No. _____

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SUPREME COURT OF THE UNITED STATES

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STATE OF MAINE,

*Respondent*,

v.

JONATHAN LIMARY,

*Petitioner*.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
MAINE SUPREME JUDICIAL COURT

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**PETITION FOR A WRIT OF CERTIORARI**

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## I. QUESTION PRESENTED

Did the lower court deny Jonathan Limary the right to a fair and impartial jury under the Sixth Amendment of the United States Constitution, by denying his request to conduct voir dire regarding the justifications of self-defense and defense of others during jury selection?

## II. PARTIES TO THE PROCEEDINGS

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## V. PETITION FOR WRIT OF CERTIORARI

Jonathan Limary, an inmate currently incarcerated at the Maine State Prison in Warren, Maine, by and through Hunter Tzovarras, respectfully petitions this Court for a writ of certiorari to review the judgment of the Maine Supreme Judicial Court.

## VI. OPINION BELOW

The Maine Supreme Judicial Court's decision is reported at *State of Maine v. Jonathan Limary*, 2020 ME 83, ___ A.3d ___, 2020 WL2974094 (West 2020). The decision of the trial court is not reported and was ruled on orally; a copy is provided in the appendix.

## VII. STATEMENT OF JURISDICTION

The Court has jurisdiction under 28 U.S.C. 1257(a). This matter seeks the review of a decision from the State of Maine's highest court on a decision involving the Sixth Amendment right to a fair trial. The Maine Supreme Judicial Court issued its decision on June 4, 2020.

## VIII. CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment of the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

> confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend IV.

## IX. STATEMENT OF THE CASE

Jonathan Limary was indicted on January 19, 2018, on the charges of manslaughter and aggravated assault stemming from a fight on October 30, 2017, involving Jean Bragdon and others. During the trial, Mr. Limary presented a case of self-defense and defense of others. He admitted to fighting and kicking Mr. Bragdon in an effort to protect himself and others involved in the altercation.

At the close of the evidence, the trial court instructed the jury on these defenses. It was the first time the trial court discussed these potential defenses with the jurors. The court previously denied Mr. Limary's request to inquire about the potential jurors' bias towards the justification defenses of self-defense and defense of others.

The jury was selected on May 13, 2019. Before jury selection, the defense requested the court to include in the written questionnaire questions related to self-defense and defense of others. Transcript of Jury Selection Proceedings at 2, (May 13, 2019) (Law Ct. No. 19-329).The defense requested the court ask the jury the following questions:

> If during the trial Mr. Limary generates evidence that he acted in self-defense or in the defense of another in using physical force against Mr. Bragdon, the State must prove beyond a reasonable doubt that Mr. Limary did not act in self-defense or defense of another. Would you have any difficulty applying this burden on the State to disprove self-defense or defense of another beyond a reasonable doubt?

*Id*. at 2-3.

> Would you be willing to find Mr. Limary not guilty if he acted in self-defense or in defense of another using physical force against Mr. Bragdon?

*Id*. at 3.

> Do you have any personal, religious, philosophical or other beliefs that a person is never justified in using physical force against another human-being even if it is done in self-defense or defense of another?

*Id*.

In support of the above questions, the defense proffered that issues of self-defense and/or defense of others would be generated by the evidence at trial:

> As far as the proffer what the evidence will show ... is that there was ... a fight between Mr. Bragdon and, um, a friend of Mr. Limary's, Andrew Geer, that Mr. Bragdon had, um, sent messages to Mr. Greet that he wanted to fight and that he was going to hurt , um, Mr. Greet as well as girls, girlfriends that Mr. Limary and Mr. Greer had. And Mr. Limary was aware of these text messages. They then drove to a location that Mr. Bragdon had arranged for then to fight at, which was a parking lot.

> When they arrived at the parking lot, Mr. Bragdon came running across the street with another friend, or across the parking lot, and then began engaging in a fight between Mr. Geer and Mr. Bragdon. Mr. Limary was then engaged in a physical altercation with a friend of Mr. Bragdon's. At some point, other individuals started to come across the parking lot from the area where Mr. Bragdon ran from. This caused concern to people that were sitting in the vehicle that had arrived with Mr. Geer and Mr. Limary. They got out of the car and started yelling, warning Mr. Geer and Mr. Limary that other people were coming. At some point, Mr. Geer and Mr. Bragdon ended up on the ground. Mr. Bragdon was getting up off—according to the State's witness, Mr. Geer. In one of his statements, Mr. Bragdon was getting up off the ground coming after Mr. Geer to fight some more when Mr. Limary kicked him once in the face."

*Id*. at 3-5.

The State objected to the requested questions. *Id*. at 5-6.

The court denied Mr. Limary's request to provide any of the three questions on self-defense or defense of others. *Id*. at 7-8. The court indicated it would "give a voir dire question that inquires of, um, whether or not jurors would have, um, any difficulty in being a fair and impartial juror when fighting has occurred." *Id*. at 8.

The court provided no voir dire questions mentioning the law of self-defense or defense of others. At the close of the voir dire process, the

Defendant again renewed his objection to not asking the questions related to self-defense and defense of others. *Id.* at 205.

Following a jury trial, the court instructed the jury on the law of self-defense and the defense of others. The jury returned verdicts of guilty on both charges. *Limary*, 2020 ME 83, ¶ 11. The court imposed a sentence on the manslaughter charge of sixteen years, with all but forty-five months to serve and four years of probation. A concurrent forty-five month sentence was ordered on the aggravated assault charge. *Id.*

On appeal, the Maine Supreme Judicial Court upheld the trial court's ruling on Mr. Limary's proposed voir dire questions on June 4, 2020. *Id*. at ¶ 27.

In reaching its decision, the Maine Supreme Court recognized:

> As to legal defenses and justifications—as opposed to questions regarding potential evidence-based and status-based biases against parties or expected witnesses—some courts in other states have decided that several possible defenses and justifications, including self-defense, are sufficiently "controversial" that they must be specifically explored during voir dire if requested by a party.

*Id.* ¶ 22.

The court declined to follow other States' requirements that such defenses be inquired about at voir dire to assure a fair trial. Rather, the court sided with the "other courts that have considered whether a requested self-

defense question must be posed to potential jurors during voir dire, however, hold that the determination is in the discretion of the trial court based on the circumstances before it. " *Id.* at ¶ 23. The court concluded:

> We have not identified any particular defense or justification as being sufficiently "controversial" to warrant special inquiry during jury voir dire whenever raised and cannot now conclude that the law regarding defense of self or others is sufficiently controversial to justify elevating its significance above the many other potential forms of bias that could, in theory, be the subject of specific inquiry during jury voir dire. We are not persuaded that there exists societal bias against the law of defense of self or others to the extent that the constitutional right to a fair trial compels specific voir dire inquiry during jury selection.

*Id*. at ¶ 24.

Mr. Limary now seeks review of that decision with this Court.

## X. REASONS FOR GRANTING THE PETITION

The Court should grant certiorari because the decision of Maine's highest court is in conflict with the decisions of other state appellate courts requiring voir dire on the justification defenses.

The lower courts denied Mr. Limary a fair trial by denying him the ability to inquire about potential jurors' bias or prejudices involving the law of self-defense or defense of others. The three questions proposed by defense counsel sought to discover any bias or prejudice in applying the

law of self-defense. The potential for bias—left unexplored—denied Mr. Limary his Sixth Amendment right to an impartial jury and fair trial.

"In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial jury . . . ." U.S. Const. amend. VI.

The voir dire questioning of potential jurors serves the "dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges." *Mu'min v. Virginia*, 500 U.S. 415, 431 (1991).

The Maine Supreme Judicial Court's decision that voir dire questions regarding the law of self-defense and defense of others are not required to assure a fair trial is in conflict with the holdings of other state appellate court decisions.

The appellate courts in Arkansas, Illinois, and Michigan all require inquiry into the law of justification defenses to assure the accused a fair trial. The appellate court in Florida and Alaska have likewise held a defendant is denied a fair trial when these justifications are not inquired into at the time of jury selection.

In *Griffin v. Arkansas*, 389 S.W. 2d. 900, 901 (Ark. 1965), the appellant was accused of involuntary manslaughter. At trial, appellant sought to argue defense of justification and asked to question the venire through

voir dire "how they felt about the law of self-defense" when a man has killed a woman. *Id.* at 902. The court refused such questioning, asserting that it had already questioned jurors "as to whether or not they could and would follow the law as given by the Court and an affirmative indication given by each to the Court." *Id.* On appeal, the Arkansas Supreme Court determined that the trial court should have allowed such questioning. *Id.* The Arkansas high court held:

> The court should have permitted counsel to question the veniremen as indicated. The mere fact that they stated that they would follow the law as given by the court was not necessarily sufficient to enable counsel to determine whether peremptory challenges should be exercised. There are very few people bold enough to say that they will not follow the law, and yet *there are many people who do not believe there is any justification for taking human life, whether it is done in self-defense or in defense of their homes, their family, or their country.* In many instances, counsel decides whether to use a peremptory challenge not so much on what a venireman may say, but on how he says it.

*Id.* (emphasis added).

In *People v. Gregg*, 732 N.E. 2d 1152, 1154 (Ill. 2000), the appellant stood accused of trafficking of cocaine in-state. In response to a question from a juror concerning the burden of proof required for a finding of legal insanity, the court opined that "jurors would be instructed as to the defendant's burden at the close of the trial" and, as such, denied

appellant's request. *Id.* at 1155. On appeal, the Illinois Supreme Court held "[t]he standard for evaluating the court's exercise of discretion is whether the questions and the procedures used during voir dire to gauge juror competency created a reasonable assurance that any prejudice or bias present would be discovered." *Id.* at 1158. It notes "[a]lthough the insanity defense upon which the defendant relied is a well-recognized legal defense, it remains a subject of intense controversy and has been described as 'a defense which is known to be subject to bias or prejudice.'" *Id.* at 1168 (internal citations omitted). Because of this known bias, the court holds narrowly that jurors must be instructed on burden of proof in insanity cases on voir dire when so requested by counsel. *Id.* at 1163.

In *People v. Taylor,* 489 N.W. 2d 99, 100 (Mich. Ct. App. 1992), the appellant was convicted in state trial court of, inter alia, felonious assault with a deadly weapon. The appellant argued on appeal that the trial court erred in refusing to allow her to question potential jurors on voir dire concerning their "attitude toward self-defense and the use of deadly force." *Id.* at 100-01. The Michigan appellate court held "the refusal of the trial court to ask any questions concerning the subject of self-defense and juror attitudes toward the use of deadly force unduly restricted voir dire and was an abuse of discretion." *Id.*

The Florida Court of Appeals has held that a trial court erred in failing to ask questions regarding battered-spouse syndrome and self-defense during jury selection.

> While it is proper for a trial court to prohibit counsel from asking questions that are designed to obtain a preview of the prospective jurors' opinions of the evidence, a trial court abuses its discretion where it precludes questioning pertaining to the prospective jurors' willingness and ability to accept a valid legal theory.

*Simpson v. State*, 276 So. 3d 955, 958 (Fla. Dist. Ct. App. 2019) (internal citations omitted).

In *Savo v. State*, 382 P.3d 1179 (Ala. Crim. App. 2016), the court held the trial court erred in denying the defense the right to ask about self-defense during jury selection.

All of the above cases are at odds with the Maine Supreme Judicial Court's decision in this matter. Prior to jury selection, Mr. Limary presented a proffer supporting the justification defenses of self-defense and defense of others. He presented three questions designed to determine potential jurors' bias or prejudice towards these justifications. The court's failure to allow any inquiry into these justifications denied him a fair and impartial jury.

This Court has held that trial courts must allow voir dire of individual jurors that seeks to root out bias against defendants "entertaining a disqualifying prejudice." *Aldridge v. U.S.*, 283 U.S. 308, 314-15 (1931). The lower courts denied Mr. Limary that right and denied him a fair trial in doing so.

The issue presented in this case reaches far beyond Mr. Limary and will affect a multitude of individuals accused of crimes throughout the Country. The Court should address the conflict among State appellate courts as to whether justification defenses are sources of potential biasis that require inquiry during juror voir dire to assure a fair trial.

As the law currently stands, a defendant's right to inquire as to justification defenses and thus select a fair and impartial jury, under the Sixth Amendment, vary from state to state. If Mr. Limary's case was in Arkansas or Illinois, or one of the other states requiring such inquiry at voir dire, he would receive a different trial than he did in Maine. In order to assure the States are evenly applying the right to a fair and impartial jury, the Court should address and decide the issue presented in this matter

The present case is a good vehicle for deciding the issue presented. It provides a clear case of self-defense and defense of others presented at

trial. The trial court gave instructions at the close of evidence on these justification defenses. The defense raised the issue of inquiring into these justification defenses prior to the start of jury selection, and proffered as to the relevance of the inquiry and generation of such defenses through the anticipated trial evidence. The record below clearly preserves these issues. They were litigated at the trial and appellate levels.

## XII. CONCLUSION

The Court is respectfully requested to grant this petition for certiorari for the reasons set forth above.

DATED this 31st day of August, 2020.

*/s/Hunter J. Tzovarras*
Hunter J. Tzovarras
Counsel for Petitioner
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Bangor, Maine 04401
(207)941-8443
hunter@bangorlegal.com

## XIII. CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for a Writ of Certiorari, together with the attached Appendix, has this date been sent by email and first class mail, postage prepaid, to counsel for the State as follows:

By e-mail to: Robert.Ellis@maine.gov

By regular mail to: Robert J. Ellis, Jr. AAG
OFFICE OF THE ATTORNEY GENERAL
6 State House Station
Augusta, ME 04333-0006

DATED this 31st day of August, 2020.

*/s/Hunter J. Tzovarras*
Hunter J. Tzovarras
Counsel for Petitioner
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Bangor, Maine 04401
(207)941-8443
hunter@bangorlegal.com

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**APPENDIX**

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**APPENDIX TABLE OF CONTENTS**

STATE OF MAINE SUPERIOR COURT
Criminal Action
AROOSTOOK, ss. Docket No. AROCD-CR-18-12
Law Court No. ARO-19-329

STATE OF MAINE,
Plaintiff,
vs.
JONATHAN LIMARY,
Defendant.

JURY SELECTION

BEFORE: Honorable Harold L. Stewart II
Justice of the Superior Court
Aroostook County Courthouse
144 Sweden Street
Caribou, ME 04736
May 13, 2019
8:55 A.M.

APPEARANCES:
For the State: Robert Ellis, Esq.
For the Defendant: Hunter J. Tzovarras, Esq.
Adam P. Swanson, Esq.

Wendy S. Ambrose
Official Court Reporter

TRANSCRIPT OF PROCEEDINGS

(The following proceeding was held before Honorable Harold L. Stewart, II, Justice of the Superior Court, at the Aroostook County Courthouse, Caribou, Maine, on May 13, 2019, commencing at 8:55 A.M. The following proceeding was held in Judge's chambers.)

THE COURT: We can start our record on the Limary matter. I got to get a little sticky that says long I.

THE STATE: Yeah.

THE COURT: And we're finishing up our final edit to the juror written voir dire. And the issue is that of giving a voir dire question regarding self-defense. So, Attorney Tzovarras, if you want to make your record.

MR. TZOVARRAS: Thank you, your Honor. There's three questions that we propose the Court ask in voir dire, um, as part of the written questionnaire that relates to the law of self-defense. The questions are, one, if during the trial Mr. Limary generates evidence that he acted in self-defense or in the defense of another in using physical force

against Mr. Bragdon, the State must prove beyond a reasonable doubt that Mr. Limary did not act in self-defense or defense of another. Would you have any difficulty applying this burden on the State to disprove self-defense or defense of another beyond a reasonable doubt? That's one of the questions.

The second question that we're proposing the Court ask is, would you be willing to find Mr. Limary not guilty if he acted in self-defense or in defense of another in using physical force against Mr. Jean Bragdon?

And the third question we're proposing is, do you have any personal, religious, philosophical or other beliefs that a person is never justified in using physical force against another human being even if it is done in self-defense or defense of another?

And the reason why we're asking for those three questions, your Honor, or, um, or any of the questions is, um, is that we believe that self-defense and defense of others will be generated in this case.

As far as the proffer what the evidence will

show, your Honor, is that there was, um, a fight between Mr. Bragdon and, um, a friend of Mr. Limary's, Andrew Geer, that Mr. Bragdon had, um, sent messages to Mr. Geer that he wanted to fight and that he was going to hurt, um, Mr. Geer as well as, um, girls, girlfriends that Mr. Limary and Mr. Geer had. And Mr. Limary was aware of these text messages. They then drove to a location that Mr. Bragdon had, um, arranged for them to fight at, which was a parking lot.

When they arrived at the parking lot, Mr. Bragdon came running across the street with another friend, or across the parking lot, and then began engaging in a fight between Mr. Geer and Mr. Bragdon. Mr. Limary was then engaged in a physical altercation with a friend of Mr. Bragdon's. At some point, other individuals started to come across the parking lot from the area where Mr. Bragdon had run from. Um, this caused concern to people that were sitting in the vehicle that had arrived with Mr. Geer and Mr. Limary. They got out of the car and started telling, warning Mr. Geer and Mr. Limary that other

people were coming.

At some point, Mr. Geer and Mr. Bragdon ended up, um, on the ground. Mr. Bragdon was getting up off -- according to the State's witness, Mr. Geer, in one of his statements, is that Mr. Bragdon was getting up off the ground coming after Mr., um, Geer to fight some more when Mr. Limary kicked him once in the face. And then, um, then they left at that point.

So, based on that summary of the evidence, we believe that the issues of self-defense and defense of others will be generated. So, it would be important in selecting a jury, an unbiased jury, to know whether the jurors have any -- um, will have any problem applying the law as the Court, um, will instruct them on these offenses, as well as knowing whether they have any beliefs or philosophical opinions, um, that would prevent them from applying the law of self-defense or defense of others.

THE COURT: The State?

THE STATE: Judge, as we discussed, I object to that request. I think the

questionnaire covers the basics of the law. Um, the issue of whether self-defense is generated is an entirely different issue. We'll certainly talk about that. As we've stated in discussion here, I have a very different point of view about that issue; but what we're talking here is something entirely different. And I think this falls clearly within the, um, case of State v. Jeffrey Roby. And the Court there said, voir dire questions that have no relationship to a prospective juror's knowledge, bias, or predisposition, or that are intended to advocate a party's position regarding the facts or issues in dispute, are improper.

I believe that's what's going on. The Defense would like to plant the seed of self-defense early on through the questionnaire process. I don't think that's appropriate. I think that's an issue to be dealt with through instruction and the testimony that's generated at trial. Um, again, we can talk about self-defense later; but in terms of right now, out of the chute, putting it in a questionnaire, I don't think that's proper.

And the Law Court has cautioned against that and I object to the request. I am satisfied with the proposal the Court has made, which gets to a general issue about philosophical beliefs about fighting or anything of that nature.

THE COURT: So, the Court recognizes the issue of giving a self-defense instruction; and the bar is quite low in there being evidence sufficient to give that instruction. However, we're -- we have not received any of the evidence at this point. And it's clear that the State and Defense have, um, clearly differing views as to whether self-defense will be generated. So, it strikes me that that remains a decision to be made upon presentation of the evidence that we see in the courtroom.

The parties are in agreement that this is -- the entire overall facts of this case will clearly show that there was fighting occurring and that, um, fighting amongst individuals appear to the Court to be one of those things which an individual juror could have certain bias or prejudice. Um, and so the Court -- I'm not going to -- I refuse to give the

instructions -- or the voir dire questions, um, that specifically address self-defense or any connotation of that. However, I will give a voir dire question that inquires of, um, whether or not jurors would have, um, any difficulty in being a fair and impartial juror when fighting has occurred.

Anything further to put on the record? I do want to tweak that a little bit, but we can do that off the record.

MR. TZOVARRAS: Just to make the record clear, when you're talking about self-defense, you're talking about defense of others.

THE COURT: Yes, yes.

MR. TZOVARRAS: So, you made a ruling on both, just for the record.

THE COURT: Yeah, I view those as close cousins.

MR. TZOVARRAS: Right.

THE COURT: So, when I'm saying self-defense, I'm referring to both.

MR. TZOVARRAS: Yes. No, nothing further, your Honor. We understand the ruling.

THE COURT: All right. We can go off the record now.

(The proceeding in Judge's chambers concluded at 9:00 A.M. and reconvened in the courtroom at 9:25 A.M.)

THE COURT: Good morning. Please remain standing while the clerk administers the oath.

THE CLERK: Please raise your right hand. You swear or affirm that you'll make true answers to such questions as may be put to you by the Court or by its order, so help you God or under the pains and penalties of perjury?

MEMBERS OF THE JURY: (indicate)

THE CLERK: Please, be seated.

THE COURT: So, good morning again, and welcome back. And as I had told you over the last couple selections, we have primarily just one case to do today. And going to be going at this a little bit differently than we have in the other cases. So, let me first start off by introducing the participants. And so this is a case State of Maine versus Jonathan Limary. And let's start by,

MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2020 ME 83
Docket: Aro-19-329
Submitted
On Briefs: April 14, 2020
Decided: June 4, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

STATE OF MAINE

v.

JONATHAN LIMARY

HORTON, J.

[¶1] Jonathan Limary appeals from a judgment of conviction of manslaughter (Class A), 17-A M.R.S. § 203(1)(A) (2020), and aggravated assault (Class B), 17-A M.R.S. § 208(1)(A) (2020), entered by the court (Aroostook County, *Stewart, J.*) after a jury trial. Limary argues that the court deprived him of a fair trial by denying his request during jury voir dire to pose certain questions in the jury questionnaire, and that the evidence was insufficient to support a finding that Limary's actions—rather than subsequent medical treatment—caused the victim's death. We affirm the judgment.

## I. BACKGROUND

[¶2] Viewing the evidence in the light most favorable to the State, the jury could rationally have found the following facts beyond a reasonable doubt.

*See State v. Asaad*, 2020 ME 11, ¶ 8, 224 A.3d 596. Late on the night of October 29, 2017, Limary and some friends had a dispute, via text-based and voice-based social media, with the victim—a man whom none of them had met. As a result, Limary and a friend of his—with three others in the vehicle—drove from Presque Isle to Caribou to meet up with the victim and his friend in a parking lot to fight. While Limary and the victim's friend fought, Limary's friend fought with the victim. Limary's friend and the victim ended up on the ground, and Limary's friend eventually got up and backed away from the victim. By then, another friend of the victim had arrived with his teenage son and had gone over to help the victim up off the ground. Before the victim could rise from his knees, Limary approached and forcefully kicked the victim in the face, resulting in numerous fractures to the victim's nose, eye orbits, upper jaw, and cheek bones.

[¶3] The victim received medical care in the early morning hours of October 30 and was released, but he returned to the hospital later that day and was admitted. He was released on November 2. He then had two surgeries on November 9 and was released on November 17. For purposes of the surgeries, a tracheostomy tube was inserted; that tube was removed two days before the

victim's release from the hospital, leaving the victim with a healing hole in his throat at the incision site where the tracheostomy tube had been.

[¶4] On the day that the victim was released, his friend and the friend's son brought him to their house. That evening, the victim began bleeding from the opening in his neck, and his friend called 9-1-1. Under the guidance of the dispatcher, the victim's friend performed CPR until the ambulance arrived. The victim bled profusely, and, despite the paramedics' resuscitation efforts, he died. An autopsy revealed that, although at least some blood exited the victim through the tracheostomy site,[1] more extensive hemorrhaging occurred in the victim's sinuses.[2]

[¶5] In January 2018, Limary was charged by indictment with manslaughter (Class A), 17-A M.R.S. § 203(1)(A), and aggravated assault (Class B), *id.* § 208(1)(A). He pleaded not guilty, and the matter proceeded to a jury trial.

[1] There was also evidence of bleeding from the nose and of blood having entered the stomach and lungs.

[2] From these facts, the jury could rationally have found beyond a reasonable doubt that Limary committed the aggravated assault by "intentionally, knowingly or recklessly caus[ing] . . . [b]odily injury to another that create[d] a substantial risk of death or extended convalescence necessary for recovery of physical health." 17-A M.R.S. § 208(1)(A) (2020); *see* 17-A M.R.S. § 35(1)-(3) (2020). The sufficiency of the evidence of manslaughter is discussed below.

[¶6] Jury selection was held on May 13, 2019. The court refused to include on the jury questionnaire three of the questions that Limary proposed relating to self-defense and defense of another:

- "[I]f during the trial Mr. Limary generates evidence that he acted in self-defense or in the defense of another in using physical force against [the victim], the State must prove beyond a reasonable doubt that Mr. Limary did not act in self-defense or defense of another. Would you have any difficulty applying this burden on the State to disprove self-defense or defense of another beyond a reasonable doubt?"

- "[W]ould you be willing to find Mr. Limary not guilty if he acted in self-defense or in defense of another in using physical force against [the victim]?"

- "[D]o you have any personal, religious, philosophical or other beliefs that a person is never justified in using physical force against another human being even if it is done in self-defense or defense of another?"

The court reasoned that it was not evident that a self-defense or defense-of-another instruction would be generated by the evidence. The court indicated that it would ask "whether or not jurors would have . . . any difficulty in being a fair and impartial juror when fighting has occurred." The questionnaire presented to the potential jurors included such a question and also asked the jurors if they would be able to "base their verdict upon the evidence and according to the law" without allowing "any feelings of bias, prejudice, pity, anger, sympathy or other emotion [to] influence their verdict in

any way" and if they would be able to follow the law as instructed by the court "even if [they] d[id] not agree with the law."

[¶7] After the potential jurors completed the questionnaire, the court conducted individual voir dire. Both the State and Limary agreed that the jury that was ultimately selected was satisfactory.

[¶8] The jury trial was held over the course of the next four days. The State offered testimony from eyewitnesses, a paramedic who treated the victim on the day of his death, a police officer, and the State's Chief Medical Examiner. The State offered no evidence that would suggest that Limary had acted in self-defense or defense of another. The medical examiner testified that, before performing an autopsy of the victim, he reviewed hospital records summarizing the multiple, serious fractures to the victim's face. He also considered a post-surgery x-ray showing the surgeons' use of braces and other materials to reconstruct the victim's face. The autopsy revealed no hemorrhaging in the area of the tracheostomy but extensive hemorrhaging in the sinuses, where the victim had sustained the injuries and undergone surgery. The medical examiner concluded that the victim died of blood loss—specifically, "hemorrhagic complications following multiple fractures of facial bones due to the blunt force trauma of his head."

[¶9] Limary moved for a judgment of acquittal on the manslaughter charge, arguing that the victim's surgery, which he claims was elective, broke the chain of causation between his actions and the victim's death such that the jury could not find him guilty of manslaughter. *See* M.R.U. Crim. P. 29. The court denied the motion.

[¶10] Limary then offered an expert witness—the Chief Medical Examiner for the State of Maryland—whose testimony differed from the State's Chief Medical Examiner's mainly in identifying the source of the victim's bleeding as one or more veins at the site of the tracheostomy, not the site of Limary's injuries and surgery.[3] Limary also offered his own testimony that he had kicked the victim in the mouth to protect his friend because he thought the victim was getting up to continue fighting and he wanted to get away from the victim and his friends.

[¶11] In its instructions to the jury, the court provided instructions on self-defense and defense of another. The jury found Limary guilty of both the manslaughter and aggravated assault charges. After a sentencing hearing, the court sentenced Limary to sixteen years in prison for manslaughter, with all but

[3] Through cross-examination, it became clear that, when the expert prepared his report, he had mistakenly believed that the tracheostomy tube had still been in the victim's throat when he died.

forty-five months suspended and four years of probation. For the conviction of aggravated assault, the court sentenced Limary to forty-five months in prison, to be served concurrently with the manslaughter sentence. The court also ordered Limary to pay $70 plus restitution of $2,519 to the Victims' Compensation Fund. Execution of the sentence was stayed pending appeal. *See* M.R.U. Crim. P. 38(a). Limary timely appealed. 15 M.R.S. § 2115 (2020); M.R. App. P. 2B(b)(1).

## II. DISCUSSION

[¶12] Limary challenges (A) the court's denial of his request to pose questions regarding self-defense and defense of another in the juror questionnaire and (B) the sufficiency of the evidence that he caused the victim's death. We address each issue in turn.

### A. Juror Questionnaire

[¶13] Limary argues that he was deprived of a fair and impartial jury because the questionnaire did not specifically inquire of the jurors whether they were able to be fair and impartial regarding issues of self-defense and defense of another. He contends that, unlike in *State v. Burton*, 2018 ME 162, ¶ 17 & n.2, 198 A.3d 195, the court did not include other questions regarding self-defense or defense of another that would satisfy the concerns he raised.

[¶14] We review challenges to the conduct of voir dire for abuse of discretion. *State v. Roby*, 2017 ME 207, ¶ 11, 171 A.3d 1157. "[T]he purpose of the voir dire process is to detect bias and prejudice in prospective jurors, thus ensuring that a defendant will be tried by as fair and impartial a jury as possible." *Burton*, 2018 ME 162, ¶ 15, 198 A.3d 195 (quotation marks omitted). Thus, a trial court has considerable discretion over the scope of voir dire provided that it is adequate to disclose facts that would reveal juror bias. *Id.*

[¶15] A court need not voir dire potential jurors in the exact manner requested by a party as long as the process is sufficient to reveal bias. *Roby*, 2017 ME 207, ¶ 13, 171 A.3d 1157. Nor does a court abuse its discretion in excluding questions "that have no relationship to a prospective juror's knowledge, bias, or predisposition, or that are intended to advocate a party's position regarding the facts or issues in dispute." *Roby*, 2017 ME 207, ¶ 11, 171 A.3d 1157 (quotation marks omitted).

[¶16] For purposes of the United States Constitution, "[t]o be constitutionally compelled, . . . it is not enough that [voir dire] questions might be helpful. Rather, the trial court's failure to ask these questions must render the defendant's trial fundamentally unfair." *Mu'Min v. Virginia*, 500 U.S. 415, 425-26 (1991). For instance, the United States Supreme Court has determined

that voir dire questions about racial bias may be constitutionally required, particularly in death penalty cases. *See Turner v. Murray*, 476 U.S. 28, 35-36 (1986); *Rosales-Lopez v. United States*, 451 U.S. 182, 190 (1981) (holding that, although there is no presumption of racial bias, a court may be required to ask voir dire questions about race if there are "substantial indications of the likelihood of racial or ethnic prejudice affecting the jurors in a particular case"); *Aldridge v. United States*, 283 U.S. 308, 314-15 (1931) (vacating a judgment of conviction of murder, for which the defendant had been sentenced to death, because the court failed to inquire of the jurors regarding racial bias).

[¶17] Consistent with this jurisprudence, the *Maine Jury Instruction Manual*, widely used in civil and criminal jury trials in Maine, recommends that the trial court consider specific voir dire in cases that "may involve particularly sensitive issues such as race, religion, sexual preferences, interpersonal or sexual violence, or child abuse." Alexander, *Maine Jury Instruction Manual* § 2-4 at 2-6 (2019-2020 ed. 2019). The same resource recommends that during jury voir dire the trial court "describe the basic law applicable to the case—in criminal cases, the presumption of innocence, the State's beyond a reasonable doubt standard of proof, the defendant's right to remain silent and not present any evidence—and then ask the jurors if they were willing and able to accept

and apply the law to the case if they were selected as jurors, regardless of any personal view they may have as to what the law should be." *Id.* § 2-4E at 2-20. In this case, all of these principles were addressed in the written jury questionnaire.

[¶18] On the other hand, the *Manual* recommends against "[q]uestions that ask about jurors' knowledge or beliefs about the law and whether the jurors agree with the law as stated by counsel." *Id.* § 2-4F at 2-24 ("Voir dire is not a mini bar exam for citizen jurors untrained in the law.").

[¶19] The principles set forth in the *Manual* are consistent with, and derive from, our own jurisprudence. "A voir dire of jurors becomes essential when the potential for bias and prejudice is manifest." *State v. Barczak*, 562 A.2d 140, 142 (Me. 1989). "Whether prejudice is manifest is a question of fact for the trial court's determination and the scope of an examination is a matter of discretion for the court." *Id.* Based on the evidence anticipated in a case, therefore, special inquiry of jurors during voir dire may be required with respect to potential bias regarding matters such as race and sexual orientation, pretrial publicity, and law enforcement connections. *See State v. Bethea*, 2019 ME 169, ¶¶ 15-19, 221 A.3d 563; *State v. Turner*, 495 A.2d 1211, 1212-13 (Me. 1985); *State v. Lovely*, 451 A.2d 900, 901-02 (Me. 1982); *see also*

Alexander, *Maine Jury Instruction Manual* § 2-4I at 2-31 to 2-32 (including sample jury questions about pretrial publicity); *cf. State v. Saucier*, 2001 ME 107, ¶ 21, 776 A.2d 621 (affirming the denial of a motion to change venue in part because voir dire questions about pretrial publicity had been posed to the jury). Applying these principles, we held that jury voir dire was inadequate when trial courts precluded inquiry into the nature of jurors' associations with prospective law enforcement witnesses, *State v. O'Hara*, 627 A.2d 1001, 1003 (Me. 1993), and jurors' past experiences with violent crime, *State v. Lowry*, 2003 ME 38, ¶¶ 10-11, 819 A.2d 331.

[¶20] In many circumstances, it will be necessary for a defendant to provide evidence of potential bias for voir dire to be required. *See, e.g.*, *State v. Lowe*, 2015 ME 124, ¶ 17, 124 A.3d 156 (holding that there was insufficient evidence that pretrial publicity generated a potential for bias); *see also United States v. Robinson*, 475 F.2d 376, 381 (D.C. Cir. 1973) (holding that, when no recognized class of societal bias is involved, "it is incumbent upon the proponent to lay a foundation for his question by showing that it is reasonably calculated to discover an actual and likely source of prejudice, rather than pursue a speculative will-o-the-wisp").

[¶21] In a case in which the defendant was a patron of a gay bar, however, we in effect took judicial notice of societal prejudice that compelled inquiry on the subject of anti-gay bias. *See Lovely*, 451 A.2d at 901-02 (acknowledging the undeniable "stigmatization of homosexuals in our society" and concluding that the trial court was required to inquire about anti-gay bias during jury voir dire when the evidence suggested that the defendant had been a patron of a gay bar). The common theme in our jury voir dire jurisprudence has been to require inquiry into jurors' attitudes and experiences involving the parties and witnesses or involving specific areas of evidence when there is a more than speculative potential for juror bias.

[¶22] As to legal defenses and justifications—as opposed to questions regarding potential evidence-based and status-based biases against parties or expected witnesses—some courts in other states have decided that several possible defenses and justifications, including self-defense, are sufficiently "controversial" that they must be specifically explored during voir dire if requested by a party. *See Griffin v. State*, 389 S.W.2d 900, 902 (Ark. 1965) (self-defense); *People v. Gregg*, 732 N.E.2d 1152, 1163 (Ill. App. Ct. 2000) ("Although the insanity defense upon which the defendant relied is a well-recognized legal defense, it remains a subject of intense controversy and

has been described as 'a defense which is known to be subject to bias or prejudice.'" (quoting *People v. Bowel,* 488 N.E.2d 995, 999 (Ill. 1986))); *People v. Taylor*, 489 N.W.2d 99, 101 (Mich. Ct. App. 1992) (per curiam) (self-defense and the use of deadly force); *cf. People v. Keenan*, 758 P.2d 1081, 1123 (Cal. 1988) (holding that sequestered voir dire may be required in a death penalty case as to "potentially controversial defenses" such as self-defense).

[¶23] The majority of the other courts that have considered whether a requested self-defense question must be posed to potential jurors during voir dire, however, hold that the determination is in the discretion of the trial court based on the circumstances before it. *See State v. Ebron*, 975 A.2d 17, 26 & n.14 (Conn. 2009), *overruled in part on other grounds by State v. Kitchens*, 10 A.3d 942, 959 (Conn. 2011); *see, e.g., Robinson*, 475 F.2d at 380-81 (holding that, although it may have been preferable for the trial court to inquire about juror attitudes toward self-defense, the refusal to do so did not prejudice the defendant's substantial rights); *Simpson v. State*, 276 So. 3d 955, 958 (Fla. Dist. Ct. App. 2019) ("This Court has recognized that no bright line rule can be fashioned to determine the limits a trial court may impose on voir dire because the complexities in each case are different."); *State v. Bedford*, 529 N.E.2d 913, 920 (Ohio 1988) ("The scope of voir dire is within the trial court's discretion

and varies depending on the circumstances of each case."); *see also Savo v. State*, 382 P.3d 1179, 1182 (Alaska Ct. App. 2016) (vacating a conviction when the court refused to allow requested voir dire when "the evidence already known to the State provided support for th[e] claim of self-defense").

[¶24] We have not identified any particular defense or justification as being sufficiently "controversial" to warrant special inquiry during jury voir dire whenever raised and cannot now conclude that the law regarding defense of self or others is sufficiently controversial to justify elevating its significance above the many other potential forms of bias that could, in theory, be the subject of specific inquiry during jury voir dire. We are not persuaded that there exists societal bias against the law of defense of self or others to the extent that the constitutional right to a fair trial compels specific voir dire inquiry during jury selection. *See Commonwealth v. Fisher*, 290 A.2d 262, 264 (Pa. 1972) (holding that there was no evidence of widespread bias against the self-defense justification); *Commonwealth v. Morales*, 800 N.E.2d 683, 694 (Mass. 2003) ("There is no reason to suspect juror prejudice against claims of self-defense and the defendant has not shown a substantial risk of juror bias against such a defense.").

[¶25] To the extent that we have addressed voir dire about self-defense, we affirmed a trial court's decision not to ask the following question regarding self-defense in a murder case:

> The law allows a person to use deadly force against another person in self-defense. Do you have any beliefs or opinions that would prevent you from applying the law of self-defense if the Court provided such an instruction in this case?

*Burton*, 2018 ME 162, ¶ 7, 198 A.3d 195 (quotation marks omitted). We held that the proposed question was not required to ensure impartiality and that the question about self-defense that the court did ask—which stated that the law allowed the use of deadly force in self-defense "in certain circumstances"—was sufficient to reveal juror bias. *Id.* ¶17 & n.2 (emphasis omitted) (quotation marks omitted). We affirmed the judgment based on the adequacy of the questions asked to determine bias and the availability of individual voir dire of the potential jurors. *Id.* ¶¶ 17 & n.2, 19.

[¶26] Unlike the jury question propounded by the court in *Burton*, the three questions that Limary proposed regarding self-defense and defense of another did not indicate that a person's rights of self-defense and defense of others are limited, *see* 17-A M.R.S. § 108(1)-(2) (2020),[4] and, in that respect,

[4] At the time of the crime at issue here, subsection 3 of 17-A M.R.S. § 108 (2020) had not yet taken effect. *See* P.L. 2019, ch. 462, § 2 (effective Sept. 19, 2019).

they failed to provide accurate statements of the law. *See Burton*, 2018 ME 162, ¶ 17 n.2, 198 A.3d 195. The court was justified in declining to adopt them as phrased. *See Roby*, 2017 ME 207, ¶ 14, 171 A.3d 1157.

[¶27] Although the court could well have included an appropriate question regarding self-defense and defense of another based on Limary's contention that those issues would likely be generated at trial, the court did not abuse its discretion in declining to include such a question. Limary did not supply an evidentiary basis to establish societal bias against the law of self-defense or defense of another, *cf. Lowe*, 2015 ME 124, ¶ 17, 124 A.3d 156; it was not clear whether the evidence would generate either justification, which increased the risk that the question would amount to improper pretrial advocacy, *see Roby*, 2017 ME 207, ¶ 11, 171 A.3d 1157; and Limary's concerns regarding bias against the law of self-defense and defense of another were addressed by the court's questions about whether the jurors could follow all of the court's instructions, even if they disagreed with the law, including when there had been fighting.[5] Ultimately, Limary agreed that the jury that was selected was acceptable, and there is no evidence of bias in any particular juror

[5] The written jury questionnaire asked jurors whether they could follow the law in five different questions.

or in the jury as a whole as a result of the court's exclusion of the requested instructions. Because the questions asked in the questionnaire were adequate to reveal facts that would identify any bias against applying the existing law and there is no evidence that Limary was deprived of an impartial jury, we will not vacate the judgment on this basis. *See Burton*, 2018 ME 162, ¶ 15, 198 A.3d 195.

B. Sufficiency of the Evidence of Causation

[¶28] Limary argues that, because the victim did not die until eighteen days and two surgeries after the fight, the evidence cannot support a finding that, but for Limary's conduct, the death would not have occurred or that his conduct was the legal cause of the victim's death. He contends that the kick was a "non-dispositive event" that did not, beyond a reasonable doubt, cause the victim's death because the victim had elective surgery and was released in stable condition. He contends that there was no evidence that the kick caused the bleeding that occurred on November 17, 2017.

[¶29] When a defendant challenges the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the State to determine whether a trier of fact rationally could find beyond a reasonable doubt each element of the offense charged. *Asaad*, 2020 ME 11, ¶ 8, 224 A.3d 596. "The fact-finder may draw all reasonable inferences from the

evidence, and decide the weight to be given to the evidence and the credibility to be afforded to the witnesses." *Id.* (quotation marks omitted).

[¶30] "A person is guilty of manslaughter if that person . . . [r]ecklessly, or with criminal negligence, causes the death of another human being." 17-A M.R.S. § 203(1)(A). Limary does not contest the sufficiency of the evidence that he acted recklessly or with criminal negligence. *See* 17-A M.R.S. § 35(3)(A), (C), (4)(A), (C) (2020) (defining "recklessly" and "criminal negligence"). He argues only that the evidence did not permit the jury to find beyond a reasonable doubt that his conduct caused the victim's death.

[¶31] At the time of the fight, the statute governing causation stated, "Unless otherwise provided, when causing a result is an element of a crime, causation may be found where the result would not have occurred but for the conduct of the defendant operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the defendant was clearly insufficient." 17-A M.R.S. § 33 (2017).[6]

[6] The language regarding concurrent causation was amended, effective after the events at issue here, to state the concurrent causation standard in the affirmative and in a separate paragraph, using simplified language:

[¶32] "Section 33 expressly imposes limitations on causative responsibility and imposes standards similar to the common law standards of proximate cause." *State v. Snow*, 464 A.2d 958, 962 (Me. 1983). Thus, the foreseeability of events or conditions contributing to the victim's death becomes relevant. *See State v. Shanahan*, 404 A.2d 975, 983 (Me. 1979); *see also United States v. Kilmartin*, 944 F.3d 315, 331 (1st Cir. 2019) ("Proximate cause is commonly understood as a function of the foreseeability of the harm."). In applying section 33, "the State must prove beyond a reasonable doubt not only that the result would not have occurred but for the conduct of the defendant, but also that the concurrent cause was not alone clearly sufficient to produce the result and that the conduct of the defendant was not clearly insufficient to produce the result." *Snow*, 464 A.2d at 962; *see also State v. Crocker*, 431 A.2d 1323, 1325 (Me. 1981).

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**§ 33. Result as an element; causation**

**1.** Unless otherwise provided, when causing a result is an element of a crime, causation may be found when the result would not have occurred but for the conduct of the defendant, operating either alone or concurrently with another cause.

**2.** In cases in which concurrent causation is generated as an issue, the defendant's conduct must also have been sufficient by itself to produce the result.

17-A M.R.S. § 33 (2020) (codifying P.L. 2017, ch. 432, § C-1 (emergency, effective July 4, 2018)); *see* L.D. 1091, Summary (128th Legis. 2017) ("Subsection 2 contains a simplified test to be applied in the event concurrent causation is generated as an issue. It provides that, when a defendant's conduct may have operated concurrently with another cause, in addition to satisfying the 'but for' test the defendant's conduct must have been sufficient by itself to produce the result . . . .").

[¶33] The evidence plainly supported a jury finding that the victim underwent surgeries to repair injuries caused by Limary's kick and that those surgeries would not have occurred but for Limary's actions. The question is whether the evidence was sufficient for the jury to find, beyond a reasonable doubt, that the surgeries were not the sole cause of death and that Limary's actions were not "clearly insufficient" to cause the death. 17-A M.R.S. § 33. In other words, we must decide whether the medical treatment undertaken before the victim's death was, as a matter of law, an intervening—rather than merely a concurrent—cause of the victim's death, negating criminal liability.

[¶34] We have not explicitly announced a rule regarding concurrent versus intervening causes of death in the context of medical treatment of an injured victim. In *State v. Hachey*, 278 A.2d 397, 400-01 (Me. 1971), however, we affirmed a murder conviction when, although the victim received medical care, including a tracheostomy, after the defendant shot him, the victim ultimately died of infection: "Certainly [the jury] could find that the cause of the septicemia was the entry of the bullet into the body of the decedent." *Id.*[7]

[7] We reached this holding at common law because no statute equivalent to section 33 was in force until the adoption of the Maine Criminal Code in the mid-1970s. *See* P.L. 1975, ch. 499, § 1 (effective Mar. 1, 1976) (codified at 17-A M.R.S.A. § 56 (1979)). As the bill's comment reveals, the new statutory language was taken from a proposed Massachusetts Code and based on the proposed Federal Criminal Code. L.D. 314, § 1, cmt. to 17-A M.R.S.A. § 56 (107th Legis. 1975). The federal drafters specifically noted that "[t]he major problem in enunciating such rules is presented by situations in which two or more factors 'cause' the result." Nat'l Comm'n on Reform of Fed. Criminal Laws, Final

[¶35] In other concurrent causation contexts, we similarly held that a jury could find causation, despite other events or circumstances that may have contributed to the victim's death. For instance, we concluded that the evidence was sufficient to support a manslaughter conviction when the medical examiner testified that a wound inflicted by the defendant, which was accompanied by other injuries not inflicted by the defendant, would eventually have caused death if untreated. *State v. Morelli*, 493 A.2d 336, 338-40 (Me. 1985); *see also State v. Cumming*, 634 A.2d 953, 954, 956-57 (Me. 1993) (affirming a murder conviction when, although the pathologist could not distinguish which injuries resulted from the victim leaping or being pushed from the defendant's car and which injuries resulted from him then driving over her, the evidence could support a jury finding that the victim was alive when she was run over); *State v. Peaslee*, 571 A.2d 825, 826-27 (Me. 1990) (affirming a vehicular manslaughter conviction when the defendant's passenger was thrown from the vehicle and then run over by another car because the victim would not have been in the road if not for the defendant's

Report 32 (1971). The section was proposed as "a modified 'but for' test with a proviso that excludes those situations in which the concurrent cause was clearly sufficient to produce the result and the accused's conduct clearly insufficient. . . . 'But for' is a minimal requirement for guilt; and resolving that question permits focusing on the more important issue of culpability as to the result caused." *Id.*

conduct); *State v. Reardon*, 486 A.2d 112, 116-18 (Me. 1984) (affirming a trial court's finding of causation in a felony murder case because it was reasonably foreseeable that a sixty-seven-year-old robbery victim would have a heart attack due to the stress of the robbery, his foreseeable attempt to chase the perpetrator, and his agitated explanation of the robbery to police); *Shanahan*, 404 A.2d at 983 (holding that the victim's foreseeable conduct in attempting to wrest the gun away from the defendant was not, "as a matter of law, an intervening cause relieving defendant of criminal responsibility for her death").

[¶36] Other jurisdictions have more specifically held that when medical treatment is provided to an injured victim, negligent treatment cannot be an intervening cause "unless the doctor's treatment is so bad as to constitute gross negligence or intentional malpractice." 1 Wayne R. LaFave, *Substantive Criminal Law* § 6.4(f)(5) at 658-59 (3d ed. 2018). These courts have held that gross negligence, which is not reasonably foreseeable, can be an intervening cause if the fact-finder determines that the victim would have survived without that gross negligence. *See People v. Calvaresi*, 534 P.2d 316, 319 (Colo. 1975) ("[M]ere medical negligence can reasonably be foreseen. We hold, however, that gross negligence is abnormal human behavior, would not be reasonably foreseeable, and would constitute a defense, if, but for that gross negligence,

death would not have resulted."); *State v. Soucy*, 653 A.2d 561, 565 (N.H. 1995) ("The majority of jurisdictions . . . have adopted what has been termed a 'sole' cause test, under which malpractice constitutes a supervening cause only if it was the 'sole' cause of the death."); *cf. State v. Jackson*, 223 N.W.2d 229, 233-34 (Iowa 1974) (holding, with respect to *ordinary* negligence, that "[a]n injury is the proximate cause of resulting death although the deceased would have recovered had he been treated by the most approved surgical methods or by more skillful methods, or with more prudent care").

[¶37] Applying these generally accepted standards, courts have concluded that a jury could find causation despite interceding medical treatment when there was no evidence that the medical care was grossly negligent, *see People v. Saavedra-Rodriguez*, 971 P.2d 223, 228-29 (Colo. 1998); when the wound was so dangerous on its own that the medical treatment could not have been the sole cause of death, *see State v. Shabazz*, 719 A.2d 440, 444-45 (Conn. 1998); *Wright v. State*, 374 A.2d 824, 827, 828-29 (Del. 1977); *State v. Surbaugh*, 786 S.E.2d 601, 607-08, 616 (W. Va. 2016); and when nonnegligent emergency treatment caused some bleeding but not enough to cause the victim's death, *Neal v. State*, 722 S.E.2d 765, 768 (Ga. 2012).[8]

[8] In contrast, a court found that the evidence was *insufficient* to establish causation beyond a reasonable doubt when the victim was stabbed in the stomach and during surgery, the surgeons

[¶38] Here, there is no evidence of medical negligence—much less gross medical negligence—nor any evidence that the surgery was for any purpose other than to treat the injuries inflicted on the victim by Limary. *Cf. id.* Although there was evidence that the victim could have deferred the surgery, the surgery was entirely foreseeable and was not cosmetic; the medical examiner opined that the stability of the victim's face was at risk and that, without surgery, he would be in danger of bleeding or of the bones in his face healing badly and impeding his breathing. The medical examiner also testified that a bone shard could have severed multiple blood vessels and caused the type of excessive sinus bleeding that he concluded had occurred here. Given this evidence, and the medical examiner's specific determination that the victim died of "hemorrhagic complications following multiple fractures of facial bones due to the blunt force trauma of his head," the jury could rationally find that the surgery was not the sole cause of the bleeding and that the damage inflicted

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discovered an incarcerated hernia, which they proceeded to correct after the initial surgery. *People v. Stewart*, 358 N.E.2d 487, 489-90 (N.Y. 1976). During that second surgical procedure, the victim went into cardiac arrest. *Id.* at 490. The medical examiner testified that the cardiac arrest could have been caused by the shock of the stab wound or by the physical strain of either operation; he also testified that the anesthesiologist's report and surgeons' report were contradictory about whether the anesthesiologist had failed to deliver oxygen to the victim, which alone could have caused the victim's death. *Id.* at 490-91. The court concluded that it could not be ruled out as a possibility that the hernia operation had caused the victim's death, "certainly not beyond a reasonable doubt." *Id.* at 492.

through the kick was not "clearly insufficient" to cause death. *See* 17-A M.R.S. § 33.

[¶39] Based on the evidence in the record, the jury could rationally find beyond a reasonable doubt that (1) the victim's death "would not have occurred but for the conduct of the defendant, operating either alone or concurrently with another cause"; and (2) the medical care was not "clearly sufficient," and the kick to the victim's face was not "clearly insufficient," to cause the victim's death. 17-A M.R.S. § 33; *see Calvaresi*, 534 P.2d at 319; *Soucy*, 653 A.2d at 565. We therefore affirm the judgment of conviction.

The entry is:

Judgment affirmed.

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Hunter J. Tzovarras, Esq., Bangor, for appellant Jonathan Limary

Aaron M. Frey, Attorney General, and Katie Sibley, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee State of Maine

Aroostook County Unified Criminal Docket docket number CR-2018-12
FOR CLERK REFERENCE ONLY

MAINE SUPREME JUDICIAL COURT Reporter of Decisions
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Submitted
On Briefs: April 14, 2020
Decided: June 4, 2020
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Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

STATE OF MAINE

v.

JONATHAN LIMARY

**ERRATA SHEET**

The Court's opinion certified on June 4, 2020, is revised to correct an error. In paragraph 27, at the end of the third sentence, "requested instructions" is replaced with "requested questions."

The original opinion on the Court's website has been replaced with the opinion as revised.

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 81. Supreme Court (Refs & Annos)

28 U.S.C.A. § 1257

# § 1257. State courts; certiorari

Currentness

**(a)** Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

**(b)** For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

**CREDIT(S)**

(June 25, 1948, c. 646, 62 Stat. 929; Pub.L. 91-358, Title I, § 172(a)(1), July 29, 1970, 84 Stat. 590; Pub.L. 100-352, § 3, June 27, 1988, 102 Stat. 662.)

28 U.S.C.A. § 1257, 28 USCA § 1257
Current through P.L. 116-158.

**End of Document**

MAINE SUPREME JUDICIAL COURT Sitting as the Law Court

No. ARO-19-329

STATE OF MAINE

v.

JONATHAN LIMARY

ON APPEAL FROM AROOSTOOK UNIFIED CRIMINAL DOCKET (CARIBOU)

Brief of Appellant,
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## I. PROCEDURAL HISTORY

On January 19, 2018. Jonathan Limary was indicted on the charges of manslaughter and aggravated assault stemming from a fight involving with Jean Bragdon and others on October 30, 2017. Mr. Bragdon died 18 days later on November 17, 2017. Jonathan was 22 years old at the time of charge and pleaded not guilty.

A jury was selected on May 13, 2019. The defense requested the court include questions related to self-defense and defense of another on a written questionnaire the court provided to the jury pool. (Jury Selection Tr. at p. 2)

The defense requested the court ask the jury the following questions:

> If during the trial Mr. Limary generates evidence that he acted in self-defense or in the defense of another in using physical force against Mr. Bragdon, the State must prove beyond a reasonable doubt that Mr. Limary did not act in self-defense or defense of another. Would you have any difficulty applying this burden on the State to disprove self-defense or defense of another beyond a reasonable doubt?

(*Id.* at 2-3).

> Would you be willing to find Mr. Limary not guilty if he acted in self-defense or in defense of another using physical force against Mr. Bragdon?

(*Id.* at 3).

> Do you have any personal, religious, philosophical or other beliefs that a person is never justified in using physical force against another human-being even if it is done in self-defense or defense of another?

(*Id.)*.

The defense proffered to the court that both the issues of self-defense and defense of another would be generated by the evidence at trial.

> As far as the proffer what the evidence will show … is that there was … a fight between Mr. Bragdon and, um, a friend of Mr. Limary's, Andrew Geer, that Mr. Bragdon had, um, sent messages to Mr. Greet that he wanted to fight and that he was going to hurt , um, Mr. Greet as well as girls, girlfriends that Mr. Limary and Mr. Greer had. And Mr. Limary was aware of these text messages. They then drove to a location that Mr. Bragdon had arranged for then to fight at, which was a parking lot.
>
> When they arrived at the parking lot, Mr. Bragdon came running across the street with another friend, or across the parking lot, and then began engaging in a fight between Mr. Geer and Mr. Bragdon. mr. Limary was then engaged in a physical altercation with a friend of Mr. Bragdon's. At some point, other individuals started to come across the parking lot from the area where Mr.

> Bragdon had run from. Um, this caused concern to people that were sitting in the vehicle that had arrived with Mr. Geer and Mr. Limary. They got out of the car and started telling, warning Mr. Geer and Mr. Limary that other people were coming.
>
> At some point, Mr. Geer and Mr. Bragdon ended up, um, on the ground. mr. Bragdon was getting up off—according to the State's witness, Mr. Geer, in one of his statements, is that Mr. Bragdon was getting up off the ground coming after Mr. Geer to fight some more when Mr. Limary kicked him once in the face.

(*Id.* at 3-5). The State objected to the requested questions. (*Id.* at 5-6).

The court denied the request to provide any of the three questions on self-defense or defense of another requested by Mr. Limary. (*Id.* at 7-8). The court indicated it will "give a voir dire question that inquires of, um, whether or not jurors would have, um, any difficulty in being a fair and impartial juror when fighting has occurred." The court provided no voir dire questions mentioning the law of self-defense or defense of another.

At the close of the voir dire process, the Defendant again renewed his objection to not asking the questions related to self-defense and defense of another. (*Id.* at 205).

A four day jury trial followed. At the close of the evidence, the court instructed the jury on the law of self-defense and the defense of another. The jury returned verdicts of guilty on both charges.

On June 20, 2019, the court imposed a sentence of 16 years all but 45 months to serve and 4 years of probation on the manslaughter charge, and concurrent 45 months on the aggravated assault charge.

This appeal was filed on July 1, 2019.

## II. STATEMENT OF FACTS

On October 29, 2017, Andrew Geer, Jonathan Limary and their friends are hanging out at Jonathan's apartment with his roommates watching sports. (Tr. Vol. 1 at p. 60-61). Andrew begins a Facebook argument with Jean Bragdon. (*Id.* at 61). Jean is "very hostile" in his messages to Andrew. (*Id.* at 63). It turns into a phone argument yelling back and forth at each other. (*Id.* at 64). Jonathan comes out of his bedroom during this point. (*Id.*). Jon becomes involved in the argument after Jean makes comments threatening their girlfriends. (*Id.*). Jean is

threatening everyone. (64). Jonathan gets on the phone with Jean and argues with him. (*Id.* at 64-65).

The parties agree to meet at the Save-A-Lot parking lot. (*Id.* at 65). Andrew and Jonathan, and three other friends, go to the Save-A-Lot. (*Id.* at 67). They ultimately meet in the parking lot of Pine Health Center in Presque Isle. (*Id.* at 70). Once they arrive, Jean comes running across the parking lot with his arm cocked back and towards Andrew. (*Id.*). One of Jean's friends, Norm, comes running into the parking lot with him. (*Id.*). Jean and Norm are in their 40s. Jonathan and Andrew are 22 and 18 respectively.

Jonathan and Norm start jostling while Jean and Andrew start fighting in the parking lot. (*Id.* at 72-73). Eventually, the fight takes Jean and Andrew to the ground. (*Id.* at 73, 74). As Jean is getting up off the ground, Jonathan kicks Jean once in the face. (*Id.* at 73). The entire fight lasted about two minutes. (*Id.*). Jonathan and his group of friends get back in the truck and drive away. (*Id.* at 82-83).

Jonathan testified that during the fighting, Jonathan can see three other males coming over to the area. (Tr. Vol. 4 at p. 25). Jonathan thinks

they were coming to "step into the fight". (*Id.* at 25). Drew is yelling for them to not come any closer as he has Jean in a headlock on the ground. (*Id.* at 26). Jonathan walks over towards Drew and Jean. (*Id.*). When he moves within five feet of them, Drew lets go of Jean. (*Id.* at 27). Jean immediately rolls over and starts to get up. (*Id.* at 27-28). Jean's moving fast to stand back up. (*Id.* at 28). Jonathan believes Jean is getting back up to fight more. (*Id.*). Jonathan wants to get out there feeling his friends and self are now out numbered now. (*Id.*). Jonathan kicks Jean once in the head as Jean is getting back up. (*Id.* at 29). He kicks Jean to "ensure that myself and the others with me could leave without harm." (*Id.)*. Jonathan is wearing a pair of Vans denim-knitted shoes at the time he kicks Jean. (*Id.* at 30).

As a result of the kick, Jean suffers injuries and fractures to his facial area. He is taken to Cary Medical Center at approximately 1:50 a.m. on October 30, 2017 and discharged in stable condition at 4:45 a.m. that same day. (Tr. Vol. 3 at p. 83-85). Later on October 30, 2017, Jean returns to Cary Medical Center at approximately 2:40 p.m. because he is feeling dizzy. (*Id.* at 89). He is admitted for observation. (*Id.* at 90). He is

discharged in stable condition on November 2, 2017 at approximately 10:56 a.m. (*Id.*).

On November 8, 2017, Jean returns to Cary Medical Center for pain medication. (*Id.* at 93). The doctor who previously treated Jean on the prior dates indicates his injuries looked to be improving. (*Id.* at 94). Jean is provided pain medication and sent home.

On November 9, 2017, Jean travels to EMMC for a consultation with Dr. Crowley for facial surgery. (*Id.* at 96). Following the consultation, Jean decides to have the surgery the next day. (*Id.* at 96, 97). The surgery was not necessary to save Jean's his life. (*Id.* at 96-97). The surgical consent form entered by Jean lists death as one possible risk of surgery. (*Id.* at 101-101).

On November 10, 2017, Jean undergoes two surgeries to repair the injuries in his face suffered on October 30, 2017. (*Id.* at 102). Following surgery, he remains in the hospital for one week. (*Id.* at 104). On November 17, 2017, he is discharged from EMMC at approximately 1:30 p.m. and returns home to Caribou. (*Id.* at 105). At approximately 10:30

p.m. that evening, Jean notices some blood on a bandage on his neck and bleeds to death within minutes. (*Id.* at 107).

Dr. Mark Flomenbaum determined Jean died from bleeding to death on November 17, 2017. (Id. at 72, 75). Dr. Flomenbaum determined the area of the bleeding to be in the sinuses.[1] (*Id.* at 64-67). The bleeding was found in the area where the surgery occurred. (*Id.* at 69). Dr. Flomenbaum could not determine the exact source of bleeding. (*Id.* at 70-71). He opined the cause of death was "hemorrhagic complications following multiple fractures of facial bones due to the blunt force trauma to his head." (*Id.* at 78).

[1] At trial, Dr. David Fowler, the medical examiner for the State of Maryland, testified the site of the bleeding was in the neck where the tracheotomy tube had been recently removed.

**III. ISSUES ON APPEAL.**

1. Did the court deny Jonathan Limary a fair trial by denying the defense's request to ask potential jurors questions related to bias or predisposition against the law of self-defense or defense of another during the jury selection process?

2. Did Jonathan Limary cause the death of Jean Bragdon as a matter of law?

## IV. **SUMMARY OF ARGUMENTS**

1. The trial court erred in failing to ask the potential jurors any questions relating to the law of self-defense or defense of another. The Defendant proposed three questions to the court to ask during the voir dire process that were designed to detect any bias or prejudice in applying the law of self-defense or defense of another. The court declined to ask all three proposed questions. At the close of evidence, the court instructed the jury on the law of self-defense and defense of another. Mr. Limary was denied a fair trial because it is unknown whether one or more of the jurors were biased or predisposed against these defenses because not inquiry was made during the selection process on this crucial issue.

2. The evidence was insufficient as a matter of law to establish Jonathan Limary caused Jean Bragdon's death. Mr. Bragdon was released from the hospital in stable condition three times after the injuries suffered in the fight. Mr. Bragdon elected to have a surgery that was not required to save his life. After being discharged from the

surgery and returning home, Mr. Bragdon bled to death. This bleeding occurring 17 days after the fight with Mr. Limary was not caused by Mr. Limary and cannot be held responsible for it as a matter of law.

## V. LAW AND ARGUMENT

### 1. The court denied Mr. Limary a fair trial because he was unable to inquire as to potential jurors bias or predisposition against the law of self-defense or defense of another.

Jonathan Limary was denied a trial by a fair and impartial jury because he was unable to inquire as to potential juror's bias or prejudice as it relates to self-defense or defense of another during the jury selection process. The defense raised self-defense and defense of another throughout the case. The court instructed the jury on these defenses. It cannot be determined the jury decided these issues fairly and impartially because no voir dire questions were asked by the court as to potential basis or prejudice when it comes to such defenses.

The Maine and federal constitutions guarantee that criminal defendants shall have the right to an impartial jury trial. U.S. Const. amend. VI; Me. Const. art. I, § 6.

The Court reviews challenges to the trial court's voir dire for abuse of discretion." *State v. Lowry*, 2003 ME 38, ¶ 7, 819 A.2d 331; *State v. Simons,* 2017 ME 180, ¶ 19, 169 A.3d 399. Any error is considered harmful. "Because of the constitutional rights at stake, however, if we do discern an error that affects the right to an impartial adjudicator, that error cannot be regarded as harmless." *State v. Carey*, 214 A. 3d 488, 493 (Me. 2019).

"[T]he purpose of the voir dire process is to detect bias and prejudice in prospective jurors, thus ensuring that a defendant will be tried by as fair and impartial a jury as possible." *State v. Roby*, 171 A. 3d 1157, 1160 (Me. 2017); *see also State v. O'Hara*, 627 A.2d 1001, 1003 (Me. 1993); *State v. Lovely,* 451 A.2d 900, 901 (Me. 1982).

In this case, Mr. Limary presented three questions for the court to ask the prospect jurors during the voir dire process designed to detect

an inherent bias or prejudice as it relates to the law of self-defense or defense of another.

> 1. If during the trial Mr. Limary generates evidence that he acted in self-defense or in the defense of another in using physical force against Mr. Bragdon, the State must prove beyond a reasonable doubt that Mr. Limary did not act in self-defense or defense of another. Would you have any difficulty applying this burden on the State to disprove self-defense or defense of another beyond a reasonable doubt?"
>
> 2. Would you be willing to find Mr. Limary not guilty if he acted in self-defense or in defense of another in using physical force against Mr. Bragdon?"
>
> 3. Do you have any personal, religious, philosophical or other beliefs that a person is never justified in using physical force against another human-being even if it is done in self-defense or defense of another?"

If the prospect juror answered "yes" to question one, or "no" to either question 2 or 3 a potential basis or prejudice would be discovered. At that time, Mr. Limary could move to strike for cause the potential juror, or later exercise a preemptory strike. Absent the above questions, Mr. Limary had no way of determining if any of the potential jurors were bias or prejudice to the defenses likely to be raised (and raised) throughout the trial.

The questions proposed by the defense went directly to the potential juror's bias or predisposition in being able to decide the case fairly and impartially. This Court has upheld the exclusion of "[q]uestions that have no relationship to a prospective juror's knowledge, bias, or predisposition, or that are intended to advocate a party's position regarding the facts or issues in dispute, are improper." *Roby*, 171 A. 3d at 1160. Mr. Limary's proposed questions went directly to the bias or predisposition in applying the law of self-defense or defense of another in Maine. The questions did not advocate Mr. Limary's position that he acted in self-defense, but asked whether the juror's were willing and able to follow the law on self-defense, or had any predisposition against applying the law of self-defense.

The voir dire process failed to disclose jurors with potential basis towards self-defense or defense of another. This Court has upheld the selection process when the lower "court ensured that the voir dire process was sufficient to disclose facts that would reveal juror bias." *Id* (internal quotations and citations omitted). Here, the trial court never informed the jury pool at all about the law of self-defense or defense of

another, or asked any questions addressing any bias or prejudice when it comes to these defenses. Without asking such questions, it is impossible to know whether any of the jurors held an inherent predisposition against such defenses.

The Court in *State v. Burton*, 198 A. 3d 195 (Me. 2018), found no error in declining to ask some questions regarding self-defense when other questions were asked by the court relating to self-defense. "We note in particular that the written questionnaire used by the court addressed the principle of self-defense in verbiage that was almost identical to Burton's proposed question, but that stated the law more accurately: 'The law allows in certain circumstances a person to use deadly force against another person in self-defense or in defense of premises. Do you have any beliefs or opinions that would prevent you from applying the law of self-defense or defense of premises if the Court provided such an instruction in this case?' *Burton*, at Fn 2 (internal citations omitted).

The court in this matter failed to ask any question similar to the question asked in the *Burton* case. The first of the three proposed

questions submitted by Mr. Limary was similar to the question asked in *Burton*.

Without the ability to inquire into whether the jurors can fairly and impartially apply the law of self-defense and defense of another to this case, Mr. Limary was denied a fair trial. The trial focused extensively on the issue of self-defense and defense of another. It was the main issue at trial, along with causation of the death. At the close of evidence, the court provided the jury several pages of instructions on these defenses. There is no way of knowing whether some or all of the jurors were bias or predisposed against such defenses because the court never asked during the jury selection process.

Therefore, the Court should find the trial court abused its discretion in denying such voir dire and grant a new trial.

2. **Mr. Limary did not cause Mr. Bragdon's death as a matter of law.**

This evidence is insufficient as a matter of law to prove Mr. Limary's conduct on October 30, 2017 caused Mr. Bragdon's death on November 17, 2017." When a defendant alleges that evidence is insufficient t support his conviction, we review the evidence in the light most favorable to the State to determine whether the trier of fact rationally could have found beyond a reasonable doubt every element of the offense charged." *State v. Bickart*, 963 A.2d 183 (Me. 2009). Evidence that is "too tenuous for a rational fact-finder to determine that it is almost certainly true " cannot support a conviction. *State v. Cook*, 2 A. 3d 333, 339 (Me. 2010).

Viewing the evidence in a light most favorable to the State, Mr. Bragdon died on November 17, 2017 after being discharged from the hospital and bleeding to death in the sinus/nasal area. This is the area in which he was kicked by Mr. Limary on October 30, 2017, and had surgery to repair on November 10, 2017. The State's evidence did not indicate the kick from October 30, 2017 caused the bleeding on

November 17, 2017. Rather, the State's evidence was the bleeding occurred in the same area 18 days later, and several days after surgery.

In order to be guilty of the charge of manslaughter, Mr. Limary had to cause the death of Mr. Bragdon by acting either recklessly or with criminal negligence. 17-A MRSA § 203.

Maine law defines "causation" as follows: "Unless otherwise provided, when causing a result is an element of a crime, causation may be found when the result would not have occurred but for the conduct of the defendant, operating either alone or concurrently with another cause. In cases in which concurrent causation is generated as an issue, the defendant's conduct must also have been sufficient by itself to produce the result." 17-A M.R.S.A. § 33. The evidence is insufficient to establish Mr. Limary's kick on October 30, 2017 caused Mr. Bragdon's death on November 17, 2017.

In every case where causing a result is an element of the crime, the state must prove beyond a reasonable doubt the result would not have occurred *but for* defendant's conduct; that is, state may prove either that defendant's conduct, operating alone, produced results or that

defendant's conduct, or operating in conjunction with the concurrent cause of condition, produced the result. *State v. Crocker*, 431 A.2d 1323 (Me. 1981).

The question in this case is whether the evidence was sufficient to prove Mr. Limary's conduct on October 30, 2017 in kicking Mr. Bragdon caused his death on November 17, 2017. In other words, would Mr. Bragdon have died on November 17, 2017 *but for* Mr. Limary kicking him on October 30, 2017.

Mr. Limary's conduct on October 30, 2017 could not have been the but for cause of Mr. Bragdon's death. Rather, Mr. Bragdon's death resulted from a bleed on November 17, 2017. There was no evidence presented this bleed occurred on November 17, 2017 because Mr. Limary kicked Mr. Bragdon 18 days prior.

Supreme Court precedent on causation supports a finding that Mr. Limary was not the but for, or legal, cause of Mr. Bragdon's death. In *Burrage v. U.S.*, 134 S. Ct. 881 (2014), the Court analyzed the causation element of when "death or serious bodily injury results from the use of such substance", under 21 U.S.C. § 841(a)(1), (b) (1)(A)-(C).

> The law has long considered causation a hybrid concept, consisting of two constituent parts: actual cause and legal cause. H. Hart & A. Honoré, Causation in the Law 104 (1959). When a crime requires "not merely conduct but also a specified result of conduct," a defendant generally may not be convicted unless his conduct is "both (1) the actual cause, and (2) the `legal' cause (often called the `proximate cause') of the result." 1 W. LaFave, Substantive Criminal Law § 6.4(a), pp. 464-466 (2d ed. 2003) (hereinafter La-Fave); see also ALI, Model Penal Code § 2.03, p. 25 (1985).

*Id.* at 887.

> The Model Penal Code reflects this traditional understanding; it states that '[c]onduct is the cause of a result' if 'it is an antecedent but for which the result in question would not have occurred.' § 2.03(1)(a). That formulation represents 'the minimum requirement for a finding of causation when a crime is defined in terms of conduct causing a particular result.

*Id.* at 888.

But-for causation usually inures to the benefit of the criminal defendant and is motivated by the rule of lenity. *Burrage*, 571 U.S. at 216. The Court has refused to adopt "less demanding" causation tests, such as, "[t]he defendant's conduct is a cause of the event even if it was a…substantial factor in bringing it about," id. at 215, or "a wrongdoer's conduct, though alone insufficient to cause the plaintiff's harm, is, when combined with the conduct by other persons, more than sufficient

to cause the harm," *Paroline v. United States*, 572 U.S. 434, 451-52 (2014). If a statute requires but-for causation, then it will not be enough for the State to prove that the defendant's actions merely "contributed to" the death. *Burrage*, 571 U.S. at 216.

The State's evidence in this case, at best, establishes Mr. Limary's kick was a substantial or contributing factor in causing death—either that Mr. Bragdon would not have chosen to have the surgery if not kicked, or the kick combined with the surgery caused the death. This level of causation is insufficient as a matter of law to prove but for causation.

While Mr. Limary's kick on October 30, 2017 caused the facial injuries that evening, it was not the cause of death on November 17, 2017, and played a nonessential contributing role. The Court in *Burrage* provided the following analogy for the but for causation requirement.

> This but-for requirement is part of the common understanding of cause. Consider a baseball game in which the visiting team's leadoff batter hits a home run in the top of the first inning. If the visiting team goes on to win by a score of 1 to 0, every person competent in the English language and familiar with the American pastime

> would agree that the victory resulted from the home run. This is so because it is natural to say that one event is the outcome or consequence of another when the former would not have occurred but for the latter. It is beside the point that the victory also resulted from a host of other necessary causes, such as skillful pitching, the coach's decision to put the leadoff batter in the lineup, and the league's decision to schedule the game. By contrast, it makes little sense to say that an event resulted from or was the outcome of some earlier action if the action merely played a nonessential contributing role in producing the event. If the visiting team wound up winning 5 to 2 rather than 1 to 0, one would be surprised to read in the sports page that the victory resulted from the leadoff batter's early, non-dispositive home run.

*Id.* at 888.

Here, the kick on October 30, 2017 was a non-dispositive event. It did not result in Mr. Bragdon's death because he was treated at the hospital and discharged later that day (and twice more) as stable. The decision to have the surgery on November 9 and the performance of the surgery, and the bleeding on November 17, 2017 are all events that contributed to the final outcome of death.

The State may argue that Mr. Bragdon would not have had the surgery on November 10, 2017 but for Mr. Limary kicking him. The Defendant would agree. However, the kick being the but for cause of

the surgery is not the same as it being the but for cause of the death. The surgery was elective. It was not emergency surgery necessary to save or stabilize Mr. Bragdon's life. The surgery then becomes an intervening event Mr. Bragdon elected to undergo.

In *State v. Morelli*, 493 A. 2d 336 (Me. 1985), the defendant was convicted of manslaughter after the victim was shot several times, with the defendant shooting him once in the pelvic. The Court found the gunshot wound to the pelvic was sufficient to prove causation of the death, even if the other gunshot wounds could have caused death. "Dr. Roy further testified that the pelvic wound, included by him as a cause of death, would not necessarily be fatal immediately. He stated, however, it would cause death eventually if untreated." *Id.* at 339. "The evidence also provides a rational basis for the jury to conclude that the wound in the lower abdomen as a concurrent cause, was not clearly insufficient to cause death. The medical witness testified that the wound would cause death." The important distinction between *Morelli* and this case is the medical examiner never testified the facial injuries caused by the kick would be fatal eventually if left untreated, or that the

bleeding on November 17, 2017 was the result of the kick on October 30, 2017.

In *State v. Hachey*, 278 A. 2d 397 (Me 1971), the defendant was convicted of murder after shooting the victim, who died 4 days later from an infection associated with the gunshot wound. In that case, the medical examiner testified, "'I think he died of infection.' He explained that the effect of the bullet passing through the abdomen and the stomach was to create a condition which produced an infection. Dr. McEvoy concurred with this opinion and attributed the sepsis and other conditions resulting in death to the original damage caused by the passage of the bullet through the abdomen." *Id.* at 400.

> Dr. Eyerer removed the bullet, noting it had severed the spinal cord, and gave it to a police officer. The Jury had every right to conclude from all the medical testimony in the case that, had this shooting not occurred, Mr. Buzzell would not have died. Certainly they could find that the cause of the septicemia was the entry of the bullet into the body of the decedent. The law is well settled that a Defendant is responsible even where the act was not the immediate cause of death if an intervening cause was the natural result of the wrongful act.

*Id.* at 401.

Unlike in *Hachey*, there is no evidence in this case the bleeding on November 17, 2017 was caused by the kick 18 days earlier , or was a natural cause of the kick. Mr. Bragdon's decision to have surgery on November 9, 2017 is not the sort of "natural result" contemplated in *Hachey*. The natural result there was an infection resulting from the bullet going through the body—a matter entirely beyond the victim's control. The decision to have surgery here was a conscious choice. It is also notable that the victim in Hachey died in the hospital 4 days after the gunshot, without ever being discharged, and after having suffering an infection directly related to the bullet that was fired.

Therefore, the Court should find the evidence was insufficient to prove Mr. Limary caused Mr. Bragdon's death and vacate the manslaughter conviction.

## V. **CONCLUSION**

For all of the above reasons, it is respectfully requested the Court vacate the convictions in this matter.

Dated: December 13, 2019

Respectfully Submitted,

_____

Hunter J. Tzovarras
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**CERTIFICATION OF SERVICE**

I hereby certify a copy of the above motion was sent on December 13, 2019 to: Attorney General Office, 6 State House Station, August, Maine 04333, and AAG Donald Macomber (via email copy).

_____
Hunter J. Tzovarras
Bar No. 4429

MAINE SUPREME JUDICIAL COURT Sitting as the Law Court

No. ARO-19-329

STATE OF MAINE

v.

JONATHAN LIMARY

ON APPEAL FROM AROOSTOOK UNIFIED CRIMINAL DOCKET (CARIBOU)

**APPENDIX**

Appellant,
Jonathan Limary

Hunter J. Tzovarras
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STATE OF MAINE
vs
JONATHAN LIMARY
174 OGREN ROAD
PRESQUE ISLE ME 04769

CRIMINAL DOCKET
AROOSTOOK, ss.
Docket No AROCD-CR-2018-00012

**DOCKET RECORD**

DOB: 08/15/1995

Attorney: HUNTER TZOVARRAS
PELLETIER FAIRCLOTH BRACCIO LLC
88 HAMMOND STREET, SUITE 321
BANGOR ME 04401
APPOINTED 01/22/2018

State's Attorney: ROBERT ELLIS

Attorney: ADAM SWANSON
SWANSON LAW PA
487 MAIN ST, SUITE 1
PRESQUE ISLE ME 04769
APPOINTED 01/22/2018

Filing Document: INDICTMENT
Filing Date: 01/19/2018

Major Case Type: HOMICIDE

**Charge(s)**

1 MANSLAUGHTER 10/30/2017 CARIBOU
Seq 4248 17-A 203(1)(A) Class A
FOWLER / MSP

2 AGGRAVATED ASSAULT 10/30/2017 CARIBOU
Seq 13123 17-A 208(1)(A) Class B
FOWLER / MSP

**Docket Events:**

01/19/2018 FILING DOCUMENT - INDICTMENT FILED ON 01/19/2018

01/19/2018 BAIL BOND - $50,000.00 CASH BAIL BOND SET BY COURT ON 01/19/2018
HAROLD STEWART , JUSTICE
CASH BAIL, NO THIRD PARTY

01/19/2018 Charge(s): 1,2
WARRANT - $50,000.00 ON COMP/INDICTMENT REQUESTED ON 01/19/2018

CASH BAIL, NO THIRD PARTY

01/19/2018 Charge(s): 1,2
WARRANT - $50,000.00 ON COMP/INDICTMENT ORDERED ON 01/19/2018
HAROLD STEWART , JUSTICE
CASH BAIL, NO THIRD PARTY

01/19/2018 Charge(s): 1,2
WARRANT - $50,000.00 ON COMP/INDICTMENT ISSUED ON 01/19/2018

CASH BAIL, NO THIRD PARTY

01/20/2018 Charge(s): 1,2
WARRANT - ON COMP/INDICTMENT EXECUTED BY AGENCY ON 01/20/2018 at 02:16 p.m.

01/24/2018 Charge(s): 1,2
HEARING - ARRAIGNMENT HELD ON 01/22/2018

DEFENDANT INFORMED OF CHARGES.

01/24/2018 Charge(s): 1,2
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 01/22/2018

01/24/2018 BAIL BOND - $50,000.00 CASH BAIL BOND SET BY COURT ON 01/22/2018
BERNARD G O'MARA , JUDGE
CASH BAIL, NO CONTACT WITH AUSTIN BILLINGSLEA, CASSIDY CLAIR, ANDREW GEER, KYLE NADEAU,

ALEXIS NICHOLS, BRITNEY WILLETT, JASON WILLETTE JR, JASON WILLETTE SR, NORMAN WILLETTE, ALLYSON ADAMS, MARY WHITE, HILLARY JACKSON, HANAH WHITE, MORGANNE BRAGDON, BEN WHITE, ANDREA BRAGDON, EUGENE BRAGDON, DAVID WHITE, BREANNE TROSPER

01/24/2018 Charge(s): 1,2
MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 01/22/2018

01/24/2018 Charge(s): 1,2
MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 01/22/2018
BERNARD G O'MARA , JUDGE
COPY TO PARTIES/COUNSEL

01/24/2018 Party(s): JONATHAN LIMARY
ATTORNEY - APPOINTED ORDERED ON 01/22/2018

Attorney: HUNTER TZOVARRAS

01/24/2018 Party(s): JONATHAN LIMARY
ATTORNEY - APPOINTED ORDERED ON 01/22/2018

Attorney: ADAM SWANSON

01/24/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE SCHEDULE OTHER COURT ON 04/19/2018 at 08:30 a.m.

CARDC

01/24/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 01/24/2018

01/24/2018 ORDER - SPECIAL ASSIGNMENT ENTERED ON 01/24/2018
ROLAND A COLE , JUSTICE
ASSIGNED TO JUSTICE STEWART

03/16/2018 BAIL BOND - $2,000.00 UNSECURED BAIL BOND FILED ON 11/03/2017

Bail Amt: $2,000
Date Bailed: 10/30/2017

03/29/2018 MOTION - OTHER MOTION FILED BY DEFENDANT ON 03/29/2018

MOTION TO AMEND CONDITIONS OF RELEASE

04/13/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE NOT HELD ON 04/13/2018

04/13/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE SCHEDULE OTHER COURT ON 04/19/2018 at 01:00 p.m.

CARDC

04/13/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 04/13/2018

05/01/2018 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE HELD ON 04/19/2018

05/01/2018 HEARING - BAIL HEARING SCHEDULE OTHER COURT ON 05/16/2018 at 09:00 a.m.

HOUSC

05/01/2018 HEARING - BAIL HEARING NOTICE SENT ELECTRONICALLY ON 05/08/2018

05/08/2018 CASE STATUS - CASE FILE LOCATION ON 05/08/2018

GAVE TO JUSTICE HUNTER TO TAKE TO HOULTON FOR 5/16/18
05/16/2018 CASE STATUS - CASE FILE RETURNED ON 05/16/2018

GIVEN TO JUSTICE STEWART TO RETURN TO CARIBOU ON 5/16/2018
05/16/2018 HEARING - BAIL HEARING HELD ON 05/16/2018
HAROLD STEWART , JUSTICE
05/16/2018 MOTION - OTHER MOTION GRANTED ON 05/16/2018
HAROLD STEWART , JUSTICE
MOTION TO AMEND CONDITIONS OF RELEASE
05/16/2018 BAIL BOND - $5,500.00 CASH BAIL BOND AMENDED ON 05/16/2018
HAROLD STEWART , JUSTICE
CASH; NOT TO U/P ILLEGAL DRUGS/ALCOHOL/MARIJUANA; SUBMIT TO S/T FOR ID/A/M W/O ARTCULABLE SUSPICION OR PROBABLE CAUSE; NO CONTACT W/ALLYSON ADAMS, ZACHARY JACKSON, JAZMINE BRAGDON, CASSISY CLAIR, ANDREW GEER, KYLE NADEAU, MARY WHITE, HILLARY JACKSON, HANAH WHITE, MORGANNE BRAGSON, NORMAN WILLETTE, JASON WILLETTE SR, BEN WHITE, ANDREA BRAGDON, EUGENE BRAGDON, DAVID WHITE, BREANNE TROSPER, AUDTIN BILLINGSLEA, ALEXIS NICOLS, BRITNEY WILLETT, JASON WILLETTE JR; GENERAL CUSTODIAN SEE ORDER FOR COMPLE
05/16/2018 HEARING - DISPOSITIONAL CONFERENCE SCHEDULE OTHER COURT ON 07/19/2018 at 08:30 a.m.

CARDC
05/16/2018 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 05/16/2018

05/24/2018 BAIL BOND - $5,500.00 CASH BAIL BOND SET BY COURT ON 05/16/2018
HAROLD STEWART , JUSTICE
NO USE/POSSESS ALCOHOL/ILLEGAL DRUGS/MARIJUANA; SUBMIT TO RANDOM SEARCH/TEST, WITHOUT PROBABLE CAUSE, FOR SAME; NO CONTACT W/PERSONS NAMED; GENRAL CUSTODIAN JOHN DEVOE; 24/7 HOUSE ARREST AT 358 WASHBURN ST, CARIBOU UNLESS IN THE COMPANYT OF JOHN DEVOE; ATTENDING COURT APPEARANCES, LAWYER MEETING, OR MEDICAL APPOINTMENTS, FOLLOW HOUSE RULES
05/24/2018 BAIL BOND - CASH BAIL BOND COMMITMENT ISSUED ON 05/16/2018

05/30/2018 BAIL BOND - $5,500.00 CASH BAIL BOND FILED ON 05/21/2018

Bail Receipt Type: CR
Bail Amt: $5,500
Receipt Type: CK
Date Bailed: 05/16/2018 Prvdr Name: TESSA HEBERT
Rtrn Name: TESSA HEBERT

07/13/2018 HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 07/13/2018

08/14/2018 Charge(s): 1,2
MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 07/18/2018

08/14/2018 Charge(s): 1,2
MOTION - MOTION TO CONTINUE GRANTED ON 07/18/2018
HAROLD STEWART , JUSTICE
COPY TO PARTIES/COUNSEL
08/30/2018 HEARING - CONFERENCE SCHEDULE OTHER COURT ON 10/11/2018 at 01:00 p.m.

CARSC

08/30/2018 HEARING - CONFERENCE NOTICE SENT ELECTRONICALLY ON 08/30/2018

09/13/2018 MOTION - MOTION TO REVOKE BAIL FILED BY STATE ON 09/10/2018

09/13/2018 NOTE - OTHER CASE NOTE ENTERED ON 09/10/2018
STEPHEN NELSON , JUDGE
DEFENDANT'S BAIL AS SET BY THE COURT ON 5/16/18 SHALL CONTINUE UNMODIFIED PENDING HEARING ON THIS MOTION
09/13/2018 HEARING - MOTION TO REVOKE BAIL SCHEDULE OTHER COURT ON 11/01/2018 at 01:00 p.m.

CARSC
09/13/2018 HEARING - MOTION TO REVOKE BAIL NOTICE SENT ON 09/13/2018

VIA EMAIL
10/01/2018 MOTION - OTHER MOTION FILED BY DEFENDANT ON 10/01/2018

MOTION FOR TRANSCRIPT AT STATE EXPENSE
10/01/2018 ORDER - TRANSCRIPT ORDER FILED ON 10/01/2018

10/02/2018 MOTION - OTHER MOTION GRANTED ON 10/01/2018
HAROLD STEWART , JUSTICE
MOTION FOR TRANSCRIPT AT STATE EXPENSE
10/16/2018 HEARING - CONFERENCE HELD ON 10/11/2018
HAROLD STEWART , JUSTICE
10/16/2018 ORDER - COURT ORDER ENTERED ON 10/16/2018
HAROLD STEWART , JUSTICE
FIRST SCHEDULING ORDER
10/16/2018 HEARING - CONFERENCE SCHEDULE OTHER COURT ON 01/10/2019 at 08:30 a.m.

CARSC
10/16/2018 HEARING - CONFERENCE NOTICE SENT ELECTRONICALLY ON 10/16/2018

10/16/2018 HEARING - MOTION TO REVOKE BAIL NOT HELD ON 10/16/2018

10/24/2018 OTHER FILING - TRANSCRIPT FILED ON 10/24/2018

11/02/2018 MOTION - MOTION TO AMEND BAIL FILED BY DEFENDANT ON 10/31/2018

11/05/2018 MOTION - MOTION TO AMEND BAIL GRANTED ON 11/02/2018
HAROLD STEWART , JUSTICE
COPY TO PARTIES/COUNSEL
01/07/2019 HEARING - CONFERENCE CONTINUED ON 01/07/2019

01/07/2019 HEARING - CONFERENCE SCHEDULE OTHER COURT ON 01/17/2019 at 08:15 a.m.

CARSC ATTORNEYS ONLY
01/07/2019 HEARING - CONFERENCE NOTICE SENT ELECTRONICALLY ON 01/07/2019

02/18/2019 HEARING - CONFERENCE HELD ON 01/17/2019
HAROLD STEWART , JUSTICE
03/12/2019 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 05/13/2019 at 09:00 a.m.

CARSC JURY SELECTION
03/12/2019 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 05/14/2019 at 09:00 a.m.

CARSC DAY 1
03/12/2019 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 05/15/2019 at 09:00 a.m.

CARSC DAY 2
03/12/2019 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 05/16/2019 at 09:00 a.m.

CARSC DAY 3
03/12/2019 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 05/17/2019 at 09:00 a.m.

CARSC DAY 4
03/12/2019 TRIAL - JURY TRIAL NOTICE SENT ON 03/12/2019

04/01/2019 HEARING - CONFERENCE SCHEDULE OTHER COURT ON 04/11/2019 at 08:15 a.m.

CARSC
04/01/2019 HEARING - CONFERENCE NOTICE SENT ELECTRONICALLY ON 04/01/2019

04/03/2019 HEARING - CONFERENCE SCHEDULE OTHER COURT ON 04/04/2019 at 03:30 p.m.

CARSC
04/03/2019 HEARING - CONFERENCE NOTICE SENT ELECTRONICALLY ON 04/03/2019

04/05/2019 HEARING - CONFERENCE HELD ON 04/04/2019
HAROLD STEWART , JUSTICE
04/05/2019 HEARING - CONFERENCE NOT HELD ON 04/04/2019

05/17/2019 TRIAL - JURY TRIAL HELD ON 05/17/2019
HAROLD STEWART , JUSTICE
Reporter: WENDY AMBROSE
05/17/2019 TRIAL - JURY TRIAL HELD ON 05/16/2019
HAROLD STEWART , JUSTICE
Reporter: WENDY AMBROSE
05/17/2019 TRIAL - JURY TRIAL HELD ON 05/15/2019
HAROLD STEWART , JUSTICE
Reporter: WENDY AMBROSE
05/17/2019 TRIAL - JURY TRIAL HELD ON 05/14/2019
HAROLD STEWART , JUSTICE
Reporter: WENDY AMBROSE
05/17/2019 TRIAL - JURY TRIAL SELECTED ON 05/13/2019

05/17/2019 TRIAL - JURY TRIAL NOT HELD ON 05/13/2019

05/17/2019 Charge(s): 1,2
VERDICT - GUILTY RETURNED ON 05/17/2019

05/17/2019 Charge(s): 1,2
FINDING - GUILTY ENTERED BY COURT ON 05/17/2019
HAROLD STEWART , JUSTICE
05/17/2019 Charge(s): 1,2

FINDING - GUILTY CONT FOR SENTENCING ON 05/17/2019

05/17/2019 HEARING - SENTENCE HEARING SCHEDULE OTHER COURT ON 06/20/2019 at 09:00 a.m.

HOUSC
05/20/2019 OTHER FILING - WITNESS LIST FILED BY STATE ON 05/13/2019

05/20/2019 MOTION - MOTION IN LIMINE FILED BY STATE ON 05/06/2019

05/20/2019 HEARING - SENTENCE HEARING NOTICE SENT ELECTRONICALLY ON 05/20/2019

05/20/2019 MOTION - MOTION IN LIMINE GRANTED ON 05/14/2019
HAROLD STEWART , JUSTICE
COPY TO PARTIES/COUNSEL BY AGREEMENT
05/31/2019 MOTION - OTHER MOTION FILED BY DEFENDANT ON 05/31/2019

DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME TO FILE RULE 29 MOTION
05/31/2019 MOTION - OTHER MOTION GRANTED ON 05/31/2019
HAROLD STEWART , JUSTICE
DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME TO FILE RULE 29 MOTION
06/19/2019 OTHER FILING - SENTENCING MEMORANDUM FILED BY STATE ON 06/19/2019

06/19/2019 OTHER FILING - SENTENCING MEMORANDUM FILED BY DEFENDANT ON 06/18/2019

06/20/2019 Charge(s): 1,2
MOTION - MOTION FOR JDGMT OF ACQUITTAL FILED BY DEFENDANT ON 06/06/2019

06/20/2019 Charge(s): 1,2
MOTION - MOTION FOR JDGMT OF ACQUITTAL DENIED ON 06/20/2019
HAROLD STEWART , JUSTICE
COPY TO PARTIES/COUNSEL
06/20/2019 HEARING - SENTENCE HEARING HELD ON 06/20/2019
HAROLD STEWART , JUSTICE
HOUSC FTR
06/20/2019 MOTION - MOTION TO REVOKE BAIL MOOT ON 06/20/2019

06/20/2019 BAIL BOND - UNSECURED BAIL BOND BAIL RELEASED ON 06/20/2019

Date Bailed: 10/30/2017
06/20/2019 BAIL BOND - UNSECURED BAIL BOND RELEASE ACKNOWLEDGED ON 06/20/2019

Date Bailed: 10/30/2017
06/20/2019 Charge(s): 1,2
MOTION - MOTION FOR STAY SUSP-APPEAL MADE ORALLY BY DEFENDANT ON 06/20/2019

REQUEST FOR POST CONVICTION BAIL AND STAY OF EXECUTION PENDING APPEAL
06/20/2019 Charge(s): 1,2
MOTION - MOTION FOR STAY SUSP-APPEAL GRANTED ON 06/20/2019
HAROLD STEWART , JUSTICE
06/20/2019 BAIL BOND - CASH BAIL BOND CONT AS POST CONVIC ON 06/20/2019

Date Bailed: 05/16/2018

06/20/2019 Charge(s): 1

RULING - ORIGINAL ORDERED ON 06/20/2019

HAROLD STEWART , JUSTICE

It is adjudged that the defendant is guilty of 1 MANSLAUGHTER 17-A 203(1)(A) Class A as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 16 year(s).

Execution stayed pending appeal.

It is ordered that all but 45 month(s) of the sentence as it relates to confinement be suspended.

Defendant to receive credit for time served.

It is ordered that the defendant be placed on a period of probation for a term of 4 year(s) upon conditions attached hereto and incorporated by reference herein.

Said Probation to commence after completion of the unsuspended term of imprisonment.

It is ordered that the defendant forfeit and pay the sum of $2519.00 as restitution through Probation.

For the benefit of :

VICTIMS COMPENSATION FUND Amount $2519

$ 35 VICTIMS COMPENSATION FUND

**TOTAL DUE: $ 35.00.**

**Special Conditions of Probation:**

1. refrain from all criminal conduct and violation of federal, state and local laws.
2. report to the probation officer immediately and thereafter as directed and within 48 hours of your release from jail.
3. answer all questions by your probation officer and permit the officer to visit you at your home or elsewhere.
4. obtain permission from your probation officer before changing your address or employment.
5. not leave the State of Maine without written permission of your probation officer.
6. maintain employment and devote yourself to an approved employment or education program.

8. identify yourself as a probationer to any law enforcement officer if you are arrested, detained or questioned for any reason and notify your probation officer of that contact within 24 hours.
9. waive extradition back to the State of Maine from any other place.
10. not own, possess or use any firearm or dangerous weapon if you have ever been convicted of a crime in any jurisdiction with a potential penalty of one year or more or any crime involving domestic violence or the use of a firearm or dangerous weapon.
11. pay to the Department of Corrections a supervision fee of $ 10.00 per month.

12a. provide a DNA sample if convicted of applicable offense listed in 25 MRSA Section 1574.

submit to random search and testing for firearms at the direction of a law enforcement officer.
submit to random search and testing for dangerous weapons at the direction of a law enforcement officer.

pay restitution as stated earlier.

SUBMIT TO SEARCH AND TESTING FOR EXCESSIVE USE OF ALCOHOL .05 NOT EXCESSIVELY POSSESS ALCOHOL .05

Have no contact of any kind with ALLYSON ADAMS and the family of said person.
Have no contact of any kind with MARY WHITE and the family of said person.
Have no contact of any kind with MORGANNE BRAGDON and the family of said person.
Have no contact of any kind with ANDREA BRAGDON and the family of said person.
Have no contact of any kind with EUGENE BRAGDON and the family of said person.
Have no contact of any kind with NORMAN WILLETTE and the family of said person.
Have no contact of any kind with JASON WILLETTE SR and the family of said person.
Have no contact of any kind with JASON WILLETTE JR and the family of said person.
Have no contact of any kind with ANDREW GEER and the family of said person.
Have no contact of any kind with ALEXIS NICHOLS and the family of said person.

06/20/2019 Charge(s): 1

RULING - ORIGINAL ISSUED ON 06/20/2019

DEFENDANT ACKNOWLEDGES RECEIPT

Charge(s): 2

06/20/2019 RULING - ORIGINAL ORDERED ON 06/20/2019
HAROLD STEWART , JUSTICE
It is adjudged that the defendant is guilty of 2 AGGRAVATED ASSAULT 17-A 208(1)(A) Class B as charged and convicted.
The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 45 month(s).
This sentence to be served concurrently with: AROCDCR201800012 Charge: 1
Execution stayed pending appeal.
Defendant to receive credit for time served.
$ 35 VICTIMS COMPENSATION FUND
**TOTAL DUE: $ 35.00.**
06/20/2019 Charge(s): 2
RULING - ORIGINAL ISSUED ON 06/20/2019

DEFENDANT ACKNOWLEDGES RECEIPT
06/20/2019 NOTE - OTHER CASE NOTE ENTERED ON 06/20/2019

APPEAL FORMS GIVEN TO DEFENSE ATTORNEY
06/20/2019 OTHER FILING - FINE PAYMENT SCHEDULE ORDERED ON 06/20/2019

INSTALLMENT PYMTS: 0;DAILY: F;WEEKLY: F;BI-WEEKLY: F;MONTHLY: F;BI-MONTHLY: F;PYMT BEGIN: AT 0;PYMT IN FULL: 20190720 AT 0;THRU PPO: F;PYMT DUE AMT: 70;PMT DUE: 20190720 AT 0;OTHER:
08/13/2019 Charge(s): 1,2
APPEAL - NOTICE OF APPEAL FILED ON 07/01/2019

08/13/2019 Charge(s): 1,2
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 08/13/2019

08/13/2019 MOTION - OTHER MOTION FILED BY DEFENDANT ON 07/01/2019

MOTION FOR TRANSCRIPT AT STATE EXPENSE
08/13/2019 ORDER - TRANSCRIPT ORDER ENTERED ON 07/01/2019

08/14/2019 MOTION - OTHER MOTION GRANTED ON 08/14/2019
WILLIAM STOKES , JUSTICE
MOTION FOR TRANSCRIPT AT STATE EXPENSE
08/19/2019 Charge(s): 1,2
APPEAL - NOTICE OF APPEAL SENT TO REPORTER/ER ON 08/19/2019

08/19/2019 Charge(s): 1,2
APPEAL - RECORD ON APPEAL DUE IN LAW COURT ON 08/05/2019

08/19/2019 Charge(s): 1,2
APPEAL - RECORD ON APPEAL SENT TO LAW COURT ON 08/19/2019

VIA UPS

**FINE PAYMENT SCHEDULE**

Execution/payment stayed to pay in full by 07/20/2019 or warrant to issue.

A TRUE COPY
ATTEST: _____
Clerk

And the Law Court has cautioned against that and I object to the request. I am satisfied with the proposal the Court has made, which gets to a general issue about philosophical beliefs about fighting or anything of that nature.

THE COURT: So, the Court recognizes the issue of giving a self-defense instruction; and the bar is quite low in there being evidence sufficient to give that instruction. However, we're -- we have not received any of the evidence at this point. And it's clear that the State and Defense have, um, clearly differing views as to whether self-defense will be generated. So, it strikes me that that remains a decision to be made upon presentation of the evidence that we see in the courtroom.

The parties are in agreement that this is -- the entire overall facts of this case will clearly show that there was fighting occurring and that, um, fighting amongst individuals appear to the Court to be one of those things which an individual juror could have certain bias or prejudice. Um, and so the Court -- I'm not going to -- I refuse to give the

instructions -- or the voir dire questions, um, that specifically address self-defense or any connotation of that. However, I will give a voir dire question that inquires of, um, whether or not jurors would have, um, any difficulty in being a fair and impartial juror when fighting has occurred.

Anything further to put on the record? I do want to tweak that a little bit, but we can do that off the record.

MR. TZOVARRAS: Just to make the record clear, when you're talking about self-defense, you're talking about defense of others.

THE COURT: Yes, yes.

MR. TZOVARRAS: So, you made a ruling on both, just for the record.

THE COURT: Yeah, I view those as close cousins.

MR. TZOVARRAS: Right.

THE COURT: So, when I'm saying self-defense, I'm referring to both.

MR. TZOVARRAS: Yes. No, nothing further, your Honor. We understand the ruling.

JUROR # _____

STATE OF MAINE
AROOSTOOK, ss.

UNIFIED CRIMINAL DOCKET
DOCKET NO. CR-18-12

STATE OF MAINE

v.

**JURY POOL QUESTIONNAIRE**

JONATHAN LIMARY
Defendant

The responses to this questionnaire will be disclosed to the parties in the case. No other disclosure will be allowed and this questionnaire will be kept confidential. PLEASE STATE YOUR JUROR NUMBER, AND NOT YOUR NAME, AT THE TOP OF PAGE ONE AND AT THE BOTTOM OF THE LAST PAGE OF THIS QUESTIONNAIRE.

**PLEASE DO NOT DISCUSS THIS QUESTIONNAIRE OR YOUR ANSWERS WITH ANY OTHER JUROR.**

The founders of our country and our State decided a long time ago that many of the most important decisions in a criminal trial should be decided not by judges or by attorneys, but by citizens who live in the communities where crimes allegedly occur. Therefore, if you are selected to serve as a juror your job will be extremely important.

If you serve on a criminal jury, you will have to agree to take an oath to follow, and must follow, certain rules of law and constitutional principles, even if you disagree with or have reservations about such laws and principles.

The United States Constitution and the Constitution for the State of Maine guarantee that a person charged with a crime has a constitutional right to be presumed innocent. Every defendant in a criminal case begins a trial with this presumption of innocence. This presumption of innocence can only be overcome if, after the evidence is presented, you decide that the State has proven each and every element of each offense charged beyond a reasonable doubt. This right also guarantees that a defendant does not need to present any evidence whatsoever in his/her defense. The burden of overcoming the presumption of innocence is entirely on the State.

The United States Constitution and the Constitution for the State of Maine also guarantee that a person charged with a crime has an absolute **right to remain silent** at his/her trial. He/she does **NOT** have to take the witness stand and testify, and **NO** presumption of guilt may be raised, and **NO** inference of any kind may be drawn, from a defendant's choice to exercise his/her right not to testify.

**Keeping these constitutional rights in mind, please answer the following questions:**

1. On or about October 30, 2017, Jonathan Limary and Jean Bragdon were involved in a physical confrontation. Jean Bragdon died on November 17, 2017 and the State has charged Jonathan Limary with manslaughter and aggravated assault as a result of that confrontation and subsequent death.

Have you heard anything about this case from any source, including any form of media, or from any individual either in the courtroom or in the community?

_____ YES _____ NO

2. If you answered "YES" to question #1, please answer this next question. If your answer to question #1 was "NO", please proceed to question #3.

If you answered "YES" to question #1 please indicate the source of the information you received about this case by placing a check by any of the following that apply:

Newspaper _____
Television _____
Radio _____
Internet or Social Media _____
Discussion with any individual _____

Would any of the information you have received in one or more of the above categories interfere in any way with your ability to listen objectively to the evidence presented at the trial, or interfere in any way with your ability to render a verdict based only on the evidence and the legal principles that the Court is obligated to provide to you?

_____ YES _____ NO

3. Have you ever witnessed a crime of violence?

_____ YES _____ NO

4. Have you or any close family member or friend ever been seriously injured, or has the close family member or friend died, as a result of an act or crime of violence?

_____ YES _____ NO

5. If you answered "YES" to question #4, please answer the next question below. If your answer was "NO" please proceed to question #6.

Would the fact that you or a close family member or friend may have been seriously injured, or died, as a result of an act or crime of violence interfere in any way with your ability to be fair and impartial in this case?

_____ YES _____ NO

6. Have you or a close family member or friend ever been accused of committing an act or crime of violence resulting in serious injury or death?

_____ YES _____ NO

7. If you answered "YES" to question #6, please answer the next question below. If your answer was "NO" please proceed to question #8.

Would the fact that you or a close family member or friend may have been accused of committing an act or crime of violence, interfere in any way with your ability to be fair and impartial in this case?

_____ YES _____ NO

8. Are you a United States Citizen?

_____ YES _____ NO

9. Are you currently a resident of Aroostook County?

_____ YES _____ NO

10. Are you over 18 years of age?

_____ YES _____ NO

11. Do you know, or have any opinion about, the Defendant in this matter, Mr. Jonathan Limary?

_____ YES _____ NO

12. Do you know, or have any opinion about, the named victim in this matter, Mr. Jean Bragdon?

_____ YES _____ YES

13. Do you know the prosecutor, Mr. Robert Ellis, who goes by the name Bud Ellis?

_____ YES _____ NO

14. Do you know defense attorneys Mr. Hunter Tzovarras or Mr. Adam Swanson?

_____ YES _____ NO

15. Do you have any physical or mental disability that you believe would interfere in any way with your jury service?

_____ YES _____ NO

16. Do you have any personal, philosophical, political, or religious views that would affect in any way your ability to follow and apply the principle of law that states that a person accused of committing a crime is presumed to be innocent of that crime, and cannot be convicted or found guilty of the crime unless the State presents proof of guilt beyond a reasonable doubt?

_____ YES _____ NO

17. Do you or any member of your immediate family work for any law enforcement agency or have you done so within the past ten years, or have you or a member of your immediate family ever applied for a job with law enforcement?

YES NO

18. Do you have any personal, political, philosophical, or religious views or have you otherwise had any experiences in life that could affect your ability in any way to consider fairly, impartially, and objectively evidence presented in a case where the crime of manslaughter or aggravated assault is charged?

YES NO

19. Trial in this matter is expected to begin on Monday, May 13, 2019 and is expected to last all week. Jurors will not be sequestered and accordingly will be allowed to go home each day at approximately 4:30 p.m. Would serving as a juror on this case cause you extreme inconvenience or undue hardship?

YES NO

20. Justice Stewart will instruct the jurors in this case that they must base their verdict upon the evidence and according to the law, and that they must not allow any feelings of bias, prejudice, pity, anger, sympathy or other emotion influence their verdict in any way. Would you be able to follow this instruction if selected to be a juror in this case?

YES NO

21. There may be law enforcement officers called as witnesses in this matter. Would you give a law enforcement officer's testimony greater or lesser weight than that of another witness because the witness was a law enforcement officer?

YES NO

22. Have you or any member of your immediate family had any personal experience with any law enforcement agency, specifically the Maine State Police, with a member of the Attorney General's Office or with any defense counsel that would interfere in any way with your ability to be fair and impartial in this case?

YES NO

23. In order to find Mr. Limary guilty of a crime, the State must prove beyond a reasonable doubt he is in fact guilty. "Proof beyond a reasonable doubt" means evidence that convinces you that the crime charged is almost certainly true. Would you have any difficulty applying this high standard of proof to the evidence you hear in this case?

YES NO

24. If you are selected as a juror in this case, you will take a sworn oath that requires you to follow the law, even if you do not agree with the law. If you do not agree with the law, will you still be able to follow the law as provided by Justice Stewart?

YES NO

25. The law states that a person accused of a crime, including manslaughter and aggravated assault, has the right to remain silent and is not required to take the witness stand and testify, no presumption of guilt may be raised, and no inference of any kind may be drawn from a defendant's choice not to testify. Would you have any difficulty following this law if Mr. Limary does not testify?

YES NO

26. Did you know the alleged victim in this case, Jean Bragdon, or any member of his family?

YES NO

27. Mr. Limary is of mixed-race.

A. Would the fact that the person charged with a crime is of mixed race have any effect on your ability to be a fair and impartial juror?

YES_____ NO_____

B. Do you believe that because the person charged is of mixed race he is more likely to commit a crime than someone who is white?

YES_____ NO_____

C. Do you have any personal, political, religious, social or philosophical beliefs or opinions about minority races that will make it difficult for you to be fair and impartial?

YES_____ NO_____

28. This case may involve the presentations of photographs and other evidence that is graphic in nature, including autopsy photographs of the deceased. Do you feel that consideration of such evidence would interfere in any way with your ability to objectively and impartially weigh such evidence?

_____ _____
**YES** **NO**

29. Justice Stewart will order that members of the jury selected avoid media reports and any other discussion regarding this case until the case is over. Will you be able to completely avoid coverage and discussion about this case, whether it be from family, friends, radio, television, the newspaper, or the Internet?

_____ _____
**YES** **NO**

30. Justice Stewart will instruct the jury at the end of the trial that each individual juror must decide the case for themselves, but only after an impartial consideration of the evidence with their fellow jurors. During the deliberations, a juror should not hesitate to change their mind if the arguments of their fellow jurors convince them that their initial analysis or conclusions were incorrect. On the other hand, a juror should not give up a well-reasoned, well thought out belief simply because they want to end the deliberations or because they stand alone. If selected as a juror on this case will you be able to follow this instruction?

_____ YES _____ NO

31. It is possible that some, or possibly all, of the following individuals may be called as witnesses to provide testimony in this case. Please review the list and **circle** the name of any witness that you know:

Maine State Police:
- Jason Fowler
- Christopher Foxworthy
- Chad Lindsey
- Gregory Roy

Caribou Police Department
- Aaron Marquis
- Keith Ouellette

Caribou Fire and Ambulance
- Jean-Luke Brabant
- Dann Cyr
- Eric Dickinson
- Michael DeVito
- Scott Jackson
- Brian Lajoie

Office of the Chief Medical Examiner
- Dr. Mark Flomenbaum-State of Maine
- Dr. David Fowler-State of Maryland

Civilian Witnesses
- Allyson Adams
- Austin Billingslea
- Cassidy Clair
- Andrew Geer
- Dereck Moholland
- Kyle Nadeau
- Alexis Nichols
- Mary White
- Brittney Willette
- Jason Willette Sr.
- Jason Willette Jr.
- Norman Willette

32. Keeping in mind the previous questions and your answers, do you know of any reason why you could not serve as a fair and impartial juror in this case?

_____ YES _____ NO

33. The evidence in this case will show two or more individuals engaged in a fight. Do you have any personal, philosophical, political, or religious views that would affect in any way your ability to be a fair and impartial juror and render a verdict based on the instructions given by the court when fighting has occurred?

_____ YES _____ NO

**PLEASE COMPLETE YOUR ANSWERS AND GIVE THIS FORM TO ONE OF THE COURT OFFICERS. DO NOT DISCUSS YOUR ANSWERS WITH ANYONE ELSE. THANK YOU.**

**JUROR #**_____

**STATE OF MAINE**
**AROOSTOOK, ss.**

**SUPERIOR COURT**
**CRIMINAL ACTION**
**DOCKET NO. CR-18-** 12

**STATE OF MAINE**

**V.**

**JONATHAN LIMARY**
DOB: 8/15/1995

ATN No. 253574B
CTN No. 001/004248
002/013123

**INDICTMENT FOR:**

**COUNT I:**
**17-A M.R.S. § 203(1)(A)**
**MANSLAUGHTER**

**COUNT II:**
**17-A M.R.S. § 208(1)(A)**
**AGGRAVATED ASSAULT**

**THE GRAND JURY CHARGES THAT:**

COUNT I
MANSLAUGHTER
17-A M.R.S. § 203 (1)(A)
Class A Crime

On or about October 30, 2017, in Aroostook County, State of Maine, **JONATHAN LIMARY** (dob:8/15/1995), did recklessly or with criminal negligence, cause the death of **JEAN BRAGDON** (dob:8/12/1973), all in violation of 17-A M.R.S.A. § 203(1)(A).

COUNT II
AGGRAVATED ASSAULT
17-A M.R.S. § 208 (1)(A)
Class B Crime

On or about October 30, 2017, in Aroostook County, State of Maine, **JONATHAN LIMARY** (dob: 8/15/1995) did intentionally, knowingly, or recklessly cause bodily injury to **JEAN BRAGDON** (dob: 8/12/1973) that caused a substantial risk of death or extended convalescence necessary for recovery of physical health, all in violation of 17-A M.R.S.A. § 208(1)(A).

DATED: January 19, 2018

A TRUE BILL

Jessica L Kingsbury,
FOREPERSON