methamphetamine was some of the largest crystals the officers had ever seen. (Trl. Tr. 175). Much of the fentanyl was in "finger" form, used for bulk resale. (Trl. Tr. 173). Some of these drugs were found in a Walmart bag. (Trl. Tr. 171). Officers also located a curious box in the back seat hand-labeled, "Property of DEA." (Trl. Tr. 170). While later sitting in the back of a patrol car, Quirion claimed ownership of a black backpack in the rear of the vehicle that would have clothing in it. (Trl. Tr. 180). There were two backpacks found in the trunk area, but only one which was black and contained clothing. (Trl. Tr. 180). That backpack also contained 36 grams of the aforementioned fentanyl, a scale, and unused ticket bags. (Trl. Tr. 182, 524). Later, after the search was concluded, Mr. Jalbert provided a wealth of information to officers. (Trl. Tr. 209, 269).

On January 21, 2022, Maine Drug Enforcement Agency agents executed a search warrant on Quirion's residence at 4 Bower Street in Bangor. On the second floor, agents discovered Quirion's bedroom, which contained another hand-labeled "Property of DEA" box, an apparent drug ledger, a finger of

fentanyl out in the open on the floor, an envelope labeled “Money for Fing,” three pistols, and an assault rifle. (Trl. Tr. 419-442). Right outside a door to that bedroom, agents found a door that appeared to be concealed and locked. (Trl. Tr. 277-278). Opening it revealed a stairway that led up to a presently uninhabited third floor, and right at the top of the stairs, was a picture on the wall hiding a safe. (Trl. Tr. 284-285). The safe contained 85 fingers of fentanyl (a total of 850 grams, some of it stored within a purse), 810 grams of methamphetamine, and a wrapped up stack of $20,000 cash, labeled “Angel’s 20!” (Trl. Tr. 287-301, 339). The drugs within that safe had an estimated value exceeding $200,000. (Trl. Tr. 341). And within arms reach off to the left of that safe, agents found cardboard boxes labeled, “Angel’s Shit.” (Trl. Tr. 283-284).

Eufemio “Loki” Santana testified at trial pursuant to a plea and cooperation agreement. (Trl. Tr. 549-550). He confirmed Quirion’s nickname was “Angel” and that she was a “big player.” (Trl. Tr. 550, 553). (Trl. Tr. 558-561). Santana testified to eventually selling between 50-200 fingers of fentanyl/heroin a week for Quirion, and there were at least three other individuals selling her product as well. (Trl. Tr. 558-561). Santana also indicated he was not Quirion’s highest-volume seller, and had seen her deliver 100 fingers at once to one of these other individuals. (Trl. Tr. 572-573).

During the pendency of the case (prior to trial), William Simmons proffered for the State while in custody for his own trafficking charge. (Trl. Tr. 475). He gave great detail about his own role in selling drugs for her, other individuals who sold on Quirion's behalf, and information about her suppliers. (Trl. Tr. 475-476). The report from his proffer was made available to then-counsel for Quirion as well as for co-defendant Jalbert the year prior to trial, subject to a protective order. (Trl. Tr. 476). Less than one week after its disclosure, that proffer report, as well as Simmons's picture, were publicized by a Facebook account named "Maicol Tejada" which the State represented to the court was involved in the large-scale distribution of drugs from Massachusetts to Maine, resulting in many seizures. (Trl. Tr. 476). This post was sent directly to many individuals involved in the drug trade in Maine, putting Simmons at risk of retaliation. (Trl. Tr. 476).

The Thursday prior to trial, Simmons met with attorneys for the State, declining to engage about the content of his proffer, claiming to have an unspecific mental illness and a foggy memory. (Trl. Tr. 477). He then said he did not want to answer further questions and made it clear he would not do anything to help the case. (Trl. Tr. 478). In the aftermath of that meeting, investigators looked into jail communications between Quirion and Simmons. *Id.* Despite a long period of no contact between the two, there was a sudden

flurry of contact between the two after the State's first witness list was filed, where they discussed his anticipated testimony. *Id.* These conversations included descriptions of how to testify in a way to benefit Quirion, and Simmons emphasizing he would now say whatever he could to undermine the State. *Id.* During these conversations, Quirion also admitted to Simmons that she was the one that leaked the content of his proffer. (Trl. Tr. 480). The content of the conversations made it clear that Quirion and Simmons were colluding to have Simmons perjure himself on Quirion's behalf. (Trl. Tr. 479). With that knowledge, the State could no longer sponsor him as a witness, believing that he did not intend to testify truthfully. *Id.* This information was conveyed to Quirion's attorney that night, as well as an initial batch of the described jail calls. *Id.*

There was an initial discussion about this in chambers on October 13 where this was first conveyed to the Court. (Trl. Tr. 1-4). It was confirmed at that time that Quirion's attorney also did not intend to call Simmons as of that time. (Trl. Tr. 1-4, 469). Attorneys for the State then informed Simmons the State would not be calling him, and excused him from their subpoena. (Trl. Tr. 480).

On the morning of October 16, there was another chambers conference about the State electing not to call Simmons as a witness. (Trl. Tr. 141).

Quirion's counsel indicated understanding Simmons had never been charged out of the conduct in the case, would potentially be implicating himself for a role in it, and that Simmons should talk to an attorney first. (Trl. Tr. 142-143). The State indicated that there was evidence from jail calls that Simmons was conspiring with Quirion to perjure himself, and that it would consider appropriate charges if he did so. (Trl. Tr. 144). Simmons's prior counsel on other cases (Attorney Silverstein) was present and willing to accept appointment for that purpose, and would attempt to make contact with him. (Trl. Tr. 144).

On October 17, the matter was again addressed in the Court. (Trl. Tr. 467). As of that time, Quirion's attorney indicated that Simmons had never yet made contact with Attorney Silverstein. (Trl. Tr. 470). Ultimately, Quirion decided not to call Simmons as a witness. (Trl. Tr. 474, 472).

On October 18, Attorney Folster appeared asking to be appointed to represent Sierra Strout, who Quirion had called as a witness. (Trl. Tr. 659). Attorney Folster had represented Strout on charges that led to her present incarceration, and indicated she would communicate with her as to whether she was willing to testify, a detail which was upsetting to Quirion. (Trl. Tr. 659-660). Attorney Folster knew that Strout was not being provided with any immunity and was concerned she was going to be testifying to further drug

activity. (Trl. Tr. 660). Outside the presence of Strout, the State candidly informed the Court she was the subject of a pending drug investigation that occurred in the jail, which had not yet been submitted to the prosecutor for charges (but that it would be presented in the near future). (Trl. Tr. 662). The State further presented to the Court its desire to impeach this witness with this conduct, in compliance with an order in limine. (Trl. Tr. 663). It was also mentioned to the Court that, based on the tenor of the potential testimony conveyed, she could potentially inculpate herself as an accomplice to Mr. Santana. (Trl. Tr. 663-664). All of this information was provided to Attorney Folster. (Trl. Tr. 664). The State's attorney openly acknowledged that it did not yet have a case file for the alleged jail offense, but that it would not waive any options he may or may not have, because he didn't know what would happen. *Id.* Quirion's attorney made offhand suggestions and accusations that the witness was thus being threatened. (Trl. Tr. 664-666). The Court recognized that the State was describing bases on which it could reasonably challenge the veracity of Strout. (Trl. Tr. 667). Strout later testified for Quirion. (Trl. Tr. 687).

During closing arguments, the State objected to arguing facts not in evidence (a suggestion that Jalbert took ownership of the Walmart bags). (Trl. Tr. 861). The State was on alert for this argument due to a prior attempt to admit hearsay statements of Jalbert, which were ultimately not admitted. (Trl.

Tr. 242-245). The Court sustained the objection without further comment. (Trl Tr. 861).

STATEMENT OF THE ISSUES

I. Did the Trial Court err by denying Quirion's motion for a mistrial after properly sustaining the State's objection to Quirion's closing argument, and does sustaining an objection without further comment constitute a comment on the evidence?

II. Was there any admonition made to William Simmons, or any improper admonition made to Sierra Strout, impacting the Quirion's rights to due process?

SUMMARY OF ARGUMENT

1. The objection to Quirion's closing argument was correctly sustained as there was no evidence in the record that Jalbert claimed ownership of the Walmart bags. A one-word ruling on a succinct legal objection does not constitute a judicial comment on the evidence.

2. The record does not support Quirion's factual claims; no admonitions were made to Simmons, and no improper admonitions were made to Strout. No error occurred that affected Quirion's ability to call witnesses.

ARGUMENT

I. The trial court properly sustained the State's objection to the Quirion's closing argument, and sustaining an objection without further comment is not a comment about the evidence.

A. Standard of Review

This Court reviews the rulings on objections to argument for an abuse of discretion. *State v. Winslow,* 2007 ME 124, ¶ 18, 930 A.2d 1080. Likewise, the denial of a motion for mistrial is also reviewed for an abuse of discretion. *State v. Fay,* 2015 ME 160, ¶ 9, 130 A.3d 364.

B. There was no evidence in the record that Adam Jalbert claimed ownership of the Wal-Mart bag.

While it was in the record that Adam Jalbert claimed some small bags of drugs underneath his seat, there was no evidence in the record of any statements by Jalbert claiming ownership of any Wal-Mart bags. (Trl. Tr. 158, 214, 523).

C. The State's objection was properly made and sustained.

There were efforts by Quirion to offer certain hearsay statements of Jalbert at trial, which were not admitted. (Trl. Tr. 242-245). This led to the State being on alert for any further attempts to admit or argue any such assertions. After Quirion (properly) argued that Jalbert had claimed ownership of the drugs in the front seat, the State understood Quirion's counsel to be segueing

into a claim that Jalbert made comments claiming ownership of the drugs in the Walmart bag. It can be inferred the Court reached the same conclusion.

The objection, as stated, was, "objection, arguing facts not in evidence." (Trl. Trl. 861). To preserve an issue, a party must not only object, but must also state the specific grounds of its objection. *Anderson v. O'Rourke,* 2008 ME 42, ¶ 13, 942 A.2d 680; see also M.R.U. Crim. P. 51. What Quirion characterizes as a "speaking objection" is actually the minimally sufficient legal form for an objection in the State of Maine.

Given the trial court's familiarity with the flow of the trial and what was being said in the moment, it was best positioned to gauge what was happening in the moment during argument, and thus properly sustained the objection.

D. Sustaining an objection, without further comment, does not constitute a comment on the evidence.

The trial court's complete response to the objection was, "the objection's sustained. Please move on." (Trl. Tr. 861). Quirion appears to be staking out the position that merely ruling on an evidentiary objection constitutes an improper comment on the evidence. Quirion, however, cites no cases that would support such an unworkably broad proposition.

Quirion also seems determined to conflate this narrow objection and ruling with a proposition that the trial court ruled there was no evidence that

Jalbert owned *some* of the drugs that date, which is simply inconsistent with the record of the argument, objection, and ruling. The objection was, "objection, arguing facts not in evidence," and the ruling was, "the objection is sustained. Please move on." (Trl. Tr. 861). The issue in dispute was whether there was evidence of Jalbert claiming ownership of the Walmart bags. *Id.*

The only case cited by Quirion as an example of sustained improper comments is easily distinguishable. The court in *Edwards* produced a detailed chronology that presented events outlined by the State (and not the defense) as having occurred, then provided that to the jury for use in their deliberations. *State v. Edwards,* 458 A.2d 422, 424 (Me. 1983). Here, by contrast, the trial court merely said, "sustained." To hold that such a perfunctory ruling constitutes an improper judicial comment would effectively make it impossible for any counsel to object when they believe opposing counsel is arguing facts not in the record. This would allow attorneys to effectively give unsworn testimony in the form of argument with impunity.

II. No admonitions were made to William Simmons, and no improper admonitions were made to Sierra Strout, and thus there was no effect on Quirion's rights.

A. Standard of Review

As Quirion conceded, this argument is not preserved as to William Simmons. The argument as to Sierra Strout, however, is also unpreserved. To

preserve an issue for appellate review, a party must timely present that issue to the original tribunal, so that it has the opportunity to consider the issue and correct any perceived error. *Brown v. Town of Starks,* 2015 ME 47, ¶ 6, 114 A.3d 1003. As to Strout, Quirion's attorney merely made baseless accusations in the course of complaining that Strout's attorney wanted to speak with Strout first outside the presence of Quirion's attorney. (Trl. Tr. 658-666). No objection was made, no ruling was sought, and no ruling was made related to this argument. Since the Court was not asked to decide anything, the issue was not preserved.

Where the alleged error has not been preserved at trial, it must be reviewed under the obvious error standard; that is, whether there has been a seriously prejudicial error tending to produce manifest injustice. *State v. Pabon*, 2011 ME 100, ¶ 18, 28 A.3d 1147. The four-part test is whether there is (1) an error, (2) that is plain, and (3) affects substantial rights; and only if those three are met, (4) whether the error seriously affects the fairness and integrity or public reputation of judicial proceedings. *Id.* ¶ 29.

B. William Simmons received no admonitions.

Contrary to Quirion's artful narrative, no admonitions were made to William Simmons, let alone improper ones. There is nothing in the record to support the accusation that Simmons was told he was preparing to commit perjury. There is nothing in the record to suggest Simmons ever entered the

court or was a party to any of the discussions about him. Likewise, while information about the various issues related to his potential testimony were communicated to an attorney intended to represent him, the record makes it clear that attorney was never able to make contact with Simmons. (Trl. Tr. 470). Ultimately, Quirion elected to simply never call Simmons and articulated valid trial strategy reasons to not call him. (Trl. Tr. 472-474).

C. Sierra Strout received no improper admonitions.

Likewise, notwithstanding Quirion's claims, the record does not support any claim that Strout received any improper admonitions. The State did not communicate directly to Strout. Attorney Folster was informed about the new pending investigation, the indication Strout could inculpate herself in Santana's crimes, and potential grounds of impeachment. (Trl. Tr. 659-664). These discussions happened outside Strout's presence. The trial court's only interaction with Strout was to inquire whether she had an opportunity to consult with Attorney Folster, and whether she knew and trusted Attorney Folster. (Trl. Tr. 683-684). Presumably Quirion is referring to the candid acknowledgment, in the context of the new investigation, that the State was, "not going to waive any options that may or may not be on the table," because it did not know what Strout was going to testify to. (Trl. Tr. 664).

D. Quirion's right to call witnesses was not impacted.

Quirion's entire argument as to this issue is not supported by the record. It is true that this Court has held that any practice that effectively deters a material witness from testifying is invalid unless necessary to accomplish a legitimate interest, and simultaneously recognized both the important interest in protecting a witness's right against self-incrimination and that a trial justice can advise a witness of their rights when they believe the witness may unwittingly incriminate themselves. *State v. Fagone,* 462 A.2d 493, 496-497 (Me. 1983). And yet, that is not what happened here.

Quirion cites a line of cases involving threats or over-aggressive warnings driving witnesses from the stand, yet all of the cases are easily distinguishable. In *Webb*, the trial judge gave a lengthy and pointed admonishment of a Defense witness, where in if the witness lied, the judge threatened to personally see that the witness got indicted for perjury and probably have several more years assessed consecutive to their present sentence. *Webb v. Texas,* 409 U.S. 95, 96 (1972). In *Fagone,* the trial court gave a defense witness a detailed warning that they could implicate themselves in at least three crimes, outlined those crimes and their potential penalties, and at least three times reiterated that the witness could elect not to testify to avoid incriminating himself. *State v. Fagone,* 462 A.2d 493, 494-495 (Me. 1983). In *Morrison,* the prosecutor used an invalid

subpoena to bring the defense witness to their office to essentially privately Mirandize them and tell them that they could be potentially prosecuted as a juvenile in federal or state court, and that they could also be prosecuted for perjury. *United States v. Morrison,* 535 F.2d 223, 225-226 (3rd Cir. 1976). In *MacCloskey,* the prosecutor called up the attorney of the co-defendant (who was anticipated to testify for the defendant) and told the attorney that, "he would be well-advised to remind his client that, if she testified at MacCloskey's trial, she could be reindicted if she incriminated herself during that testimony." *United States v. MacCloskey,* 682 F.2d 468, 475 (4th Cir. 1982).

Instead, the facts of this record are analogous to those in *Berry,* where this Court held that the prosecutor's mere suggestion that a defense witness might be prosecuted if he made incriminating statements (made outside that witness's presence in a chambers conference), "falls far short of the intimidating conduct by a prosecutor that has been held to violate a defendant's right to present witnesses in his defense." *State v. Berry,* 1998 ME 113, ¶ 8, 711 A.2d 142. In fact, in that case, the witness did not ultimately testify, but instead invoked their fifth amendment privilege not to testify after consulting a lawyer. *Id.*

Even if there were any error, Quirion is incorrect in asserting there can be no harmless error. Following *MacCloskey,* the same court held that a call or

warning to a witness's attorney about the consequences of perjury could be harmless error, and in that case, found it to be just that. *United States v. Teague,* 737 F.2d 378, 382 (4th Cir. 1984). Simmons was a witness subpoenaed by the State, and Quirion agreed to release him and never actually called him to testify. Strout testified for Quirion and did not decline to testify as to any question, showing that even if there was an error, it had no effect on the trial.

CONCLUSION

For the foregoing reasons, the State respectfully asks that the conviction be affirmed.

Respectfully submitted,

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Dated: May 14, 2024

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CERTIFICATE OF SERVICE

I, Jason Horn, Assistant Attorney General, certify that I have sent a native PDF and mailed two copies of the foregoing "BRIEF OF APPELLEE" to Quirion's attorney of record, Rory McNamara, Esq.

Dated: May 14, 2024

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