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Enough is Enough: The Law Court's Decision to Functionally Raise the "Reasonable Connection" Relevancy Standard in State v. Mitchell

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I. INTRODUCTION

In *State v. Mitchell*,[1] the Maine Supreme Judicial Court, sitting as the Law Court, affirmed a jury verdict finding Thomas Mitchell guilty of a 1983 murder.[2] In doing so, the Law Court examined two issues: First, whether the trial court "abused its discretion in excluding evidence of an alternative suspect";[3] and second, whether the trial court's decision to admit evidence stemming from an autopsy performed two decades before the trial violated the Confrontation Clause of the United States Constitution.[4] In reaching the alternative suspect decision, the Law Court held that the evidence proffered by Mitchell did not establish a reasonable connection between the alternative suspect and the crime "sufficient to raise a reasonable doubt" as to Mitchell's own guilt.[5] Justice Silver filed a dissenting opinion arguing that the proffered evidence did meet the reasonable connection standard and should have been admitted.[6]

The adversarial nature of the American criminal justice system places the heaviest burden on the prosecution by requiring that all elements of a crime be proven beyond a reasonable doubt.[7] In order to cast reasonable doubt, a defendant may introduce exculpatory evidence to rebut these elements.[8] A defendant's right to introduce evidence is not limitless but rather is subject to the evidentiary rules of the jurisdiction in which the defendant faces prosecution.[9] Rationally, jurisdictions require that evidence must be relevant in order to be admissible.[10] Maine, like most jurisdictions, endorses a liberal stance on relevancy, defining relevant evidence in Rule 401 of the Maine Rules of Evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the

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1. 2010 ME 73, 4 A.3d 478.

2. *Id.* ¶ 1, 4 A.3d at 480.

3. *Id.*

4. *Id. See also* U.S. CONST. amend. VI.

5. *Mitchell*, 2010 ME 73, ¶ 35, 4 A.3d at 487.

6. *Id.* ¶ 48, 4 A.3d at 490 (Silver, J., dissenting).

7. *See*, *e.g.*, Victor v. Nebraska, 511 U.S. 1, 5 (1994) (describing the reasonable doubt standard as "an ancient and honored aspect of our criminal justice system").

8. *See In re* Winship, 397 U.S. 358, 364 (1970) (explicitly holding "that the Due Process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged").

9. *See generally* MARK REUTLINGER, EVIDENCE: ESSENTIAL TERMS AND CONCEPTS (Richard A. Epstein et al. eds., 1996) (discussing the source and workings of modern evidentiary law).

10. *See* FED. R. EVID. 402 (stating that "[e]vidence which is not relevant is not admissible").

action more probable or less probable than it would be without the evidence."[11] The Rules further declare, in Rule 402, that "[a]ll relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute or by these rules or by other rules applicable in the courts of this state."[12] This modern view of relevance stems from a need for "a greater liberality in the admission of evidence, thus demonstrating confidence in the ability of jurors to appraise the strength and weaknesses of testimony that had been excluded at common law because the jurors were considered too ignorant to evaluate it wisely."[13] Trial judges, however, still maintain a great deal of discretion under Rule 403 to prevent a jury from hearing evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."[14]

Despite the modern thrust towards liberal relevance, trial courts across the nation routinely apply heightened standards of relevancy to alternative suspect evidence, usually resulting in its exclusion.[15] These standards impose a threshold burden for alternative suspect evidence that falls squarely on the shoulders of the defendant and effectively supplants the liberal standard of relevancy gleaned from Rules 401 and 402.[16] The Law Court has held that, in order for alternative suspect evidence to be admissible in Maine, the defendant must establish a reasonable connection between the third party and the crime sufficient to raise reasonable doubt as to the defendant's own culpability.[17]

Although the majority in *Mitchell* came to the correct result under the reasonable connection standard, the standard itself has become functionally untenable. The Law Court first adopted the reasonable connection standard in order to limit the burden trial courts may place on a defendant offering alternative suspect evidence.[18] However, through precedent affirming the standard's functional application, the Law Court subsequently encouraged trial courts to exclude an increasing amount of alternative suspect evidence.

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11. M.R. Evid. 401. The text of Maine Rule of Evidence 401 is identical to that of Federal Rule of Evidence 401, and this Note will refer to them collectively as Rule 401.

12. M.R. Evid. 402. The text of Maine Rule of Evidence 402 is identical to that of Federal Rule of Evidence 402, and this Note will refer to them collectively as Rule 402.

13. PETER L. MURRAY, MAINE EVIDENCE § 102.1 (6th ed. 2007).

14. M.R. Evid. 403. The text of Maine Rule of Evidence 403 is identical to that of Federal Rule of Evidence 403, and this Note will refer to them collectively as Rule 403.

15. *See generally* David McCord, *"But Perry Mason Made It Look* Easy*!": The Admissibility of Evidence Offered by a Criminal Defendant to Suggest That Someone Else is Guilty*, 63 TENN. L. REV. 917 (1996).

16. *Compare* M.R. Evid. 401 (defining relevant evidence as "evidence having *any tendency* to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence") (emphasis added), M.R. Evid. 402 (stating that all relevant evidence is admissible), *and* M.R. Evid. 403 (establishing a balancing test for relevant evidence with a presumption toward admissibility), *with Mitchell*, 2010 ME 73, ¶ 25, 4 A.3d at 484 (noting that alternative suspect evidence is only admissible if it "is of sufficient probative value to raise a reasonable doubt as to defendant's culpability by establishing a reasonable connection between the alternative suspect and the crime") (internal quotation marks omitted).

17. *See Mitchell*, 2010 ME 73, ¶ 25, 4 A.3d at 484.

18. *See infra* Part III.B.

This Note will begin by briefly explaining the Fourteenth Amendment Due Process concerns implicated by the exclusion of alternative suspect evidence—namely, the defendant's right to present a complete defense. This Note will then explore the methods employed by courts to determine the admissibility of alternative suspect evidence—specifically, the "direct connection" doctrine followed by many courts and Maine's "reasonable connection" standard. Next, this Note will analyze the Law Court's application of the reasonable connection standard that ultimately resulted in the exclusion of all alternative suspect evidence in *Mitchell*.

This Note will conclude by arguing that the *Mitchell* majority improperly endorsed a heightened standard of relevancy for alternative suspect evidence. In previous decisions, the Law Court noted the dangers and concerns implicated by applying a heightened standard. However, in *Mitchell*, the majority functionally conflated the "reasonable connection" standard with the direct connection doctrine. Finally, and perhaps most importantly, this Note will demonstrate how an application of the existing limitations on the admissibility of evidence set forth in the Maine Rules of Evidence would be a more appropriate method for determining the admissibility of alternative suspect evidence.

II. THE MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE: A BAR ON ARBITRARY RULES

The Supreme Court of the United States has not only recognized that "state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials"[19] but also that there are limits on the breadth of this latitude.[20] Overlying the restraint on a state's rulemaking authority is the idea that "criminal prosecutions must comport with prevailing notions of fundamental fairness."[21] One such prevailing notion of fairness is that "criminal defendants be afforded a meaningful opportunity to present a complete defense."[22] The Court has declared that such "meaningful opportunity" is a constitutional privilege designed to "protect[] the innocent from erroneous conviction and ensure[] the integrity of our criminal justice system."[23] In order to preserve this constitutional privilege, the Supreme Court has struck down rules that serve no legitimate purpose and arbitrarily exclude evidence important to a defendant.[24] For example, a rule precluding "principles, accomplices, or accessories" from being introduced as witnesses for each other,[25] a rule preventing parties from impeaching their own witnesses,[26] and a rule preventing parties from eliciting testimony regarding the voluntariness of a prior confession[27] have all been found to impede

19. United States v. Scheffer, 523 U.S. 303, 308 (1998).

20. Holmes v. South Carolina, 547 U.S. 319, 324 (2006).

21. California v. Trombetta, 467 U.S. 479, 485 (1984).

22. *Id.*

23. *Id.*

24. *See Holmes*, 547 U.S. at 325-26 (explaining several instances in which the Supreme Court has struck down arbitrary state rules of evidence).

25. *See* Washington v. Texas, 388 U.S. 14, 15-17 (1967).

26. *See* Chambers v. Mississippi, 410 U.S. 284 (1973).

27. *See* Crane v. Kentucky, 476 U.S. 683, 686-87 (1986).

upon a defendant's constitutional privilege to present a complete defense. Even while overruling such arbitrary restrictions, however, the Supreme Court has maintained that, undoubtedly, a state retains the right to exclude evidence that is repetitive, marginally relevant, prejudicial, or misleading "through the application of evidentiary rules that themselves serve the interests of fairness and reliability."[28]

Citing this ability to limit evidence, many jurisdictions maintain that evidence offered at trial by a criminal defendant suggesting that an "alternative suspect" was the actual perpetrator should be subjected to a heightened relevancy standard. These jurisdictions offer many reasons for such a requirement, most notably the need to keep the trial focused on the guilt or innocence of the accused.[29] States feel the need to "place reasonable limits on the trial of collateral issues."[30] In like manner, many jurisdictions view the presentation of third party perpetrator evidence as a waste of judicial resources.[31] Further, courts have recognized that alternative suspect evidence is easy to fabricate.[32] Accordingly, the need for greater limitations stems from a fear that if trial courts allow defendants to liberally present evidence of alternative suspects, juries will base decisions on speculative evidence.[33] Likewise, some jurisdictions are concerned that presentation of alternative suspect evidence will confuse jurors.[34]

Nonetheless, as the Supreme Court has recognized, a criminal defendant's right to a meaningful opportunity to present a defense operates as a check on these limitation of alternative suspect evidence. Most recently, in *Holmes v. South Carolina*,[35] the Supreme Court struck down a state law that prevented defendants from offering evidence of third party guilt if the state produced DNA evidence implicating the defendant.[36] The trial court effectively precluded the defendant from presenting evidence that a third party may have committed the crime because the proffered evidence failed to raise a reasonable doubt as to the defendant's own innocence.[37] The Supreme Court of South Carolina went a step further in affirming the exclusion, holding that "where there is strong evidence of an appellant's guilt, especially where there is strong forensic evidence, the proffered evidence about a third party's alleged guilt does not raise a reasonable inference as to the appellant's

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28. *Id.* at 689-90.

29. *See* Ellen Yankiver Suni, *Who Stole the Cookie from the Cookie Jar?: The Law and Ethics of Shifting Blame in Criminal Trials*, 68 FORDHAM L. REV. 1643, 1680 (2000) (noting that justification for heightened standards of admissibility of alternative suspect evidence "relate largely to the orderly administration of trials").

30. State v. Rabellizsa, 903 P.2d 43, 46 (Haw. 1995) (internal quotation marks omitted) (quoting People v. Green, 609 P.2d 468, 480 (Cal. 1980)).

31. *See*, *e.g.*, State v. Luna, 378 N.W.2d 229, 234 (S.D. 1985) (justifying the application of the direct connection doctrine because it prevented defendants from "unduly tying up the court process").

32. *See*, *e.g.*, McCord, *supra* note 15, at 930 (quoting State v. May, 15 N.C. (4 Dev.) 328, 333 (1833)).

33. *See*, *e.g.*, Perry v. Rushen, 713 F.2d 1447, 1453 (9th Cir. 1983) (noting the significant state interest in excluding alternative suspect evidence to avoid "unsupported jury speculation"); State v. Scheidell, 595 N.W.2d 661, 670-71 n.10 (Wis. 1999).

34. *See* John H. Blume et al., *Every Juror Wants a Story: Narrative Relevance, Third Party Guilt and the Right to Present a Complete Defense*, 44 AM. CRIM. L. REV. 1069, 1084 (2007).

35. 547 U.S. 319 (2006).

36. *Id.* at 331.

37. *Id.* at 323-24.

own innocence."[38]

In vacating the judgment of the South Carolina Supreme Court, Justice Alito, writing for the majority, recognized a state's right "to establish rules excluding evidence from criminal trials,"[39] but found that the DNA preclusion rule, as promulgated by the South Carolina Supreme Court, was arbitrary and unjustly restricted the defendant's right to present a complete defense.[40] Focusing on the practical application of the rule, Justice Alito found that "by evaluating only one party's evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt."[41] In reaching this decision, however, the Court explicitly accepted rules by South Carolina and other jurisdictions that are designed "to focus the trial on the central issues by excluding evidence that has only a *very weak logical connection* to the central issues."[42] Consequently, the *Holmes* decision serves as a warning to state and federal rulemakers that although their authority to promote efficiency is broad, the scope will ultimately be limited by traditional notions of fairness.[43]

Despite differences in both reasoning and method, most jurisdictions have classified alternative suspect evidence as a category that requires greater scrutiny.[44] Interestingly, when considering the admission of evidence that *someone else may have committed the crime*, judges have developed admissibility requirements under the guise of relevancy,[45] rather than under the more rational authority of Rule 403 concerns (i.e., "undue delay, waste of time, or needless presentation of cumulative evidence").[46] Nonetheless, while limiting admissibility, jurisdictions must be mindful of a defendant's constitutional privilege to present a complete defense.[47]

III. LIMITING THE ADMISSIBILITY OF ALTERNATIVE SUSPECT EVIDENCE

A. Alternative Suspect Admissibility in Other Jurisdictions

In order to alleviate the dangers of alternative suspect evidence, many

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38. *Id.* at 324 (quoting State v. Holmes, 605 S.E.2d 19, 24 (S.C. 2004)) (internal quotation marks omitted).

39. *Id.* (quoting United States v. Scheffer, 523 U.S. 303, 308 (1998)) (internal quotation marks omitted).

40. *Id.* at 331.

41. *Id.*

42. *Id.* at 330 (emphasis added).

43. *See id.* at 324-25 (quoting *Scheffer*, 523 U.S. at 308) (stating that the right to present a complete defense "is abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve") (internal quotation marks omitted). *See also* McCord, *supra* note 15, at 929-30 (noting that *Holmes* and its progeny established that the constitutionality of an evidentiary rule shall be determined by weighing the "state's interest in maintaining the . . . rule" and "the defendant's interest in presenting a defense").

44. *See infra* note 48 and accompanying text. *See also* Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 360 (2006).

45. *See* State v. Mills, 2006 ME 134, ¶ 14, 910 A.2d 1053, 1058 (stating that "[a]dmission of evidence supporting an inference that another person may have committed the crime for which the defendant is charged 'is subject to a threshold ruling of relevance which is largely discretionary with the trial court'") (quoting MURRAY, *supra* note 13, at § 401.3).

46. M.R. Evid. 403.

47. *See*, *e.g.*, *Holmes*, 547 U.S. at 331.

jurisdictions adopted a standard that results in the proffered evidence being presumptively inadmissible: the direct connection doctrine.[48] This doctrine has been termed "the prevailing legal principle" for determining the admissibility of alternative suspect evidence.[49] Currently, twenty-eight states employ the direct connection doctrine,[50] although some do so under different nomenclature.[51] This doctrine requires that proffered evidence meet not only the "more probable or less probable" general requirement of Rule 401,[52] but also that it establish a direct connection between the alternative suspect and the crime committed.[53] As a preliminary matter, a trial court employs the direct connection doctrine to determine whether the evidence is strong enough to be admitted.[54] Discerning a direct connection from mere speculative evidence requires a trial judge to "look to the strength of the nexus between the proffered evidence and the guilt of the third party for the crime charged."[55]

Functionally, this threshold test for admissibility amounts to a heavy burden for the defense.[56] Most direct connection states agree that evidence of a third party's motive or opportunity to commit the crime will not suffice to establish a

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48. *See* Findley & Scott, *supra* note 44, at 360 (noting that the direct connection doctrine reverses the traditional presumption of admissibility for relevant evidence).

49. McCord, *supra* note 15, at 919.

50. *See* Suni, *supra* note 29, at 1680 n.211 (a previous scholar had found twenty-five of thirty-six possible jurisdictions adhere to the doctrine, and since then three more have adopted it); Blume, *supra* note 34, at 1080 n.77 (listing Alabama, Alaska, Arkansas, Colorado, Connecticut, Hawaii, Idaho, Minnesota, Missouri, Nevada, North Carolina, South Carolina, Vermont, Virginia, Washington, West Virginia, and Wisconsin as direct connection states).

51. For instance, some employ the legitimate tendency test, according to which alternative suspect evidence must have a legitimate tendency to connect the alternative suspect to the crime. *See* Blume, *supra* note 34, at 1080-81 (noting, however, only "slight variations" between the legitimate tendency test and the direct connection doctrine).

52. *See* FED. R. EVID. 401 (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action *more probable or less probable* than it would be without the evidence") (emphasis added).

53. *See* Findley & Scott, *supra* note 44, at 343-44 (describing the heightened evidentiary standard created by the direct connection doctrine).

54. *See* McCord, *supra* note 15, at 921 (stating that the real "issue is: What level of proof of the preliminary fact of alternative perpetration does the defendant have to fulfill in order to have the [alternative suspect] evidence admitted?").

55. Stephen Michael Everhart, *Putting a Burden of Production on the Defendant Before Admitting Evidence that Someone Else Committed the Crime Charged: Is It Constitutional?*, 76 NEB. L. REV. 272, 279 (1997).

56. *Id.* at 285 ("If the connection is strong, the evidence is admitted. If it is weak, it is excluded. Courts, in this regard, are placing a burden of proof on the accused for the admission of evidence that someone else committed the crime charged."). Arguably, the connection standard is more aptly characterized as a burden of production. *See* 29 AM. JUR. 2D *Burdens of Proof, Persuasion and Production* § 171 (2008). If the defendant produces enough evidence to establish a direct or reasonable connection, the jury will hear the evidence; if not, all evidence will be excluded. *See*, *e.g.*, *Mitchell*, 2010 ME 73, ¶ 38, 4 A.3d at 488. If the probative value of each piece of alternative suspect evidence is weighed, and admissibility is determined on a piece-meal basis, then the burden is not one of production, but rather mere relevance for each piece. *See id.* (stating that Mitchell's alternative suspect evidence, "taken as a whole, did not rise above speculation"). *See also* McCord, *supra* note 15, at 961 (stating that a trial court can often avoid reversal by admitting some, but not all of the defendant's alternative suspect evidence).

direct connection.[57] Similarly, simply demonstrating that the alternative suspect was at the scene of the crime will not be admissible without also establishing a connection between the alternative suspect and the crime.[58] Consequently, the direct connection doctrine excludes circumstantial evidence proffered by the defendant to cast reasonable doubt, while similar evidence proffered by the prosecution to push the jury beyond reasonable doubt is routinely admitted.[59]

In light of this discrepancy, some jurisdictions have abandoned the direct connection doctrine in favor of a standard that clearly demonstrates alternative suspect evidence is not subject to a heightened relevancy standard.[60] In *People v. Primo*,[61] the Court of Appeals of New York noted that in some instances judicially-developed relevancy standards simply "reinforce the notion that remote evidence of a third party's culpability—though relevant—will not be sufficiently probative to outweigh the risk of trial delay, undue prejudice or jury confusion."[62] However, such an application envisions that trial judges will merely utilize the standard rules of evidence, and then couch their decisions in terms of a "direct," "reasonable," or "clear" connection standard.[63] Concerns that trial judges were interpreting a "clear link" standard to require more than Rule 401 relevance[64] and a Rule 403 balancing test[65] led the Court of Appeals of New York to abandon "connection" nomenclature and ask its judges to apply "the general balancing analysis that governs the admissibility of all evidence."[66]

In *Winfield v. United States*, the District of Columbia Court of Appeals noted another potential danger of a heightened relevancy standard by cautioning its judges against "excessive mistrust of juries" in the evaluation of relevancy.[67] In its warning, the court stated that "sifting the relevance of [alternative suspect] evidence is largely about drawing commonsense inferences from uncomplicated

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57. *See*, *e.g.*, Shields v. State, 166 S.W.3d 28, 32 (Ark. 2004).

58. *See* Beaty v. Commonwealth, 125 S.W.3d 196, 208 (Ky. 2003).

59. *See* McCord, *supra* note 15, at 975 (noting that the direct connection doctrine begs the question "why evidence offered by a criminal defendant that merely casts suspicion on an [alternative suspect is] almost invariably excluded, while evidence offered by the prosecution that merely casts suspicion on the defendant [is] routinely admitted-and usually without any explicit effort to balance probative value against countervailing considerations").

60. *See*, *e.g.*, People v. Primo, 753 N.E.2d 164, 168 (N.Y. 2001); Winfield v. United States, 676 A.2d 1, 4 (D.C. 1996); State v. Gibson, 44 P.3d 1001, 1003 (Ariz. 2002).

61. 753 N.E.2d 164, 168 (N.Y. 2001).

62. *Id.*

63. *See id.*

64. New York's definition of relevancy is substantially similar to Maine Rule of Evidence 401 and Federal Rule of Evidence 401, defining relevant evidence as evidence that has "any tendency in reason to prove the existence of any material fact, i.e., it makes determination of the action more probable or less probable than it would be without the evidence." People v. Scarola, 525 N.E.2d 728, 732 (N.Y. 1988).

65. The New York balancing test is substantially similar to Maine Rule of Evidence 403 and Federal Rule of Evidence 403, allowing a judge to "exclude relevant evidence if its probative value is outweighed by the prospect of trial delay, undue prejudice to the opposing party, confusing the issues or misleading the jury." *Primo*, 753 N.E.2d at 167.

66. *Id.* at 168.

67. *Winfield*, 676 A.2d at 6 (internal quotation marks omitted) (quoting Allen v. United States, 603 A.2d 1219, 1224 (D.C. 1992)).

facts, something we regularly entrust to juries."[68]

Similarly, in *State v. Gibson*, the Supreme Court of Arizona abandoned a heightened relevancy standard in favor of a standard application of the rules of evidence,[69] finding that tests such as direct connection or clear link place too much emphasis on the "*third party's* guilt or innocence."[70] Rather, the court held that Rules 401, 402, and 403,[71] used in conjunction, provide the proper mode for determining the admissibility of alternative suspect evidence.[72] Arizona's high court's decision came only after a dissenting appellate judge pointed out that the flawed standard required a defendant to prove, to the judge's satisfaction, that another person actually committed, or was "largely connected," to the crime charged.[73]

Further, some states have chosen to render the alternative suspect decision on Rule 403 grounds alone, noting the relevance, but finding the probative value of alternative suspect evidence to be substantially outweighed "by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."[74] Still, some states adopt a compromise between requiring a direct connection and applying the traditional rules of evidence.[75]

B. Alternative Suspect Admissibility in Maine

Although Maine judges share the concerns of those in other jurisdictions about the dangers of a liberal stance on alternative suspect evidence, Maine has articulated a somewhat more relaxed standard for determining the admissibility of the proffered evidence.[76] Maine's standard requires that the proffered evidence formulate a reasonable connection between the alternative suspect and the crime "sufficient . . . to raise a reasonable doubt as to the defendant's culpability."[77] For the evidence to meet this sufficiency requirement, "it must be more than speculative and conjectural."[78] Further, the evidence must do more than create a mere suspicion that the alternative suspect committed the crime.[79] An examination

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68. *Id.*

69. *See* State v. Gibson, 44 P.3d 1001, 1003 (Ariz. 2002).

70. *Id.* (citing *Winfield,* 676 A.2d at 4).

71. Arizona Rules of Evidence 401, 402, and 403 are identical to Maine Rules of Evidence 401, 402, and 403.

72. *Gibson*, 44 P.3d at 1004.

73. *See id.* (noting that the court agrees with Judge Gerber's dissent in which he states that "this rule forces a defendant to prove to a judge's satisfaction that another person 'really' committed the crime or was 'largely' connected to it").

74. *See* Everhart, *supra* note 55, at 281 (internal quotation marks omitted) (quoting FED. R. EVID. 403) (pointing out that some courts determine the admissibility of alternative suspect evidence under Rule 403).

75. *See id.* at 283 (explaining that some states, such as Maine, require a reasonable connection sufficient to raise a reasonable doubt, while others utilize a combination of tests).

76. *See* State v. Robinson, 628 A.2d 664, 667 (Me. 1993) (rejecting a "clear link" standard for alternative suspect evidence, but noting that a connection must be "*reasonably established*").

77. State v. Conlogue, 474 A.2d 167, 172 (Me. 1984).

78. State v. Dechaine, 572 A.2d 130, 134 (Me. 1990).

79. *Id.* (quoting Fortson v. State, 379 A.2d 147, 153 (Ind. 1978)).

of the lineage of *Mitchell* demonstrates that the Law Court has incrementally heightened what is now a significant hurdle for the admissibility of alternative suspect evidence.[80]

In a 1981 decision, *State v. Leclair*,[81] the Law Court abstained from deciding whether it was appropriate for a trial judge to exclude alternative suspect evidence based on a Rule 401 relevancy ruling rather than on any heightened connection theory.[82] In doing so, however, the Law Court noted that "in appropriate circumstances" a defendant has the right to introduce evidence that another party "had the motive, intent, and opportunity to commit [the crime]."[83] The court also noted the trial court's discretion to exclude the evidence, citing Maine Rules of Evidence 402 and 403.[84]

Three years later, in *State v. Conlogue*,[85] the Law Court reversed a decision excluding alternative suspect evidence demonstrating motive, opportunity, and previous similar acts by the alternative suspect.[86] The court noted that a trial court "should allow the defendant wide latitude to present all the evidence relevant to his defense, unhampered by piecemeal rulings on admissibility."[87]

In the 1990 decision *State v. Deschaine*,[88] the Law Court distorted its standard by holding that the "evidence incriminating another person must be competent and confined to substantive facts which create more than a mere suspicion that such other person committed the crime."[89] This language established the first requirement that a defendant's alternative suspect evidence show a specific connection between the potential alternative suspect and the crime committed.[90] The Law Court went on to state that "[t]he connection between the alternative perpetrator and the crime must be reasonably established by the admissible evidence the defendant is prepared to offer."[91] Noting a need to promote judicial efficiency, the Law Court warned that a defendant "cannot be allowed to use his trial to conduct an investigation that he hopes will convert what amounts to speculation into a connection between the other person and the crime."[92] Cautious, however, not to develop an unworkable burden, the court analogized its previous decisions in *Leclair* and *Conlogue* to Maine Rules of Evidence 401[93] and 402,[94]

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80. *See Mitchell*, 2010 ME 73, ¶ 52, 4 A.3d at 491 (Silver, J., dissenting) (citing previous alternative suspect case law and noting that the evidence in *Mitchell* is stronger).

81. 425 A.2d 182 (Me. 1981).

82. *See id.* at 187.

83. *Id.*

84. *Id.*

85. 474 A.2d 167 (Me. 1984).

86. *Id.* at 172.

87. *Id.* (internal quotation marks omitted) (quoting *Leclair*, 425 A.2d at 187).

88. 572 A.2d 130 (Me. 1990).

89. *Id.* at 134 (internal quotation marks omitted) (quoting *Fortson*, 379 N.E.2d at 153).

90. *See id.* Arguably, requiring "more than mere suspicion" essentially equates to requiring more than mere relevance. *See* M.R. Evid. 401; *supra* note 56 and accompanying text.

91. *Deschaine*, 572 A.2d at 134.

92. *Id.* (citing State v. Williams, 462 A.2d 491, 492 (Me. 1983)).

93. *See id.* (citing *Leclair*, 425 A.2d at 187, and M.R. Evid. 401) (stating that "[a] criminal defendant is entitled to present evidence in support of the contention that another is responsible for the crime with which he is charged").

respectively.

Three years later, in *State v. Robinson*,[95] the Law Court expressly declined to adopt a direct connection standard, stating that such a standard "placed too high a burden on a criminal defendant who is without the vast investigatory resources of the State."[96] In doing this, Maine became the first jurisdiction to conclude that requiring a clear connection between an alternative suspect and the crime was excessive.[97] Nevertheless, the Law Court has continued to routinely affirm the exclusion of alternative suspect evidence based upon trial court findings that a "reasonable connection" has not been established.[98] In fact, *Conlogue* stands as the last instance in which the Law Court found a trial court's exclusion of alternative suspect evidence to be reversible error.[99]

In 2010, the Law Court again affirmed the exclusion of alternative suspect evidence in *State v. Waterman*.[100] In *Waterman*, the defense sought to ask questions on direct examination that would implicate the witness as an alternative suspect.[101] The trial court found that Waterman had not established an adequate foundation, and precluded defense counsel from pursuing that line of questioning.[102] In affirming this ruling, the Law Court made strides toward abandoning the reasonable connection standard by stating that "[u]ltimately the court must exercise its discretion in considering whether to allow a question that could elicit relevant evidence . . . but, if based only on speculation, would waste time, mislead the jury, or lead to confusion of the issues."[103] The Law Court noted the relevance of the potentially exculpatory evidence but found that Waterman failed to demonstrate opportunity or motive of the alternative suspect.[104] The Law Court suggested that if Waterman had presented evidence suggesting motive or opportunity, the questioning would have been allowed.[105] However, despite these comments in the dicta of *Waterman*, the Law Court reinvigorated the strength of the "reasonable connection" standard three months later in *Mitchell.*

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94. *See id.* (quoting *Conlogue*, 474 A.2d at 172, and citing M.R. Evid. 402) (stating that "[t]he evidence 'must be admitted if it is of sufficient probative value to raise a reasonable doubt as to the defendant's culpability'").

95. 628 A.2d 664 (Me. 1993).

96. *Id.* at 667.

97. *See* McCord, *supra* note 15, at 938.

98. *See*, *e.g.*, State v. Waterman, 2010 ME 45 ¶¶ 37, 39, 41, 995 A.2d 243, 251-52 (holding that alternative suspect evidence was properly excluded because there was no evidence suggesting motive or opportunity, only that the alternative suspects knew and interacted with the victim); State v. Mills, 2006 ME 134, ¶ 15, 910 A.2d 1053, 1058 (affirming the exclusion of evidence where the only evidence connecting the alternative suspect to the crime was her prior experience with knives); State v. Bridges, 2003 ME 103, ¶ 42, 829 A.2d 247, 259 (affirming exclusion of inadmissible character evidence); State v. Robinson, 1999 ME 86, ¶ 19, 730 A.2d 684, 688 (holding that evidence was properly excluded where it did not indicate that the alternative suspect had access to the victim or the physical characteristics of the perpetrator).

99. *See* MURRAY, *supra* note 13, at § 401.3.

100. 2010 ME 45, 995 A.2d 243.

101. *Id.* ¶ 21, 995 A.2d at 249.

102. *Id.*

103. *Id.* ¶ 36, 995 A.2d at 251.

104. *Id.* ¶ 37, 995 A.2d at 251-52.

105. *Id.* ¶ 38, 995 A.2d at 252.

IV. THE MITCHELL DECISION

A. Factual Background

Thomas Mitchell's father died in 1980, bequeathing Mitchell's childhood home to his stepmother, who subsequently sold the home to Judith Flagg.[106] Mitchell had left some personal belongings at his old house, and had arranged with Flagg to pick them up.[107] When Mitchell arrived at the arranged time, the Flaggs were not home.[108] When Mitchell returned to the Flagg household for a second time, Flagg's husband told him that the items had been delivered to the former realtor's office.[109] Upon hearing this Mitchell seemed unhappy and left.[110] Nearly two years later, Judith Flagg was murdered.[111]

The Flaggs' home in Fayette is located seventy miles north of Portland.[112] At 7:00 a.m. on the morning of the murder, a South Portland police officer saw Mitchell driving a two-toned vehicle north on Interstate 295.[113] At approximately 10:30 a.m., Flagg was on the phone with her sister.[114] According to her sister, Flagg put the phone down to answer the door, returned to the phone, and said a friend of her husband's had arrived and she would have to call back.[115] At 10:45 a.m., Flagg called her brother to tell him that her husband's friend was at her house and was having car problems.[116] Flagg's brother, a mechanic, offered to come assist with the car, but the unidentified man said he would stop somewhere in Fayette.[117] Around 12:00 p.m., a mail carrier in the neighborhood saw a man driving erratically near the Flaggs' house.[118] At 2:00 p.m., Flagg's brother-in-law installed a new starter in a truck in the Flaggs' driveway.[119] The brother-in-law did not see Flagg, did not enter the home, and left after forty-five minutes.[120] At 11:00 p.m., Flagg's husband found her body lying on the floor with the telephone in hand.[121]

During the investigation into the murder, police found suspicious footprints in the snow leading to Flagg's house.[122] Investigators, with the help of the mail carrier, developed a composite sketch of the erratic driver seen the day of the murder.[123] Mitchell was initially considered a suspect because sole patterns on a

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106. *Mitchell*, 2010 ME 73, ¶ 3, 4 A.3d at 480.
107. *Id.* ¶ 4, 4 A.3d at 480-81.
108. *Id.* ¶ 4, 4 A.3d at 481.
109. *Id.* ¶ 5, 4 A.3d at 481.
110. *Id.*
111. *Id.* ¶ 12, 4 A.3d at 481.
112. *Id.* ¶ 6, 4 A.3d at 481.
113. *Id.*
114. *Id.* ¶ 7, 4 A.3d at 481.
115. *Id.* ¶ 8, 4 A.3d at 481.
116. *Id.* ¶ 9, 4 A.3d at 481.
117. *Id.*
118. *Id.* ¶ 10, 4 A.3d at 481.
119. *Id.* ¶ 11, 4 A.3d at 481.
120. *Id.*
121. *Id.* ¶ 12, 4 A.3d at 481.
122. *Id.* ¶ 13, 4 A.3d at 482.
123. *Id.* ¶ 14, 4 A.3d at 482.

pair of boots he owned matched the suspicious prints and because he also owned a car similar to that of the erratic driver.[124] The Deputy Chief Medical Examiner collected samples from the crime scene and performed an autopsy on the body.[125] These samples sat in the Maine State Police Crime Laboratory until 2006, at which time the lab's DNA specialist developed profiles from the samples collected.[126] The DNA profiles matched the victim and Mitchell.[127] "The probability of a random match was one in 69.4 quadrillion."[128]

In September 2006, Mitchell was indicted for the murder of Flagg.[129] The prosecution filed a motion in limine, requiring Mitchell to submit offers of proof for any alternative suspect evidence he intended to introduce at trial.[130] Mitchell presented offers of proof that implicated a male neighbor of the Flaggs in the murder.[131] The facts offered by Mitchell included evidence that the male neighbor owned boots with a sole pattern that resembled the track found at the crime scene, possessed clothes similar to those worn by the erratic driver, owned a car similar to that driven by the erratic driver, was having car troubles, offered an unreliable alibi, acted suspiciously after the murder, had dated Flagg's best friend, and that Flagg took the friend's side in a dispute that ended the relationship.[132] Further, a finger print examiner could not rule out the neighbor as the source of fingerprints found at the crime scene.[133] The trial court considered the proffered evidence, heard arguments, and ultimately granted the State's motion to exclude all of the evidence.[134] At trial, Mitchell testified that he was with his aunt on the day of the murder, and that his DNA at the crime scene could have been lifted from a bloodstain in Flagg's carpet stemming from an injury he sustained while living in the home.[135] The jury found Mitchell guilty of murder, and the court sentenced him to life in prison.[136]

B. The Majority's Application of the Reasonable Connection Standard

In affirming the trial court's decision to exclude the alternative suspect evidence, the Law Court functionally raised the strength of the connection required to admit evidence of third party guilt.[137] The court reiterated its commitment to the reasonable connection standard by noting that trial courts should only admit alternative suspect evidence if the offered proof is otherwise admissible, and "is of

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124. *Id.* ¶ 15, 4 A.3d at 482.
125. *Id.* ¶ 13, 4 A.3d at 482.
126. *Id.* ¶ 16, 4 A.3d at 482.
127. *Id.*
128. *Id.*
129. *Id.* ¶ 18, 4. A.3d at 482.
130. *Id.* ¶ 19, 4 A.3d at 482.
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.* ¶ 21, 4 A.3d at 483.
136. *Id.* ¶ 22, 4 A.3d at 484.
137. *See id.* ¶ 52, 4 A.3d at 491 (Silver, J., dissenting) (noting that the evidence presented in *Mitchell* was much stronger than that in previous decisions affirming the exclusion of alternative suspect evidence).

sufficient probative value to raise a reasonable doubt as to the defendant's culpability by establishing a reasonable connection between the alternative suspect and the crime."[138]

Examining the evidence excluded by the trial judge, the court first found that one piece of evidence offered—testimony that the sole pattern on the male neighbor's boots matched a footprint at the scene—was inadmissible under Maine Rule of Evidence 701.[139] Next, the Law Court assumed the remaining evidence was otherwise admissible but found that the facts "taken as a whole, did not rise above the level of speculation."[140] Weighing the probative value of the evidence, the court found that the facts presented only "weak proof of motive or propensity, and only moderately probative evidence of opportunity, mistaken identity, or suspicious post-crime behavior."[141] Ultimately, the Law Court ruled that the evidence was insufficient to establish a reasonable connection between the male neighbor and the murder and, therefore, that Mitchell was not denied a meaningful opportunity to present a complete defense as prescribed by the Constitution.[142]

In a dissenting opinion, Justice Silver argued that the evidence proffered by Mitchell established a reasonable connection between the alternative suspect and the crime sufficient to raise a reasonable doubt as to Mitchell's own guilt.[143] Justice Silver pointed out that the probative value of much of the evidence presented by Mitchell seemed to meet the low burden announced in *Holmes*—that proffered evidence establish more than "a very weak logical connection to the central issues."[144] Consequently, "it [was] for the jury to decide whether it [was] convinced by the evidence."[145] The dissenting opinion also noted that Mitchell's evidence was far stronger than that offered in previous Law Court decisions that had affirmed the exclusion of alternative suspect evidence.[146] Justice Silver's parting point was that the trial court should not have excluded the alternative suspect evidence on an "all or nothing" basis but rather, "the court [should] admit evidence that is sufficiently probative while excluding other evidence that is too attenuated or that presents too great a likelihood of misleading or confusing the jury."[147]

V. ANALYSIS

The *Mitchell* decision places an excessive and unnecessary burden on a criminal defendant's ability to present alternative suspect evidence. In *Mitchell,*

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138. *Id.* ¶ 25, 4 A.3d at 484 (internal citation omitted).

139. *Id.* ¶¶ 36-37, 4 A.3d at 487 (noting that Maine Rule of Evidence 701 requires that testimony be "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue," and that the offer of proof did not establish that the sole pattern actually matched the footprint).

140. *Id.* ¶ 38, 4 A.3d at 488.

141. *Id.*

142. *Id.* ¶ 39, 4 A.3d at 488.

143. *Id.* ¶ 51, 4 A.3d at 491 (Silver, J., dissenting).

144. *Id.* (internal quotation marks omitted) (quoting *Holmes*, 547 U.S. at 330). *See also supra* note 24 and accompanying text.

145. *Mitchell*, 2010 ME 73, ¶ 52, 4 A.3d at 491.

146. *Id.*

147. *Id.* ¶ 53, 4 A.3d at 492.

the majority did not offer an explanation as to why it deemed the motive or propensity evidence as weak, nor did the opinion explain why the remaining evidence of opportunity, identity, and suspicious post crime behavior, with admittedly moderate probative value,[148] was also excluded. Moreover, the majority unnecessarily lumped all alternative suspect evidence together, and affirmed a blanket exclusion of such evidence.[149] Most alarming, however, is that a specialized test to determine the admissibility of relevant alternative suspect evidence demonstrated distrust in a trial judge's ability to balance relevance with countervailing factors, undervalued the Maine Rules of Evidence, and fostered distrust in a jury's ability to assign evidence its proper probative value.

This most recent application of the reasonable connection standard bears considerable functional resemblance to the direct connection doctrine, as adopted by other states, which Maine has purportedly rejected. If the evidence proffered in *Mitchell* falls short of establishing a "reasonable connection" between the alternative suspect and the crime, it is unclear what evidence would be sufficient. Just like courts in direct connection doctrine jurisdictions, the Law Court affirmed a decision to exclude evidence of moderate probative value—Mitchell's proffered evidence does everything *but* establish a direct connection. As Justice Silver's dissent points out, Mitchell's evidence "established a link between the [alternative suspect] and the victim, a possible motive, opportunity, and suspicious behavior. The only item missing is DNA evidence."[150] By the phrase "the only item missing," Justice Silver alluded to the fact that Mitchell's alternative suspect evidence was markedly similar to the inculpatory evidence used in his prosecution—when comparing the prosecution's evidence against Mitchell with Mitchell's evidence against the alternative suspect, it becomes clear that Mitchell's case only lacked DNA evidence placing the alternative suspect at the scene. By requiring a connection this substantial, the Law Court squandered an opportunity to maintain any meaningful distinction between "reasonable" and "direct." *Mitchell* thus establishes that the "reasonable connection" standard does little more than dangle an admissibility "carrot" in front of defendants.

The Law Court's functional conflation of the "reasonable connection" and the direct connection standards is not the only concern: any "connection" standard poses significant dangers to the notions of fairness supporting a criminal justice system. As the Court of Appeals of New York noted in *Primo*, the true danger of a connection standard is that, at the very least, it unnecessarily opens the door for trial judges to believe that a defendant's proffered alternative suspect evidence requires more than relevance and a weighing of probative value and countervailing

148. *See id.* ¶ 38, 4 A.3d at 488 (stating that "[t]hese facts provide only weak proof of motive or propensity, and only moderately probative evidence of opportunity, mistaken identity, or suspicious post crime behavior"). *See also* McCord, *supra* note 15, at 948 (noting predictive principles as to when alternative suspect evidence of various types and strengths will be admitted).

149. *See Mitchell*, 2010 ME 73, ¶ 38, 4 A.3d at 488 ("[E]vidence regarding the neighbor as an alternative suspect, taken as a whole, did not rise above the level of speculation and did not establish a reasonable connection between the neighbor and the crime.").

150. *Id.* ¶ 52, 4 A.2d at 491 (Silver, J., dissenting).

considerations.[151] More appropriately, a trial judge's focus should only be on the probative value of the proffered evidence with regard to the guilt or innocence of the accused, not the guilt or innocence of a third party.[152] By abandoning a connection standard, the *Mitchell* majority could have ensured that trial judges subsequently focus their alternative suspect decisions on the modern rules of evidence, rather than applying any heightened standard of relevance.

Moreover, connection standards dangerously "constitute a form of prescribed tunnel vision."[153] With a connection standard, the criminal justice system presumes that prosecutors and law enforcement have apprehended the correct suspect, and, subsequently, increases the likelihood of a wrongful conviction.[154] The fundamental adage of "innocent until proven guilty" requires that evidence of alternative suspects be explored to the fullest extent possible. To forbid a defendant from introducing evidence of a third party's guilt seems to unjustly presume the prime suspect's guilt. Indeed, if defendants were allowed to introduce a greater amount of alternative suspect evidence investigators would have greater incentive to investigate and rule out alternative suspects.[155]

Worse still, when relevant evidence is excluded, and the defense is prevented from creating third party inferences, the prosecution's road beyond reasonable doubt becomes much easier to travel.[156] In *Mitchell*, the prosecution was not required to overcome the moderate probative doubt raised by the alternative suspect evidence because the trial judge prevented the jury from hearing it. This decision made it impossible for the defense to create any inferences that someone else may have committed the crime.

The majority reasoned that the reasonable connection standard has no significant effect on the prosecution's burden of proof; arguably the evidence excluded by the standard was incapable of raising reasonable doubt in a rational juror.[157] However, such rationale presupposes that the right party is making the reasonable doubt determinations. The task of determining the strength of each party's evidence, and subsequently reasonable doubt, is the exclusive province of the jury. The Sixth Amendment places trust in a jury of the defendant's peers, in part because a jury may be more apt to protect a defendant's rights than a judge would be.[158] Assuming the proffered evidence is both relevant and is not substantially outweighed by Rule 403 considerations, when a trial judge makes a preliminary determination that reasonable doubt cannot be found, he erroneously

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151. *See Primo*, 753 N.E.2d at 168. *But see* McCord, *supra* note 15, at 974-76 (arguing that the direct connection doctrine is simply a specialized test for weighing probative value).

152. *See* Suni, *supra* note 29, at 1683 (noting that the direct connection doctrine improperly shifts the focus of admissibility to whether the alternative suspect committed the crime).

153. *See* Findley & Scott, *supra* note 44, at 346.

154. *Id.* at 364.

155. *See* Suni, *supra* note 29, at 1690-91 (noting the "significant systemic benefits to not applying the [direct connection] doctrine").

156. *See id.* at 1688-92 (discussing the effect that excluding relevant defense evidence has on the "beyond a reasonable doubt" standard).

157. *See supra* Part III.B (discussing the reasonable connection standard).

158. *See* Katherine Goldwasser, *Vindicating the Right to Trial by Jury and the Requirement of Proof Beyond a Reasonable Doubt: A Critique of the Conventional Wisdom About Excluding Defense Evidence*, 86 GEO. L.J. 621, 636 (1998).

overrides a function of the jury. Even more disconcerting is the implication that, by overriding this function, the Law Court has inherently decided that a jury's erroneous acquittal is more dangerous than a wrongful conviction.[159] Such a result undermines a fundamental safeguard of the criminal justice system—the notion that "convicting the innocent is 'far worse' than letting the guilty go free."[160]

In addition, by endorsing a heightened standard, the majority ignored the Supreme Court's attempt to refocus state judges on the liberal relevancy standard of Rule 401.[161] Justice Alito's declaration in *Holmes* that it is appropriate for a court to focus a trial by "excluding evidence that has only a very weak logical connection to the central issues"[162] bears considerable resemblance to the practical application of Maine Rules of Evidence 401 and 402. Simply put, *Holmes* implicitly states that strictly adhering to the rules of evidence provides a logical approach to admitting or excluding alternative suspect evidence and ensures that a defendant is afforded constitutional privileges. Certainly, evidence of an alternative suspect such as that offered in *Mitchell* (i.e., evidence of third party motive, opportunity, similarities with defendant, and suspicious post-crime behavior) renders a fact of consequence (i.e., that Mitchell committed the murder) less probable. Thus, preventing the jury from hearing this evidence undermined Mitchell's meaningful opportunity to present a complete defense by limiting the jury's access to relevant evidence.

Moreover, application of Maine Rule of Evidence 403 to proffered alternate suspect evidence alleviates the very concerns that prompted the development of the reasonable connection standard.[163] Under Rule 403, speculative alternative suspect evidence of only slight probative value would be substantially outweighed by "considerations of undue delay, waste of time, or needless presentation of cumulative evidence."[164] Therefore, if, as feared, a jury bases an acquittal on speculative evidence, the trial judge is to blame for not properly balancing the evidence's probative value against countervailing considerations.

Furthermore, it is unlikely that the presentation of alternative suspect evidence of moderate exculpatory value would confuse jurors. In the case of *Mitchell*, even if the jury heard the alternative suspect evidence, they likely would have arrived at the same conclusion—conviction. Any rational juror assigning weight to the substantial DNA evidence inculpating Mitchell, and the circumstantial alternative suspect evidence, would have voted in favor of conviction. This assertion, however, can only be made in hindsight. Under the Supreme Court's logic in *Holmes*,[165] it would be erroneous for a trial judge to engage in such a weighing

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159. *See* Suni, *supra* note 29, at 1687-88 ("If the court admits alternative perpetrator evidence and the jury improperly assesses it, at worst, there may be a wrongful acquittal. But if otherwise appropriate evidence is excluded, the court creates an undue risk of wrongful conviction.").

160. *See* Goldwasser, *supra* note 158, at 634 (citing *In re* Winship, 397 U.S. at 372 (Harlan, J., concurring)).

161. *See supra* Part II.

162. *Holmes*, 547 U.S. at 330.

163. *See* MURRAY, *supra* note 13, at § 403.1.

164. M.R. Evid. 403.

165. *See Holmes*, 547 U.S. at 330 (noting that the true strength of the prosecution's evidence cannot be measured without examining the exculpatory evidence of the defendant); *supra* Part II (discussing *Holmes*).

"traditionally . . . reserved for the trier of fact."[166] Certainly, viewed without regard to the strong DNA evidence of the prosecution, the admittedly moderate probative evidence proffered by Mitchell was relevant, would likely survive a Rule 403 balancing test, and subsequently, was worthy of admittance.

It is notable, however, that, given the broad deference granted to trial judges in the realm of determining relevancy, the standard of review used at the appellate level, regardless of the threshold relevance test employed, will be abuse of discretion.[167] Under such a constrained standard of review, the Law Court has little choice but to affirm the decision of the trial court. Such a constraint should not be viewed as an excuse for the numerous decisions affirming exclusions, but rather as a further reason for abandoning a heightened relevancy standard. Subjecting alternative suspect evidence to the same rigors as other evidence, the Law Court could rest assured that in affirming a life sentence[168] from the cold record, the defendant was allowed every opportunity to rebut his guilt.

VI. CONCLUSION

The "reasonable connection" standard, as refined in *Mitchell*, poses considerable danger to the Maine criminal justice system. The Law Court's previous decisions, combined with the new functional hurdle in *Mitchell*,[169] demonstrate that little alternative suspect evidence—except perhaps third party confessions[170]—will ever successfully meet the test for admissibility. Functionally, the standard amounts to a presumption of inadmissibility for potentially relevant evidence that casts doubt on the defendant's guilt. In the context of criminal prosecution, especially those resulting in life imprisonment, it is illogical and prejudicial to exclude exculpatory evidence of moderate probative value. Although rationalized under the auspices of judicial efficiency, the "reasonable connection" standard unnecessarily presumes a trial judge is incapable of making appropriate determinations under the rules of evidence, and also fosters a distrust in a jury's ability to properly evaluate such evidence. Subjecting alternative suspect evidence to the same rigors as other proffered evidence is the safest way to ensure a defendant is allowed to exercise the constitutional privilege of presenting a complete defense.

Absent omnipotent authority, the criminal justice system can never be completely certain that the person found guilty for a crime is, in fact, the person who committed the crime. In light of this imperfect nature, notions of fundamental fairness afford the accused substantial protections—innocent until proven guilty beyond a reasonable doubt, right to trial by a jury of peers, right to present a complete defense—in order to prevent unjust convictions. Even in a case like *Mitchell*, where there is strong DNA evidence implicating the defendant, it is merely improbable that an alternative suspect committed the crime; determining

166. *Holmes*, 547 U.S. at 330.

167. *See*, *e.g.*, *Mitchell*, 2010 ME 73, ¶ 23, 4 A.3d at 484.

168. Mitchell received a life sentence for the murder of Judith Flagg. *Id.* ¶ 22, 4 A.3d at 484.

169. *Id.* ¶ 38, 4 A.3d at 488 (evidence must "rise above speculation").

170. *But see* Findley & Scott, *supra* note 44, at 345 (noting that despite a hearsay exception designed to admit evidence of third party confessions, the confessions are often excluded as hearsay).

how improbable is the province of the jury. In the aftermath of *Mitchell*, the reasonable connection relevancy standard ultimately thwarts essential protections of the Maine criminal justice system by assuming it is impossible, rather than merely improbable, that another person could have committed the crime.