STATE OF MAINE
AROOSTOOK, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. ARO-23-257

STATE OF MAINE,
Appellee

v.

LEE ANN DAIGLE,
Appellant

ON APPEAL FROM THE SUPERIOR COURT

BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Rules

STATEMENT OF THE ISSUES

I. The sentencing court correctly considered and applied the laws in effect at the time of the crime when sentencing Daigle.

II. The sentencing court did not deprive Daigle of due process when it offered her an opportunity to explain information that had been presented for consideration at sentencing.

SUMMARY OF THE ARGUMENT

I. Daigle's sentence was neither illegal nor imposed in an illegal manner. The record plainly demonstrates that the sentencing court correctly considered and applied the statutory provisions in effect at the time of the crime when sentencing Daigle.

II. The sentencing court did not deprive Daigle of due process when it invited her to comment on inconsistencies in statements made by her to detectives and the sentencing court. Daigle was not compelled to respond and did not offer self-incriminating statements.

PROCEDURAL HISTORY

On June 9, 2022, an Aroostook County Grand Jury returned an indictment charging Lee Ann Daigle with the intentional, knowing or depraved indifference murder of Baby Jane Doe on or between December 6 and December 7, 1985, in violation of 17-A M.R.S. § 201 (1) (A) & (B) (1983). *State of Maine v. Lee Ann Daigle*, Superior Court at Aroostook County, Docket No. AROCD-CR-2022-20186; (Appendix at page 15 (App.15)). Daigle was arraigned June 14, 2022 and entered a plea of not guilty. (App. 2).

On April 6, 2023, Daigle pled guilty to an Information charging her with Manslaughter, a Class A offense. Her plea was an open plea. (Rule 11 Transcript attached in the Addendum at page 9 (Add. 9)). At the time of the plea, the court advised Daigle that she could be sentenced to serve a maximum sentence of 20 years incarceration and made clear that she would be sentenced based on the law in effect at the time of the crime. (Add. 8, 9).

The court conducted a sentencing hearing on June 20, 2023. The State filed a detailed sentencing memorandum, in which it cited 17-A M.R.S. §§ 1252 (A) & 1202 (1983), the sentencing provisions in effect at the time of the crime. (State's Sentencing Memorandum at page 2). The State recommended that Daigle be sentenced to serve between 15-18 years to the Department of Corrections. (*Id.*).

In support of its sentencing recommendation, the State detailed the investigative process leading to Daigle's arrest and provided the court with the transcripts and audio recordings of Daigle's interviews with detectives. The State argued that Daigle's conduct the night of the homicide reflected a deliberate, premeditated decision to kill her newborn by abandoning her to freeze to death outside on a bitterly cold December night. The State additionally argued that Daigle's conduct after the homicide and the statements she made to detectives over the course of multiple interviews showed an absence of remorse.

The defense similarly submitted a sentencing memorandum. The defense argued that Daigle had not believed that Baby Jane was alive when she abandoned her, was truly remorseful, had cooperated with law enforcement and had led a productive life. (Daigle Sentencing Memorandum at pages 3-6). The defense argued that it was unlikely Baby Jane experienced any pain and stated, "Lee's actions have not gone without punishment. She has lived with that horrible night every day since she was 21 years old." (*Id*. at 8). Daigle has been "internally plagued by horrible memories of giving birth in the gravel pit in December". (*Id*. at 5). The defense recommended that the court sentence Daigle to a partially suspended sentence with probation. In doing so, the defense made specific mention of the "sentencing guidelines" in effect in 1985,

namely 17-A M.R.S.A Section 1151 (1983 & Supp. 1984-1985). (Daigle Sentencing Memorandum at pages 1, 7).

Daigle allocuted at the sentencing hearing, stating, "If I had known she was alive, I would have given her the best chance for survival." "I live with the consequences every day." (Sentencing Transcript at pages 37-38).

After Daigle's allocution, the court commented on the inconsistencies between Daigle's statements at sentencing and statements to law enforcement. He offered her an opportunity to respond, stating, "If she wishes to address that she may, but she's not required to…. If not, I'll simply make my decision with the information that's been made available up to this point." (Sentencing Transcript at page 47).

After taking a recess and consulting with counsel, Daigle supplemented her allocution. "Your Honor, when I spoke to the police, I was nervous, scared and embarrassed. I did not tell the police everything. I've tried to block the night out, but I can't. What I told you is the truth. What I feel is real." (Sentencing Transcript at page 49).

Prior to imposing sentence, the court stated that it "was mindful of the sentencing goals set forth in 17-A M.R.S. § 1151 in effect at the time." (Sentencing Transcript at page 50). The court sentenced Daigle to serve sixteen years, all but six years suspended, with three years of probation.

After conviction, Daigle filed an Application for Leave to Appeal Sentence, pursuant to M.R. App. 20 and 15 M.R.S. §§ 2151-2157. That application was denied by Order dated September 6, 2023. Daigle also filed a Notice of Direct Appeal which was permitted to go forward by Order dated September 8, 2023.

STATEMENT OF FACTS

The State presented the following facts to the court during its Rule 11 presentation and sentencing argument.

During the morning hours of December 7, 1985, Armand Pelletier discovered the naked, bloody body of a dead infant girl on the lawn of his home in Frenchville, Maine. Maine State Police responded to the scene and collected the body of the infant, who would later come to be known as Baby Jane Doe. She was unclothed, unswaddled and partially frozen, with approximately 6-10 inches of umbilical cord still attached to her body. Officers noted that the outside temperature was below freezing, and the windchill factor the night before was near zero degrees.

Approximately 1000 feet from the Pelletier residence, officers found the entrance to a large gravel pit. There, officers observed a single set of tire tracks entering the gravel pit and ending approximately 20 feet in on the dirt road. In front of the vehicle tracks, Det. Gahagan observed what appeared to be a large pool of blood, excrement, and the placenta from the birth. He also noted a small footprint frozen on the bloody ground. Similar small footprints were visible, proceeding east. Within their borders, Det. Gahagan observed what appeared to be droplets of blood. Approximately 40 feet away, he noted

a small hollow with a stand of alders and observed specks of blood in the snow under the alder branches. Here, he could also see footprints in the snow as well as dog tracks. The dog tracks left the area, heading in a westerly direction, toward the Pelletier residence. The Pelletiers had a dog named Paca. Paca was outside when Baby Jane's body was first discovered, and it is believed she brought Baby Jane's body to the Pelletier home.

Baby Jane's body was autopsied by Dr. George Chase (deceased) in Bangor. Dr. Chase conducted an external examination, an internal examination, and a microscopic examination. Baby Jane weighed 6 ½ pounds and was 18 ½" long. He determined that Baby Jane had been live born and attributed the cause of her death to exposure. Dr. Chase categorized Baby Jane's manner of death as homicide, thus marking the beginning of a criminal investigation and a search for her parents that spanned decades. Baby Jane's hairs and blood were collected at her autopsy and preserved. Her blood would later be analyzed for DNA and used to assist investigators in searching for her biological mother and father.

In 2009, Baby Jane's blood sample was submitted to the Maine State Police Crime Laboratory for DNA analysis. From it, Christine Waterhouse, a forensic DNA scientist, developed a 12 locus DNA profile.

Beginning in 2018, Maine State Police detectives began utilizing genetic genealogy to assist in the identification of the biological parents of Baby Jane Doe. Det. Jay Pelletier, a Maine State Police detective corporal assigned to the Unsolved Homicide Unit, worked with several genealogists, providing them with vital records, historical local knowledge, and target DNA tests upon request. Det. Pelletier, a native of "The Valley", used his contacts, French language skills and investigative skills to assist genealogists in the untangling of family histories.

These collaborative efforts bore fruit. In March 2022, Det. Pelletier was advised that Daigle may be the mother of Baby Jane. His next investigative step was to request DNA from Daigle or related individuals for comparison to the DNA profile of Baby Jane. A DNA comparison could establish or refute maternity or offer investigators and genealogists insight on the closeness of Daigle's familial relationship to Baby Jane.

On April 7, 2022, Maine State Police detectives Lindsey and Pelletier met with Daigle in Massachusetts. This would be the first of several interviews with Daigle, all of which were recorded.[1] The detectives informed Daigle that they were investigating the death of Baby Jane and had received information

[1] Daigle's recorded interviews dated 4/7/2022, 4/20/2022/ 4/21/2022, and 6/13/2022 and the companion transcripts were provided to the court by the State in aid of sentencing.

suggesting she may be related to Baby Jane. Daigle emphatically denied being the mother of Baby Jane and claimed to be living in New Hampshire at the time of Baby Jane's birth and death. Daigle would later change/recant both statements.

Daigle agreed to provide a buccal swab sample for DNA analysis. That sample was analyzed at the Maine State Police Crime Laboratory by DNA scientist Christine Waterhouse who determined that Baby Jane's DNA was consistent with being the offspring of Daigle.

On April 20, 2022, Detectives Lindsey and Pelletier reinterviewed Daigle and informed her that DNA had identified her as the biological mother of Baby Jane. Only when confronted with this information, did Daigle admit to having given birth to Baby Jane. During this and subsequent interviews, Daigle offered varying accounts of her pregnancy and subsequent delivery of Baby Jane. Ultimately however, she admitted that she, acting alone, had delivered and abandoned Baby Jane in the gravel pit.

At the time of her pregnancy, Daigle had a 1983 college associates degree in business clerical from Northern Maine Technical College, was working at Robert's Jewelers in Madawaska, was living with her mother on Main Street in Frenchville and had both a driver's license and a car. In March

1985, Daigle turned 21 years of age. Baby Jane would be born nearly nine months later.

When Daigle was interviewed on April 20, 2020, she initially denied knowing she was pregnant with Baby Jane. She claimed that while driving home from work, she stopped her car to pee and "a gush" came out. She stated that she then went home and showered. She denied knowing that she had left a 6-pound baby on the ground. (4/20/2022 Interview, page 758).

Daigle later acknowledged that she became aware of her pregnancy in the fall of 1985. She hid her pregnancy by wearing baggy clothes and told no one. (4/20/2022 Interview, page 42).

Detectives asked Daigle about Baby Jane's conception date. Daigle denied knowing the man identified as the biological father of Baby Doe and acknowledged that Baby Jane's conception was probably the result of a one-night stand. (4/20/2022 Interview, page 17).

Detectives asked Daigle what options she considered upon realizing that she was pregnant.

> Det.: "…[W]hat were some of those options you were considering"
>
> LD: "Um…sad to say but... but you know, kinda …get rid of it. You know?"

Det: "And-and, how so? I mean, cause there's different ways to get rid of…there's …. what's the way you are thinking of right now?"

LD: "Well like, you know, leaving it-"

Det.: "Yup"

LD: "Just abandoned and... whatever happens, happens."

Det.: "And-and that's kind of what happened, right?"

LD: "Yeah."

(4/21/22 Interview, pages 19-20).

In other statements,

Det.: "Um, did you consider any other ways to end her life other than just abandonment"

LD: "No. No, no, no, no. It was abandonment".

Det.: "Just kinda like wash your hands of her".

LD: "Yup"

Det.: "Like that's easier?"

LD: [chuckles] "Yup."

Det.: "…did you know at that time boy or girl?"

LD: "No."

(4/21/22 Interview, p. 38).

During her interviews, Daigle acknowledged that the choice she made, to abandon her baby in frigid temperatures, would cause death and made statements showing that she appreciated the wrongfulness of her actions. During one interview, Daigle asked:

LD: "Isn't this sort of committing murder?"

The detectives followed up by asking,

Det.: "Do you consider it to be that?"

LD: "Yes- yes and no."

Det.: "Ok."

LD: "It's just more like and like well, like I said before, it's like more of an abandonment. But who does that? Know, thinking now, like who does that?"

(4/21/22 Interview, page 35).

Detectives asked Daigle whether she had any second thoughts about what she had done. She had none.

Det.: "You remember getting in your car, was there any thought at that point of going back and getting her?"

LD: "No."

(6/13/22 Interview, page 19).

Det.: "No second thoughts whatsoever?"

LD: "No, no."

(6/13/22 Interview, page 20).

Dr. George Chase, who conducted the initial autopsy, is deceased. The State consulted with Chief Medical Examiner Mark Flomenbaum of the Office of Chief Medical Examiner (OCME). Dr. Flomenbaum reviewed the entire OCME case file, including Dr. Chase's report, as well as scene photographs, investigative records and transcripts of the interviews conducted with Daigle. In his written report, Dr. Flomenbaum noted:

…. all the data and facts much more strongly indicate that Baby Jane Doe was likely born alive and died as a result of exposure to an extremely cold environment. Based on the weights, measurement and organ development Baby Jane Doe was at or near full term gestation when she was born.

There was nothing observed at autopsy or at the scene which would have precluded a live birth.

There was nothing observed at autopsy or the scene which supported a stillborn delivery;

Full term fetuses need a demonstrable reason to die in utero or during delivery. Baby Jane Doe had none; in fact, she did have indications that there were no prenatal or intrauterine stressors;

It would likely have taken minutes (5-10) for the naked, wet baby to succumb to O* F. The sub-freezing temperatures not only hastened baby's death but preserved the body well enough to draw conclusions without interference of the usual post-mortem artifacts.

ARGUMENT

The Sentence Review Panel denied Daigle's application for leave to appeal sentence. Consequently, her challenge on direct appeal is limited to a claim that this sentence is illegal, imposed in an illegal manner or beyond the jurisdiction of the court.[2] The claimed illegality must appear plainly in the record. *State v. Dobbins*, 2019 ME 116, ¶51, 215 A.3d 769, 783; *State v. Bennett*, 2015 ME 46, ¶11, 114 A.3d 994. This Court reviews the legality, and not the propriety, of the sentence imposed by the sentencing court. *State v. Murray-Burns*, 2023 ME 21, ¶14, 290 A.3d 542, 548.

In this direct appeal, Daigle makes two arguments. She argues that her sentence is illegal, alleging the sentencing court used "improper statutory construction setting the sentence." (Blue Brief at page 8). She next argues that the court deprived her of due process at sentencing. Both arguments are belied by a plain reading of the record.

[2] "An illegal sentence is one which is not authorized by law, such as when the court imposes a sentence in excess of the maximum term or less than the minimum term authorized by statute…Examples of sentences imposed in an illegal manner include sentences based upon a poll of the community as to the appropriate term". *State v. Brooks*, 589 A.2d 244 (Me. 1991).

I. The sentencing court correctly considered and applied the laws in effect at the time of the crime when sentencing Daigle.

Daigle pled guilty to manslaughter, a Class A crime, which was alleged to have occurred in December 1985. At the time of this crime, the sentencing goals were set forth in 17-A M.R.S.A § 1151 (1983 & Supp. 1984-1985), and the maximum sentence authorized by law upon conviction was twenty years' incarceration and three years' probation. Title 17-A M.R.S. §§ 1202, 1252 (1983).

The sentencing court was well aware of the requirement that he sentence Daigle in accordance with the laws in effect at the time of the crime, as opposed to the date of actual sentencing. See *State v. Hardy*, 489 A.2d 508, 512 (Me. 1985). Both the State and defense cited to the pertinent, historical sentencing provisions in their sentencing arguments, and the court made explicit reference to them as well in his comments during the Rule 11 and sentencing proceedings. (Add. at page 8; Sentencing Transcript at page 50 ("The Court has to be mindful of the sentencing goals set forth in 17-A M.R.S. §1151 in effect at the time…")).

Daigle argues that the sentencing court erroneously applied 17-A M.R.S. §1501, the modern-day equivalent of 17-A M.R.S. §1151, in its sentencing analysis, suggesting that the court placed undue importance on the age of

Baby Jane. [3] (Blue Brief at page 8). The record is devoid of any support for Daigle's argument.

First, the sentencing court made explicit mention of its consideration of the sentencing goals outlined in 17-A M.R.S. § 1151 prior to imposing sentence.[4] In contrast, it made no mention of § 1501. Secondly, contrary to Daigle's implied argument, §1151 in no way limited or precluded the sentencing court from fully considering Baby Jane's age in its sentencing analysis. Baby Jane was not simply a child victim. She was the daughter of the defendant; she was a defenseless newborn; her life lasted mere minutes; and her death was likely neither quick nor painless as she succumbed to the frigid elements. The court's consideration of these factors was no less proper and appropriate under §1151 than it would have been under §1501.

[3] The two statutes, which identify the "general purposes" for sentencing, are substantially the same. The primary difference cited by Daigle is contained subsection 8 of each statute. Modern day §1501 permits sentences that do not diminish the gravity of the offense, with reference to…. (A) the age of the victim, particularly of a victim of an advanced age or of a young age who has a reduced ability to self-protect or who suffer mores significant harm due to age." §1151, as applied, stated "The general purposes of the provision of this part are…(8) To permit sentences which do not diminish the gravity of the offense with reference to the factor, among others, of the age of the victim."

[4] Although *State v. Hewey*, 622 A.2d 1151 (1993) was decided years after this homicide, the parties and the court found its analysis helpful in determining an appropriate sentence to recommend and impose. Daigle does not object to the court's use of this analysis; nor in this direct appeal may she now challenge the propriety of the sentence imposed. *State v. Cunneen*, 2019 ME 44, ¶¶25-26, 205 A.3d 885.

The record is clear that the sentencing court applied the correct law, and he did so correctly.[5] Because Daigle's argument fails to identify an illegality that is apparent from a plain reading of the record, her argument must fail.

II. The sentencing court's invitation to Daigle to address her differing statements did not violate her due process rights.

Daigle argues for the first time on appeal that the sentencing court deprived her of due process "in the way it questioned her during the sentencing hearing", citing U.S. Const. amend. V and Me. Const. art. I. § 6-A. (Blue Brief 8).[6] She contends the court placed her in a "nearly impossible position" by asking her to reconcile inconsistencies between statements made to detectives and statements she made to the sentencing court. The court's invitation, she argues, required her to concede dishonesty with law enforcement or erode the court's perception of her honesty at allocution or remain silent. Consequently, she argues, "she was not given an effective

[5] The court sentenced Daigle to serve sixteen years, all but six years suspended and three years' probation. Daigle does not contest that her sentence falls within the timeframe explicitly authorized by the Legislature for a person convicted of a Class A crime. 17-A M.R.S. §§ 1202 & 1252 (1983).

[6] Daigle does not argue that her allocution was compelled and violated her Fifth Amendment privilege against self-incrimination.

opportunity to dispute inaccuracies in information that were considered in determining sentence". (Blue Brief at page 11).

Normally, the Law Court reviews claims of constitutional infirmity on direct appeal de novo.[7] *State v. Bennett*, 2015 ME 46, ¶14, 114 A.3d 994 (citing *State v. Harrell*, 2012 ME 82, ¶4, 45 A.3d 732; *State v. Brocklebank*, 2011 ME 118, ¶15, 33 A.3d 925; *State v. Cain*, 2006 ME 1, ¶7, 888 A.2d 276). The record, whether reviewed *de novo* or under an obvious error standard, shows no due process error in the court's sentencing.

A sentencing justice may exercise wide discretion in the sources and types of information used to assist in determining the punishment to impose. *State v. Butsitsi*, 2015 ME 74, ¶ 25, 118 A.3d 222, 229. Sentencing courts are limited only by due process requirement that the information be factually reliable and relevant. *State v. Grindle*, 2008 ME 38, ¶18, 942 A.2d 673, 678. "To meet due process requirements the sentencing procedure must afford the defendant the opportunity to deny or explain information considered in determining the appropriate sentence. *Gardner v. Florida*, 430 U.S. 349, 362, (1977). The purpose of this requirement is to provide the defendant with the

[7] In *State v. Butsitsi*, 2015 ME 74, ¶¶19, 22, the appellant claimed that he was illegally sentenced based on his national origin in violation of his due process rights. The Law Court discussed its preference to apply obvious error review to unpreserved claims of error and did so in *Butsitsi*, in contrast to the de novo review conducted in *Bennett*.

opportunity to dispute inaccuracies in information that is considered in determining the sentence." *State v. Hardy*, 489 A.2d 508, 512 (Me. 1985). The sentencing court may also consider information learned at trial, along with other factors, in determining the genuineness of a defendant's claim of remorse. *State v. Moore*, 2023 ME 18, ¶ 24, 290 A.3d 533, quoting *State v. Farnham*, 479 A.2d 887 (Me. 1984). See also *State v. Cote*, 507 A.2d 584, 585 (Me. 1986).

Here, prior to the sentencing hearing, the State provided the court with Daigle's 2022 recorded interviews with Maine State Police detectives. From them, the State argued that Daigle's decision to abandon her baby was intentional, deliberate and made without remorse. Daigle did not protest use of those materials at sentencing; nor did she contest the accuracy or completeness of the recordings or transcripts.

At sentencing, Daigle elected to present a written sentencing argument and allocute. She argued that she was remorseful and cooperative with law enforcement, that "she has lived with that horrible night every day since she was twenty-one years old" and that she was "internally plagued by memories of giving birth in the gravel pit in December". (Daigle Sentencing Memorandum at pages 4-8; Sentencing Transcript at pages 36-38).

The inconsistencies between the statements Daigle made to detectives and the statements she offered at sentencing were obvious and noted by the court. [8] It offered Daigle *further* opportunity to comment but did not require her to do so. "If she wishes to address that, she may, but she's not required to." (Sentencing Transcript at page 47). The court also provided her with an opportunity to confer with her attorneys before deciding. (*Id*.). After taking a recess and consulting with counsel, Daigle re-addressed the court. (Sentencing Transcript at page 48).

Daigle argues that the court placed her in an unconstitutional catch-22. However, there was nothing coercive or fundamentally unfair about the court's invitation. The inconsistencies were already before the court for its consideration, and the court's invitation was a legitimate effort to assess the credibility of Daigle's voluntary allocution and claims of remorse. Daigle, represented by counsel, made an informed and voluntary decision to respond, forgoing the opportunity to object to the court's invitation or invoke her privilege against self-incrimination. Hers was "a strategic decision, not the

[8] In one example cited by the court, detectives asked Daigle whether she had thought about Baby Jane after the homicide. She repeatedly said, "No." "…it was something I never looked back on". When detectives asked, "So when inevitably the thought is gonna pop up periodically. What do you do when that happens?" She responded, "It didn't". (6/13/2022 Interview at pages 25-26).

product of an unconstitutional bludgeoning by the district court." *U.S. v. Cates*, 897 F.3d 349, 356 (1st Cir. 2018).

Because Daigle was provided with the opportunity to challenge the information relied upon at sentencing, she was afforded due process, and the sentencing proceeding was constitutionally sound.

Lastly, while Daigle does not specifically claim that she was unconstitutionally *compelled* to accept the court's invitation, any such argument also fails. The Fifth Amendment to the United States Constitution declares in part that "[n]o person…shall be compelled in any criminal case to be a witness against himself".[9] That "guarantee against testimonial compulsion." *Hoffman v. United States*, 341 U.S. 479, 486 (1951) is applicable to the states through the Fourteenth Amendment, *Malloy v. Hogan*, 378 U.S. 1, 6 (1964). Although the privilege extends to sentencing, *Mitchell v. United States*, 526 U.S. 314, 326 (1999), it is not a shield behind which an accused can necessarily hide in all circumstances. *Brown v. United States*, 356 U.S. 148 (1958); *White v. Woodall*, 572 U.S. 415 (2014); *State v. Butsitsi*, 2013 ME 2, ¶11, 60 A.3d 1254.

[9] Art.I, §6 of the Maine Constitution provides in pertinent part, "in all criminal prosecutions, the accused…shall not be compelled to furnish or give evidence against himself or herself…" Except in the context of involuntary confessions, this Court has "consistently interpreted the Maine constitution co-extensively with the federal privilege." *State v. Eastman*, 1997 ME 39, ¶12, 691 A.2d 179.

To qualify for a Fifth Amendment privilege against self-incrimination, the communication must be testimonial, incriminating and compelled. *Hiibel v. Sixth Judicial Dist. Court of Nevada,* 542 U.S. 177 (2014). Daigle's counselled supplemental allocution was neither incriminating, nor compelled. See also *U.S. v. Matthews*, 529 Fed.Appx. 624 (6th Cir. 2013); *U.S. v. Checchi*, 2023 WL 3638058 (6th Cir. 2023).

CONCLUSION

For all the foregoing reasons, the sentence should be affirmed.

Respectfully submitted,

Dated: February 23, 2024

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CERTIFICATE OF SERVICE

I, Lara M. Nomani, Assistant Attorney General, hereby certify that I have caused two copies of the foregoing "Brief of the Appellee" to be served upon Neil Prendergast, Esq., counsel for Lee Daigle, via regular mail.

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Dated: February 23, 2024

/s/ Lara M. Nomani
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ADDENDUM

RULE 11 TRANSCRIPT

April 6, 2023