THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Som-25-395

STATE OF MAINE,

Appellee

v.

DOUGLAS PERKINS,

Appellant

ON APPEAL from the Somerset County
Unified Criminal Docket

APPELLANT'S BRIEF

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INTRODUCTION

Douglas Perkins was convicted of five counts of sexual abuse of a minor based in part on statements he made during a 69-minute interrogation at the Skowhegan Police Department. Detective Kelly Hooper conducted that interrogation without advising Perkins of his constitutional rights. This was not an oversight. It was a strategy.

Detective Hooper had already decided Perkins was guilty. One month before she interviewed him, she told the alleged victim's family that she was going to arrest him and send him to jail. She discussed where he would be incarcerated and what his bail conditions might be. Yet when she sat Perkins down in a small, windowless room at the police station, she assured him she had no intention of arresting him. She misrepresented evidence and key pieces of Maine's age of consent laws to induce him to make incriminating statements. And when Perkins said three times that he thought he needed a lawyer, she deflected him and kept questioning.

The statements made during this interview should have been suppressed. Further, the Trial Court's relief on the State's discovery violations was inadequate to meet the interests of justice.

STATEMENT OF FACTS

Douglas Perkins had difficulty forming bonds with people. Trial Transcript Day 1, June 25, 2025 ("Tr.D1 __") 41. He had left Maine as a child and traveled throughout the East Coast. Id. He was a blue-collar worker who earned his living through hard physical labor. Id. When he moved back to Maine from Florida, he met H., and they started a relationship that gave him the stable family environment he had lacked. Id. They had one child together and were expecting a second. Tr.D1 37. He opened his home to the family; A. had her own room there, where she routinely stayed. Id. Perkins and the [redacted] family regularly congregated together for holidays, special occasions, and family gatherings. Tr.D1 41.

The allegations of sexual abuse started with an incident observed by H.'s sister, A.. A. testified that early in January 2024, she was at the home shared by herself, Perkins, H., and their infant daughter. Tr.D1 122, 130. They had all been drinking, with Perkins having consumed 10-12 beers that night. Tr.D1 123-24, Transcript of Motion to Suppress Hearing, May 29, 2025 ("Tr.MTS __") 26. She had fallen asleep on the couch while watching a movie with P. and Perkins. Tr.D1 124. She woke up between 1:00 and 1:30 in the morning. Tr.D1 124. Neither P. nor Perkins was on the couch. Tr.D1 124.

A. walked through the house and eventually saw P. and Perkins in a bedroom. Tr.D1 125.

A. testified that when she was in the doorway of the bedroom, she saw P. performing oral sex on Perkins. Tr.D1 126. Rather than immediately intervene to protect her fourteen-year-old sister, A. walked back to the living room, then crawled down the stairs to approach quietly. Tr.D1 125. There was finally a confrontation. P. said that Perkins went out to calm A. down, and she followed. Tr.D1 74-75. P. testified she heard him tell A. that this was the first time anything had happened and that he hadn't known what was going. Tr.D1 75.

A. did not tell anyone what she had witnessed for approximately two weeks, and only after everyone had found out through other means. Tr.D1 128. A. explained that she needed time to process what she had seen because it was traumatic. Tr.D1 135. She said she never told H.. Tr.D1 134.

In those intervening weeks, more allegations of abuse against Perkins were raised, involving P. and her friend B..[1] While the two girls had only known each other for a short time, they were very close friends, best friends. Tr.D1 82, 83. So close, they would lie for each other. Tr.D1 83-84.

[1] The trial transcripts spell her name as either "B." or "B." The proper spelling is "B."

The investigation into Perkins was initiated by B.'s aunt contacting the Skowhegan Police Chief about allegations involving B. and Perkins. Transcript of Trial Day 2, June 25, 2025 ("Tr.D2") 10-11. After investigators spoke to the families, both girls were referred to interviews with the Child Advocacy Center ("CAC"). Tr.D2 11-12.

In her first forensic interview at the Child Advocacy Center, P. made no disclosures of sexual abuse. Tr.D1 80-81, Defendant's Exhibit 1, Tr.D2 37.

B. conducted a CAC interview and described an incident where, in January 2024, she had sexual intercourse with Perkins. Tr.D2 12. At trial, she testified that she met Perkins for the very first time on the day of the alleged incident. Tr.D2 105. H. had just announced she was pregnant. Tr.D1 98. After H. and her brother, Ian, had left the room, she said she, P., and Perkins were alone in a bedroom while the trailer was full of people. Tr.D2 98, 105-06. There, she said Perkins began randomly flirting with her and tickling her in front of P.. Tr.D2 106. P. then left the room. Id. B. then alleged that Perkins forced her to engage in sexual intercourse – she described it as "rape" – which occurred with a houseful of five or six other family members present just down the hall. Tr.D1 84-85, 103.

After the interview, Detective Hooper conducted a follow-up visit with B. and her family, during which Detective Hooper told a story about

her friend being gang-raped, and Hooper had saved her. Tr.D2 35-36. She told B. to talk to P. about making allegations as well. Tr.D2 36-37.

P. participated in a second CAC interview after this intervention, yielding dramatically different results, now disclosing allegations of abuse. Tr.D2 36-37. At trial, P.'s testimony contained significant inconsistencies. She testified she hated Perkins from the moment she met him, Tr.D1 94, but also claimed they had a close relationship. Tr.D2 81. She testified that she would go to the house to hang out with friends. Tr.D1 94. She claimed he repeatedly abused her in his car, but testified that she would frequently go with him to get rides to places like Walmart. Tr.D1 89-91. She testified that he would force her into the back of the car, abuse her, and then they would go shopping at Walmart. Tr. D1 91. Further, when asked to describe the incident between Perkins and B., P. said that B. and Perkins started touching each other. Tr.D1 87-88. When B. began to perform oral sex on Perkins, she asked P. to join in. Tr.D1 88. That was when she left the room. Id.

Prior to interviewing Perkins, Detective Hooper told P. and her mother that she was going to arrest Perkins and send him to jail. Transcript of Pretrial Hearing, June 23, 2025 ("Tr.PTH") 5. When Detective Hooper contacted him, Perkins voluntarily agreed to be interviewed by Detective Hooper. Tr.D2 13. She did not tell him that he would eventually be arrested.

Perkins was interviewed in a small, windowless room at the Skowhegan Police Department. Tr.D2 13-14. The interview recording was played at trial. Id., State's Exhibit 7. During the interview, Perkins explained the one incident that had been witnessed. He explained that he had been asleep after consuming ten to twelve beers and was groggy when he was awakened. Tr.MTS 25-26. He initially believed he was with his girlfriend, as H. had, on prior occasions, woken him by initiating sexual activity. Tr.MTS 26. When he heard a voice and realized it was not his girlfriend's, he fully woke up. Tr.MTS 14, 26. Detective Hooper testified that Perkins put himself in the scenarios described by the complainants, i.e., trips to Walmart and being at the house, but denied that sexual contact occurred other than the single witnessed incident. Tr.D2 21.

Detective Hooper lived up to her promise. She sought and obtained an arrest warrant on June 26, 2024. App. 3. Perkins was charged by criminal complaint on June 26, 2024, with five counts of Sexual Abuse of a Minor under 17-A MRS § 254(1)(A-2). App. 1. He was indicted on those exact charges on August 15, 2024. App. 5, 44.

A motion to suppress statements was filed on April 8, 2025. App. 46-51. After a hearing held on May 29, 2025, the Trial Court (Mullen, C.J.) denied the motion on June 2, 2025. App. 24-30.

A two-day jury trial was held on June 24-25, 2025. App. 9-10. The jury found Perkins guilty of all charges. Id. At a sentencing hearing held on August 7, 2025, the Trial Court sentenced Perkins to (1) four years on Count 1; (2) three years on Count 2, consecutive to Count 1; (3) three years on Count 3, fully suspended with four years of probation, consecutive to Counts 1 and 2; (3) three years on Count 4, fully suspended, with four years probation, consecutive to Counts 1, 2, and 3; and (5) three years on Count 5, fully suspended, with four years probation, consecutive to Count 1, 2, 3, and 4. *See* Transcript of Sentencing Hearing ("Tr.S.") 42-43. The probation periods of the sentence were subsequently amended by the Trial Court *sua sponte* on August 14 and 26, 2025, to four years on Count 3, four years on Count 4, and two years on Count 5. App. 18-21.

This appeal ensued.

ISSUES ON APPEAL

I. Should Perkins' interrogation have stopped when he invoked his right to counsel?

II. Was Perkins subjected to unwarned and custodial interrogation?

III. Did Perkins voluntarily give statements to law enforcement?

IV. Was the Trial Court's remedy for the State's discovery violation sufficient to meet the interests of justice?

SUMMARY OF THE ARGUMENT

Perkins invoked his right to counsel three times during his interrogation. He told Detective Hooper he probably needed to get a lawyer, that he should do what his mother said and lawyer up, and that he should try to get a lawyer even though he had no money. Each time, Detective Hooper deflected him and continued questioning. Under *State v. McLain*, 2025 ME 87, when a suspect makes even an ambiguous invocation of the right to counsel, officers must stop and clarify. Detective Hooper did the opposite. All statements obtained after these invocations should be suppressed.

Perkins was in custody and entitled to *Miranda* warnings before any questioning began. He was interrogated for 69 minutes in a small, windowless room at the police station. He was the sole focus of the investigation, and Detective Hooper employed deliberate deception to elicit incriminating statements. She had already told the alleged victim's family that she intended to arrest Perkins and send him to jail. Her assurances to Perkins that she would not arrest him were lies designed to keep him talking.

Even if Perkins was not in custody and did not clearly invoke his rights, his statements were involuntary. Detective Hooper withheld *Miranda* warnings as a deliberate strategy, misrepresented the law of consent, claimed to have DNA evidence she did not possess, and discouraged Perkins from seeking counsel. These

tactics overbore his will and rendered his statements the product of coercion rather than free choice.

Finally, the State withheld an exculpatory recording until six days before trial. In P. 's first CAC interview, she denied any abuse by Perkins. The Trial Court found a discovery violation but imposed no meaningful remedy. Allowing Perkins to use a recording he was already entitled to use is not a sanction. The Trial Court should have excluded P. 's testimony or her second CAC interview.

ARGUMENT

I. The questioning of Perkins should have ended when he invoked his right to counsel.

Perkins invoked his right to counsel and was subjected to continued questioning. Once he invoked the right to counsel, all questioning should have stopped. The protections guaranteed by the Maine Constitution apply whether or not he was considered in custody. Despite not being advised of his rights, he still invoked them. All evidence obtained after that invocation should have been suppressed.

A. Standard of review

Generally, this court "reviews the trial court's factual findings for clear error and its legal conclusions de novo." *State v. Wai Chan*, 2020 ME 91, ¶ 13, 236 A.3d 471. It may "uphold the court's denial of a motion to suppress if any reasonable view of the evidence supports the trial court's decision." *Id.*

However, if this Court determines this issue was unpreserved, then the review is for obvious error. *See State v. Ouellette*, 2024 ME 29, ¶ 12, 314 A.3d 253, 259 (*citing State v. True*, 2017 ME 2, ¶ 15 & n.6, 153 A.3d 106) and M.R.U.Crim. P. 52(b) (motion to suppress issue)).

B. Issue preservation

This issue was sufficiently raised to warrant de novo review. Perkins did not specifically raise the issue of the invocation of the right to counsel as an independent issue in his motion to suppress. He did during his interview with Detective Hooper. App. 26. This was mentioned in his written Motion to Suppress. App. 47. Additionally, it was addressed during the examination of Detective Hooper during the suppression hearing. Tr.MTS 36-38. The recording of Perkins and his questions about the need for a lawyer was included in the evidence presented at the hearing. Tr.MTS 41.

More importantly, however, the Order specifically addressed the issue in its Order Denying Motion to Suppress. App. 26. The Trial Court concluded the right to an attorney had not been clearly invoked.

> 21. Although not directly relevant to the Michaud factors, the Court would also note that Defendant mentioned getting a lawyer, but did not ever ask for a lawyer, nor did he indicate that he did not want to answer questions. FN1. Defendant refused to give a DNA sample and demonstrated that he understood that he did not have to give a DNA sample without a "paper" (apparently referring to a warrant).
>
> …

> FN 1 For this reason, this case is clearly distinguishable from *State v. Holloway*, 2000 ME 172, 760 A.2d 223, in which the Law Court held that the defendant was in custody "if not from the outset of the detectives' questioning, certainly when Holloway asked and was denied an opportunity to end the interrogation so that he could contact a lawyer," id. ¶ 20.

This passage, and the Trial Court's use of *Holloway*, establish a sufficient basis for *de novo* review of the denial of this issue, as it shows the Trial Court considered it.

C. Perkins made an invocation of the right to counsel.

During his interview with Detective Hooper, Perkins made note of his need for an attorney no less than three times. Each time, Detective Hooper deflected him away from the topic. Approximately 45 minutes into the interview, he said:

> Perkins: What am I to do? It's getting to the point that after talking with you, I'm thinking -- **I probably need to go get a lawyer**.
>
> Detective: Okay, yeah, I mean, those are your…

App. 24, Motion to Suppress hearing, May 29, 2025, State's Exhibit 1. Perkins interrupted the detective to mention her earlier reference to supposed DNA evidence. Two minutes later, however, he went even further and invoked a need for counsel and to be silent, asking Detective Hooper what he should do:

> Perkins: So, with me finding all that out and then talking to you in my head, **I should probably do what my mother said and lawyer up.**
>
> Detective: Yeah, yeah --

Perkins: **I don't think I need to say anymore** because I've given the statement to her [someone from CPS], I've tried to be, you know --

Detective: Oh, you've been, I appreciate your time. I truly do.

Perkins: I just don't understand what you, **what am I to do**?

Detective: Yeah, I know, well, you know, the fact that you came in to talk with me, I do appreciate that.

Id. Finally, at around 63 minutes into the interrogation, he said:

Perkins: So, I take it you guys are pretty much building a case against me to try to put me away for whatever reasons, I guess. And **I should probably try to get a lawyer even though I am broke as a [expletive].**

Detective: Okay, well, I guess I'd wait until the invest -- you do what you need to do.

Id. Detective Hooper's response to the invocation of his rights was to deflect or tell him that he could wait to get an attorney. At the time she made this final statement, Detective Hooper knew she was going to eventually arrest Perkins. *See* II(C) *infra*.

D. Article I, section 6 protects even ambiguous invocations of the rights against self-incrimination.

Perkins clearly invoked the right to counsel, and it was an error, obvious or otherwise, to allow his statements once he invoked it. However, if the Court believes his invocation was ambiguous, then the recent decision of *State v. McLain*, 2025 ME 87, __ A.3d. __, must guide its review.

In *McLain*, this Court clarified the law governing the waiver of self-incrimination rights, including the right to counsel.

> We hold that someone in custody must actually waive the privilege against self-incrimination in order for an interrogation to occur or continue. We do not specify that the waiver be given orally or in writing, but we require that it be clear and unequivocal, like we require for all waivers of constitutional rights. If the waiver of the privilege is ambiguous, an officer must, before any questioning, stop to clarify whether the individual is in fact waiving the privilege against self-incrimination. If, after a suspect waives the privilege against self-incrimination, there is any ambiguous invocation of the privilege, including the attendant right to counsel, the officer must stop any questioning and clarify whether the individual is attempting to invoke the privilege against self-incrimination. If the privilege is being invoked, questioning must cease.

McLain at ¶ 62. The Court conducted an extensive review of history and common law, setting out the origins of the privilege of self-incrimination. *Id.* ¶¶ 40-46. "The privilege against self-incrimination 'reflects a high priority commitment to the principle that excluded as available to government is any person's testimonial self-condemnation of crime unless' the privilege is 'freely and knowingly' waived." *Id.* ¶ 45 (*quoting State v. Collins*, 297 A.2d 620, 626 (1972)). The history of the right "reflects an understanding of the importance of protecting the privilege, including by providing a recitation of rights and obtaining a clear waiver of the privilege prior to interrogating a suspect." *McLain* ¶ 46. Further, the Court looked to the economic and sociological underpinnings of the need for the protections inherent in the self-incrimination clause. *Id.* ¶¶ 47-49.

Finally, the caselaw from other jurisdictions help support the conclusion that "Maine has a longstanding commitment to preserving the value reflected in the privilege against self-incrimination, even at the expense of highly probative evidence." *Id.* ¶ 58. Contrast this to the federal protections that "no longer require[] an explicit and unambiguous *waiver* of the privilege against self-incrimination before questioning may occur." *Id.* ¶ 54 (*citing Berghuis v. Thompkins*, 560 U.S. 370, 381, 385, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010)).

E. The rights clarified in *McLain* do not require custodial interrogation; they only require interrogation.

As discussed in Section II, *infra*, Perkins was subject to custodial interrogation. But even if this Court disagrees, it cannot dispute that he was at least subjected to interrogation. The Trial Court conceded he was "clearly subject to interrogation." App. 27. Nonetheless, this is a moot point when the self-incrimination rights, such as the right to counsel, have been invoked. The vast majority of cases involving these issues involve no advisement of the so-called *Miranda* rights or questioning before their reading. *But see State v. Nightingale*, 2012 ME 132, 58 A.3d 1057. However, the underlying reasons for the concerns supporting those rights exist in "non-custodial" settings. "Social science confirms what common sense would suggest, that individuals who feel intimidated or powerless are more likely to speak in equivocal or nonstandard terms when no ambiguity or equivocation is meant." *McLain* ¶ 48 (*citing Davis v. United States*,

512 U.S. 452, 470 n.4, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994) (Souter, J., dissenting)).

Several of this Court's pre-*McLain* decisions, however, suggest this might not be the case. In *State v. Ormsby*, the Court noted that because the defendant was "not in custody, references he made to his right to remain silent and to speak to counsel, assuming *arguendo* that they constituted an unambiguous invocation of those rights, did not require an end to questioning." 2013 ME 88, ¶ 23, 81 A.3d 336, 344. In making this observation, the *Ormsby* court cited *Nightingale* and *United States v. Ellison*, 632 F.3d 727 (1st Cir. 2010) for this proposition. However, each of these cases was decided under the federal constitution, not Maine's. *See Ormsby* at 23 (making no reference to article 1, section 6, only the Sixth Amendment); *Nightingale* at ¶ 19 (because "Nightingale was not in custody during the interrogation surrounding the polygraph, it follows that [United States v] *Shatzer's* fourteen-day waiting period does not apply"); *Ellison* at 731 ("But even if Ellison had clearly expressed a desire to speak with a lawyer, he could not have invoked any constitutional right to do that in a non-custodial interrogation conducted before he was formally charged.") (citing Fifth and Sixth Amendment rights).

These cases do not control the analysis under article I, section 6, which *McLain* made clear has deep-rooted purposes distinct from federal

protections. The protections inherent in Maine's Constitution apply whenever police question a suspect, regardless of a reviewing court's subsequent determination of custody. The *McLain* Court identified several considerations supporting robust protection of self-incrimination rights: Maine's longstanding commitment to voluntariness predating *Miranda*; sociological research showing that intimidated individuals use hedged language even when asserting rights; the concern that continued questioning leads suspects to view further objection as futile; and the need to protect vulnerable populations. *Id.* ¶¶ 41-49, 55, 59-61. They are squarely focused on the interactions between law enforcement and criminal suspects.

Perkins was questioned in a police station, in a small windowless room, for over an hour, as the sole suspect in a child sex abuse investigation. He stated three times—with increasing clarity—that he believed he needed a lawyer. Each time, the detective continued questioning. Whether or not this encounter technically crossed the custody threshold, the concerns animating *McLain* are fully present. Requiring clarification of ambiguous invocations in this context serves the same purposes: ensuring that constitutional rights are actually exercised, protecting vulnerable individuals, and preventing the extraction of statements from someone who is trying to invoke but lacks the sophistication to do so "unambiguously."

This Court should find that all statements made after Perkins invoked his right to counsel should be excluded.

F. Applying the obvious error standard

The Court should take this action even if it determines the *de novo* review standard does not apply. That is because the Trial Court's failure to suppress these statements amounted to obvious error. An obvious-error standard should be applied when reviewing potentially unaddressed collateral issues in a motion to suppress. *See State v. Jandreau*, 2022 ME 59, ¶ 27, FN 10, 288 A.3d 371; *see also State v. Harper,* 613 A.2d. 945 (Me. 1992) (finding obvious error and suppressing statements on Sixth Amendment grounds when the issue was raised for the first time on appeal). "Error is obvious when there is (1) an error, (2) that is plain, and (3) that affects substantial rights. If these conditions are met, we must also conclude that (4) the error seriously affects the fairness and integrity or public reputation of judicial proceedings before we vacate a judgment on the basis of the error." 2024 ME 24, ¶ 18, 319 A.3d 430 (quotation marks omitted).

The same analysis this Court made in *Harper* to find an obvious error applies here. Detective Hooper's interrogation was "held at her initiative and that she was saying things to defendant that were clearly likely to elicit an incriminating response." *Id.* at 950. She was aware of the invocation of the right to counsel, and tried to deflect it, or even suggest he should not seek it, telling him,

"Okay, well, I guess I'd wait until the invest -- you do what you need to do." The continued questioning affected the outcome, because the State made a point to say how Perkins, by his statements, "put himself" in "every scenario" where P. made additional allegations (such as in the van at Walmart). Tr.D2 14, 21. The State highlighted those in the closing arguments. Tr.D2 75. The statements used by the State were made after the invocation of rights. This is the type of prejudice found in *Harper:*

> Although we certainly cannot say that in the absence of the Levesque confession there would have been insufficient evidence to support defendant's conviction, neither can we say that the admission of the constitutionally tainted confession did not contribute to the jury's verdict. As such this error was prejudicial to defendant.

Harper at 950.

Allowing statements made after the invocation of the right to counsel was an error, obvious or otherwise. They must be suppressed.

II. Perkins was subjected to custodial interrogation without being advised of his right against self-incrimination.

Perkins was in custody during the 69-minute interrogation conducted in a small, windowless room at the police station. Detective Hooper employed deliberate deception, misrepresenting the law of consent and assuring Perkins she would not arrest him, despite having told an alleged victim's family one month earlier that she intended to do exactly that. The Trial Court compounded its error

by refusing to reopen the suppression hearing when this contradictory evidence came to light. Perkins' statements should have been suppressed.

A. Standard of review

This court "reviews the trial court's factual findings for clear error and its legal conclusions de novo." *State v. Wai Chan*, 2020 ME 91, ¶ 13, 236 A.3d 471. When "the facts are not in dispute, we review the court's denial of a motion to suppress de novo." *State v. Akers*, 2021 ME 43, ¶ 23, 259 A.3d 127, 135.

B. Custodial interrogation standard

"Although a person ordinarily must invoke the Fifth Amendment privilege against compelled self-incrimination to receive the benefit of its protections, a statement made by a person subjected to custodial interrogation who is not first given *Miranda* warnings is inadmissible against that person at trial." *State v. Kittredge*, 2014 ME 90, ¶ 16, 97 A.3d 106, 110 (cleaned up) (citing *Minnesota v. Murphy,* 465 U.S. 420, 429, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984), *State v. Nadeau,* 2010 ME 71, ¶ 53, 1 A.3d 445, and *Miranda v. Arizona,* 384 U.S. 436, 478–79, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966))

For purposes of the *Miranda* analysis, an individual "is considered 'in custody' when subject to either a formal arrest or a restraint on freedom of movement to the degree associated with formal arrest." *State v. Glenn*, 2021 ME 7, ¶ 21, 244 A.3d 1023, 1029 (*quoting State v. Hopkins*, 2018 ME 100, ¶ 36, 189

A.3d 741). We "objectively review the pertinent circumstances to decide whether a reasonable person in the defendant's position would have felt free to terminate the interaction with law enforcement or if there was a restraint on freedom of movement of the degree associated with a formal arrest." *Id.* The State must prove, by a preponderance of the evidence, that the statements were made while the person was not in custody, or was not subject to interrogation. *State v. Bridges*, 2003 ME 103, ¶ 23, 829 A.2d 247, 254 (*citing State v. Barczak*, 562 A.2d 140, 144 (Me. 1989).

C. Perkins was in custody and should have been advised about his rights.

Detective Hooper interrogated Perkins. Even she, begrudgingly and after being pressed by the Trial Court, admitted he was being questioned. Tr.MTS 42-43. The question then remains whether he was in custody. He was.

In the absence of a formal arrest, a court is required to determine "whether a reasonable person in the defendant's position would have believed he was in police custody and constrained to a degree associated with formal arrest." *State v. Michaud*, 1998 ME 251, ¶ 4, 724 A.2d 1222, 1226. Objective factors to be reviewed in making that decision include:

1. the locale where the defendant made the statements;
2. the party who initiated the contact;
3. the existence or non-existence of probable cause to arrest (to the extent communicated to the defendant);

4. subjective views, beliefs, or intent that the police manifested to the defendant, to the extent they would affect how a reasonable person in the defendant's position would perceive his or her freedom to leave;
5. subjective views or beliefs that the defendant manifested to the police, to the extent the officer's response would affect how a reasonable person in the defendant's position would perceive his or her freedom to leave;
6. the focus of the investigation (as a reasonable person in the defendant's position would perceive it);
7. whether the suspect was questioned in familiar surroundings;
8. the number of law enforcement officers present;
9. the degree of physical restraint placed upon the suspect; and
10. the duration and character of the interrogation.

Michaud at ¶ 4. No single factor is determinative, and the factors are viewed not in isolation, but in their totality. *State v. Higgins*, 2002 ME 77, ¶ 13, 796 A.2d. 50, 55. In going through the Trial Court's ruling, a review of the facts listed as "significant" to the decision, App. 28, illustrates how the Trial Court misapplied those factors.

Interview room. The Trial Court noted the interview took place in a "small, windowless room with a closed, but unlocked door." Id. Detective Hooper sat between Perkins and the door. Tr.MTS 10-11. This is the same description as cases where suppression was upheld. *State v. Hassan*, 2007 ME 77, ¶ 17, 925 A.2d 625, 630 ("he was interviewed in a small, windowless room in the police station, with the door closed at all times"); *Bridges* at ¶ 25 ("the interrogation took place in a small room with one blind-covered window and with both doors closed")

Contact initiated by law enforcement. As noted in the Trial Court's order, Detective Hooper "initiated contact" with Perkins. App. 28. Detective Hooper had, in fact, tried to use "one of the minors to tape a phone call" but had not been successful. App. 24.

Probable cause to arrest. According to the Court's order, "Hooper did not believe she had probable cause to arrest [Perkins] and communicated more than once that she did not intend to arrest him that day." App. 27. That Detective Hooper testified to that is not in doubt, but her credibility in making those statements is called into question. The Trial Court's questions of Detective Hooper show the court's incredulity.

> Court: I understand your point about your investigation was ongoing, hadn't ended, so forth. But are you saying that when Perkins admitted that he had had oral sex with P., regardless of his version, are you saying that you didn't have probable cause to arrest him at that time?
>
> Detective: I felt that I didn't have enough probable cause until this was completed -- this investigation was completed and presented to the DA. There were still more witnesses to interview. His version is he wasn't awake.

Tr.MTS 45. Perkins' "version" was not that he was asleep; it was that he had been woken up by someone performing oral sex and thought it was his wife. Tr.MTS 14. At the time of the interview with Perkins, Detective Hooper had already interviewed both girls and was aware of their versions. Detective Hooper's position, that she did not believe she had probable cause, is even more difficult to

believe, given that she told B. and her family that she was going to arrest Perkins and send him to jail. Tr.PTH 5, *see* II(D) *supra*.

B.: What's going to happen to Doug?

Detective: He's gonna go to jail. To be honest with you, when my investigation is complete, I'm gonna issue an arrest warrant, and he'll be in jail.

[discussion about potential bail conditions and where he would be incarcerated]

This is gonna take a little bit. It's not like he's gonna be arrested tomorrow.

App. 60. His eventual arrest and the bail conditions were discussed not as a possibility but as a certainty. The interview with B. and her family took place one month before the interview with Perkins and over a year before she testified at the motion to suppress hearing.

Views law enforcement communicated to a defendant. As the Trial Court noted, "Hooper made several misleading statements about the law and about the evidence she had against [Perkins]. App. 28. In hopes of eliciting a confession, Detective Hooper made false statements about minors and consent to Perkins.

Counsel: And you say fourteen-year-olds can consent because 14 is the age of consent in Maine?

Detective: Fourteen-year-olds can consent. I did not say that they -- they could consent to an -- an inappropriate age that would be commit a -- be committing a crime.

Counsel: I believe at 53 minutes and 59 seconds, you say so fourteen-year-olds can consent. Thirteen-year-olds can't consent. And he responds immediately, what I've always told -- was always told was 16 with parents' consent. And you respond, no, at 14 you can consent, but you can't be forced to have sex, obviously. Fourteen you can consent to have sex, right. And then you follow up by saying, was it consensual sex with [redacted] or was it forced? Does that sound –

Detective Yep, that's --

Counsel -- accurate?

Detective -- exactly what I asked him.

Tr.MTS 29. These statements of law were offered for a deceptive purpose to elicit inculpatory statements. Hooper is intentionally misrepresenting the law regarding the ability of 14-year-olds to consent to a sexual act with a suspect she believes has engaged in sexual activity with two 14-year-olds. Compare that to cases in which suppression was upheld on custody grounds, and the Court cited law enforcement's deceptive behavior. *State v. King*, 2016 ME 54, ¶ 20, 136 A.3d 366, 372 ("when the detective arrived and commenced an aggressive interrogation, replete with accusations and deceptive suggestions designed to elicit an incriminating response"); *Bridges* at ¶ 29 ("Throughout the third interview, the detectives also made false or misleading statements about evidence they purportedly uncovered.")

Given her intent to eventually arrest Perkins, which she conveyed to [redacted], her repeated statements to Perkins that she would not were deceptive and

designed to elicit incriminating responses. "The exclusionary rule exists to deter police misconduct and favors exclusion only when the police misconduct is most in need of deterrence—that is, when it is purposeful or flagrant." *Akers* at ¶ 43 (*quoting Utah v. Strieff*, 579 U.S. 232, 136 S. Ct. 2056, 2063, 195 L.Ed.2d 400 (2016)) (cleaned up).

Views the defendant communicated to law enforcement. The Trial Court's order is scarce on this factor, saying only Perkins "never expressed or indicated that he did not feel free to leave or refuse to answer questions." App. 28. However, as discussed, *supra,* Perkins knew he was the only suspect. While he voluntarily came to the interview, his statements showed he was becoming increasingly alarmed. He said he "probably" should speak to a lawyer on three separate occasions. *See* I(C) *supra.* He said, "I don't think I should say anymore." Id. He later said, "I take it you guys are pretty much building a case against me to try to put me away for whatever reasons." Id. Whatever his mindset was when he entered the tiny interrogation room, his view on the interrogation had become increasingly concerned. *See Bridges* at ¶ 30; *Holloway* at ¶ 20 ("The circumstances in this case gave rise to a custodial setting, if not from the outset of the detectives' questioning, certainly when Holloway asked and was denied an opportunity to end the interrogation so that he could contact a lawyer.")

Focus of the investigation. As noted in the Trial Court's order, Perkins was the only suspect Detective Hooper was investigating. App. 28. Perkins was aware of the allegations against him coming into the interview; he had a PFA filed against him by the girls based on these allegations. This is a key factor in some of this Court's custody cases. *State v. Lowe*, 2013 ME 92, ¶ 19, 81 A.3d 360, 366 ("the trooper conveyed to Lowe that she should consider herself the focus of a criminal investigation"); *Bridges* at ¶ 30 ("close and persistent line of interrogation, which involved leading questions and challenged [defendant's] denials of involvement, strongly suggests that [defendant] could not help but believe she was in custody.) (*citing* Lafave, Israel, & King, CRIMINAL PROCEDURE § 6.6(f) (3d ed.2000)); *see also Holloway* at ¶¶ 22-23.

Duration and character of the interrogation. The Trial Court noted that the interrogation was "fairly conversational and relatively calm throughout." App. 28. Further, the Trial Court noted that while Detective Hooper said he was free to leave, she did not tell him he could stop answering questions at any time. App. 25. She also told him that "the DA likes to see honesty and consistency." Id. She asked for it repeatedly, as if suggesting she did not believe his statements. App. 28. However, she said, "she did not have probable cause to arrest [Perkins] and communicated more than once that she did not intend to arrest him that day." Id. These words alone are not enough to support a finding Perkins was not in custody.

State v. Hewes, 558 A.2d 696, 698–99 (Me.1989) (affirming trial court's determination of custody despite officer telling the suspect prior to his interrogation that he could terminate the interview and leave at any time).

Additionally, the interview lasted 69 minutes. App. 24. This is longer than other interrogations this Court has found custodial. *See Hewes* (45 minutes); *Hassan* (45 minutes).

Totality. Viewing the *Michaud* factors in their totality, Perkins was in custody. He was interrogated for 69 minutes in a small, windowless room at the police station. He was the sole focus of the investigation, and he knew it. Detective Hooper made deliberately deceptive statements about the law to elicit incriminating responses, and her assurances that she did not intend to arrest him are belied by her statements to [redacted]'s family one month earlier that she would "issue an arrest warrant" and send him "to jail." As the interrogation progressed, Perkins stated three times that he should speak to a lawyer, said he did not think he should say any more, and observed that Detective Hooper was "building a case against me." A reasonable person in his position would have believed he was, to a degree, constrained, as if by formal arrest.

D. The Trial Court should have reopened the Motion to Suppress hearing when additional evidence was found.

The Trial Court's denial of the motion to suppress is based, in part, on Detective Hooper's statements that she did not think she had probable cause to

arrest Perkins. App. 28. According to Perkins' Motion to Re-open the Suppression Hearing and Motion to Exclude Recording, App. 58-61, after the hearing, trial counsel found in their discovery a recording that directly contradicted this statement. App. 61. It is not clear from the Motion or the transcript of the pretrial hearing whether trial counsel was aware of the recording prior to the hearing, even though it had been in their possession, but the significance became apparent after the Court's order. App. 60. Detective Hooper's statements that she was going to arrest Perkins, *see* I(C) *supra*, directly undermine her credibility and the Trial Court's conclusions.

The motion to reopen was discussed at the pretrial hearing on June 23, 2025. App. 4-7. The Trial Court did not specifically deny the motion, but reiterated that whatever behavior Detective Hooper engaged in did not rise to the level of the behavior of officers in *State v. Dion*, 2007 ME 87, which this Court stated did not rise to the level of custody. ¶¶ 25-30. "But again, how is this any different from *Dion*? I mean, *Dion* was -- it was unbelievable, I though, what -- what happened in *Dion*, and our court had no problem with it." App. 39. The Trial Court ultimately characterized Perkins' motion as an "objection" and said, "I intend to overrule it." App. 40.

While the Trial Court did not engage in any of the proper analysis, in determining a motion to reopen, several factors should be weighed, including (1)

the potential prejudice to the opposing party, (2) the probative value of the proffered evidence, and (3) the moving party's excuse for the untimeliness of its offer. *See State v. Holland*, 2012 ME 2, ¶ 31, 34 A.3d 1130, 1137–38. The State did not state a position on the record, but it is unclear how it would have been prejudiced by the Trial Court's consideration of a few minutes of a recording it already possessed. Further, the Trial Court missed the point that this new evidence was not offered merely to illustrate police misconduct, but to impeach the credibility of the lone witness who testified at the motion to suppress, whose credibility the Trial Court relied on to reach its conclusions. It cannot be known how the Trial Court would have reacted to the evidence, but the recording directly addresses some of the Trial Court's doubts about Detective Hooper's statements about the lack of probable cause. *See* I(C) *supra*. While it would have been a better practice for Perkins to have offered the recording during the Motion to Suppress hearing, the failure to do so was easily correctable.

E. The Trial Court should have suppressed Perkins' unwarned statements.

Detective Hooper did not read Perkins his *Miranda* warnings because she wanted him to confess to the crimes she was investigating. The Trial Court pressed her on this point. *See* Tr.MTS 47-48. However, given her view of Perkins as someone she intended to arrest in the future, it was clearly an intentional tactic on her part. This cannot be the way law enforcement conducts its work.

> The application of the rule of *Miranda* is not a process to be *avoided* by law enforcement officers. Custody should not be a mystical concept to any law enforcement agency. We see no reason why doubts as to the presence or absence of custody should not be resolved in favor of providing criminal suspects with the simple expedient of *Miranda* warnings.... [T]he effectiveness of law enforcement is not undermined by informing suspects of their rights.

Holloway at ¶ 23 (emphasis in original) (*quoting United States v. Griffin,* 922 F.2d 1343, 1356 (8th Cir. 1990). "The constant reluctance of law enforcement to advise suspects of their rights is counterproductive to the fair administration of justice in a free society. Effective law enforcement is not frustrated when police inform suspects of their rights." *Griffin* at 1356.

Perkins' unwarranted statements must be suppressed.

III. Perkins' statements to Detective Hooper were involuntary.

The voluntariness inquiry provides an independent basis for suppression. Regardless of whether Perkins was in custody or clearly invoked his rights, his statements must be excluded if they were not made freely and knowingly. They were not. Detective Hooper deliberately deceived Perkins about the law, about the evidence against him, and about his need for counsel. These tactics ensured his statements were not voluntary.

A. Standard of review

The voluntariness of Perkins' statements to Hooper was not raised below. The Court reviews unpreserved errors for obvious error. *See. Ouellette* at ¶ 12 (*citing True* at ¶ 15 & n.6) and M.R.U.Crim. P. 52(b) (motion to suppress issue)).

B. The State has the burden of proving that statements were made voluntarily.

At a suppression hearing, "[t]he State has the burden of proving beyond a reasonable doubt that the . . .[defendant's] statements were voluntarily made." *State v. Lockhart*, 2003 ME 108, ¶ 30, 830 A.2d 433, 444 (Me. 2003)

"The Fifth Amendment to the United States Constitution provides that '[n]o person ... shall be compelled in any criminal case to be a witness against himself.' U.S. Const. amend. V. In the Maine Constitution, Article I, section 6 guarantees that '[t]he accused shall not be compelled to furnish or give evidence against himself or herself.' Me. Const. art. I, § 6." *State v. George*, 2012 ME 64, ¶ 14, 52 A.3d 903, 907. "The requirement that a statement be voluntary stems from the Fifth Amendment right against self-incrimination and the Fourteenth Amendment right to due process." *State v. Nightingale*, 2012 ME 132, ¶ 33, 58 A.3d 1057, 1068 (Me. 2012)(citation omitted).

The Maine Constitution affords greater protection than that provided under the U. S. Constitution to statements made by a defendant. Moreover, this Court has stated that

> [t]he constitutional privilege against self-incrimination ... reflects a high priority commitment to the principle that excluded as available to government is any person's testimonial self-condemnation of crime unless such person has acted 'voluntarily' i.e., unless he has 'waived' his constitutional privilege against self-incrimination *by choosing, freely and knowingly, to provide criminal self-condemnation by utterances from his own lips*."

State v. Rees, 2000 ME 55, ¶ 6, 748 A.2d 976, 978 (Me. 2000)(internal citations omitted)(emphasis in original). The test of voluntariness is one of whether "the confession is the product of an essentially free and unconstrained choice by its maker," and whether "his will has been overborne and his capacity for self-determination critically impaired so that the use of his confession offends due process." *State v. Caouette*, 446 A.2d 1120, 1123 (Me. 1982) (cleaned up).

"[T]he voluntariness requirement gives effect to three overlapping but conceptually distinct values: (1) it discourages objectionable police practices; (2) it protects the mental freedom of the individual; and (3) it preserves a quality of fundamental fairness in the criminal justice system." *State v. Mikulewicz*, 462 A.2d 497, 500 (Me.1983); *see also State v. Boobar*, 637 A.2d 1162, 1165 (Me. 1994) (citation omitted) (emphasis added) ("[i]n order to be voluntary, a statement must be the result of a defendant's exercise of his or her own *free will and rational intellect*.").

"Whether a confession is voluntary is primarily a question of fact." *State v. Nightingale*, 2012 ME 132, ¶ 32, 58 A.3d 1057, 1068. In making a voluntariness

determination, the court looks to the totality of the circumstances. *See State v. Boobar*, 637 A.2d 1162, 1165 (Me. 1994). More specifically,

> In making a determination on voluntariness, we consider the totality of the circumstances. Previously, we have applied the following factors to measure voluntariness: the details of the interrogation; duration of the interrogation; location of the interrogation; whether the interrogation was custodial; the recitation of *Miranda* warnings; the number of officers involved; the persistence of the officers; police trickery; threats, promises or inducements made to the defendant; and the defendant's age, physical and mental health, emotional stability, and conduct."

State v. Dodge, 2011 ME 47, ¶ 12, 17 A.3d 128 (citations omitted).

C. Perkins did not voluntarily make statements to law enforcement.

Perkins did not voluntarily make statements to Detective Hooper. It was an obvious error that the Trial Court should have addressed. Many of the factors laid out in *Dodge* have already been addressed in the context of custody. *See* II(C). Focusing on a few, however, illustrates the differences between the test for custody and voluntariness, and shows why Perkins did not make voluntary statements.

Recitation of *Miranda* warnings. No warnings were given in this case. It was an intentional strategy by Detective Hooper, who intended to eventually arrest Perkins, even if she would not do it that day. "[I]nforming (or not informing) defendants of their right against self-incrimination has always been considered an important factor under Maine law in assessing the voluntariness of their statements

or testimony. *State v. Athayde*, 2022 ME 41, ¶ 37, FN 7, 277 A.3d 387, 398 (*citing State v. Gilman*, 51 Me. 206, 225 (1862)).

Police trickery. In addition to failing to read the *Miranda* warnings, Detective Hooper misrepresented the age of consent law in Maine. App. 29. She made "misleading statements" about DNA evidence she did not have. Id. She even started to tell him that he did not need an attorney, though she caught herself before she finished the sentence. *See* I(C) *supra*. She lied to him for the purposes of getting him to make incriminating statements.

This Court has "recognized the practical necessity for the use of deception in criminal investigations." *State v. Bailey*, 2010 ME 15, ¶ 23, 989 A.2d 716. Such deception cannot police "mislead the individual during an interrogation as to that individual's constitutionally protected right against self-incrimination." *Dodge* at ¶¶ 14, 16 (addressing false police assurances of confidentiality); *see also State v. Lavoie*, 2010 ME 76, ¶ 26, 1 A.3d 408 (Levy, J., concurring) ("A deception that actually compromises a suspect's ability to make a free choice of a rational mind, is inherently coercive and fundamentally unfair." (cleaned up)). Misleading statements about legal rights can make statements involuntary. *See Dodge*, at ¶¶ 13–21; *State v. McConkie*, 2000 ME 158, ¶¶ 8–11, 755 A.2d 1075. "[A] confession is involuntary when it is made under circumstances that offend one of these fundamental values of social policy and constitutional law." *State v. Hunt*,

2016 ME 172, ¶ 20, 151 A.3d 911, 917 (*citing Lego v. Twomey*, 404 U.S. 477, 485, 92 S.Ct. 619, 30 L.Ed.2d 618 (1972) ("The use of coerced confessions, whether true or false, is forbidden because the method used to extract them offends constitutional principles.")

These actions, taken in their totality, rendered Perkins' statements involuntary. Detective Hooper intentionally withheld Miranda warnings from a suspect she intended to arrest. She misrepresented the law of consent to induce him to make incriminating statements. She falsely suggested she had DNA evidence. And when Perkins indicated he should get a lawyer, she deflected him from doing so. Under the *Dodge* factors, these circumstances "offend fundamental values of social policy and constitutional law." Hunt at ¶ 20.

The True test for obvious error asks whether the court "cannot in good conscience let the conviction stand." *Harper* at 469 (*citing State v. True*, 438 A.2d 460, 467–69 (Me. 1981)). Here, the error is plain: Detective Hooper's tactics were designed to extract statements from someone who had not freely and knowingly chosen to speak. The injustice is equally clear: the State used those statements to argue Perkins "put himself" in every scenario alleged by the complainants. Tr.D2 14, 21. This Court should not countenance such methods. Perkins' statements were involuntary and must be suppressed.

IV. The Trial Court's remedy for the State's discovery violation was woefully inadequate to promote fairness and justice.

The State violated its discovery obligations when it failed to turn over an exculpatory recording where P. denied there had been any abuse. The Trial Court's "remedy," to allow Perkins to play that recording at trial, was no remedy at all, because the defense would have been allowed to use the recording for impeachment. Therefore, it was inadequate to promote and protect the ideals of fairness and justice. The Trial Court should have either excluded P.'s testimony entirely or, at a minimum, excluded her second recorded interview from being offered as evidence.

A. Standard of Review

The Court reviews the sanctions imposed by a trial court to remedy a discovery or *Brady* violation for an abuse of discretion. *State v. Pelletier*, 2023 ME 74, ¶ 33, 306 A.3d 614, 624 (*citing State v. Reed-Hansen*, 2019 ME 58, ¶ 17, 207 A.3d 191. "A court may impose any of the sanctions listed in Rule 16(e), up to and including dismissal with prejudice, but the sanction "should be tailored to the individual circumstances of each case, with a focus on fairness and justice." *Pelletier* at 33 (*citing Reed-Hansen* at ¶ 10). This Court will "vacate a trial court's choice of sanction only if it fails to remedy the violation to such an extent that the defendant is deprived of a fair trial." *Pelletier* ¶ *33*

B. The Trial Court found a discovery violation.

Two CAC interviews were conducted of [redacted]. App. 31. In the first, she denied any abuse by Perkins. App. 54. In the second one, which was made on February 24, 2024, she alleged abuse, was made available in discovery. App.31-32. The video of the first one was not. App. 55. Discovery requests, which included a request for video evidence and any *Brady* materials, were sent to the State on July 11, 2025. App. 54

Perkins filed a Motion for Discovery Sanctions on June 17, 2025. App. 54-57. In it, Perkins asserted that he had not been provided with a video known to exist and to be in the State's possession. App. 55. Failure to produce the video was a violation of both the rules of discovery and the State's obligations under *Brady.*

The record suggests the State turn over the video on June 18, 2025, sixteen months after it was produced and six days before the first day of trial. App. 32.

The Trial Court agreed there was a violation. "The State has violated is discovery obligations under Rule 16 and is subject to sanctions." App. 32. While there was no evidence of bad faith on the part of the State, the Trial Court said the lack of bad faith "may be relevant in determining what sanction to be imposed." Id.

In trying to craft a remedy, the Trial Court noted that the defense may not even be able to use the first video if the State chooses to use the second. App. 32.

That's because the statute recently enacted to allow CAC interviews to be used in lieu of live testimony states,

> In the event that the protected person was the subject of more than one forensic interview, the exception to hearsay established under this subsection does not apply to statements from more than one forensic interview related to the same event or incident.

16 M.R.S.A. § 358(3). The Trial Court suggested the section "arguably would prohibit two recordings entered into evidence." App. 32. By allowing the second video, the Trial Court reasoned, Perkins will be able to avoid "the possible prohibition of admitting both videos" by the statute.

C. Excluding P. 's testimony or the CAC recording was the only relief meeting the interests of justice.

That the video should have been turned over is not in question. "The due process concepts articulated in *Brady* require the State to disclose to the defendant evidence that is favorable to the accused, either because it is exculpatory or because it is impeaching." *Reed-Hansen* at ¶ 13 (*quoting* *State v. Twardus*, 2013 ME 74, ¶ 32, 72 A.3d 523). "Rule 16(c), in contrast, requires the disclosure of items, including video recordings, that are 'material and relevant to the preparation of the defense.'" *Id. (quoting* M.R.U. Crim. P. 16(c)). The State is required to produce exculpatory evidence regardless of good or bad faith efforts. "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the

evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles v. Whitley*, 514 U.S. 419,434 (1995).

In *Reed-Hansen*, this Court upheld the trial court's sanction of dismissal for the State's failure to turn over a "dash-cam video of the defendant ostensibly committing the crime for which he was charged." ¶1. The Court found the dash-cam video relevant to the support for its determination that a serious sanction was warranted. The suppression of the evidence, while almost certainly fatal to the State's prosecution, fell well within the discretion of the court." ¶ 20.

The Trial Court's relief is founded in the idea that 16 M.R.S.A. § 358(3) would prevent the use of two videos, even when the two videos contradict each other, even when one of the videos is impeachment material for the other. There is nothing to suggest this is the case. When this Court recently determined the statute does not present a confrontation clause problem under either Maine or the U.S. Constitution, *see State v. Engroff,* 2025 ME 83, __ A.3d. __, it did not address this provision in the statute. The Trial Court, though, did not even consider that the

statute could be interpreted to prevent the State from offering the second video, if Perkins intended to offer the first.

This Court has said in cases of discovery violations, "[a]lthough the State's breach should not be held to the defendant's throat as a dagger, neither should it be used by him as a shield." *State v. Matatall*, 2018 ME 155, ¶ 8, 196 A.3d 1293, 1295. The Trial Court found the State violated its obligations, but the requirement that the remedy be tailored to the offense, *see Reed-Hansen* at ¶ 10, cuts both ways. It must be balanced, neither too harsh nor too lenient. The State kept a key piece of evidence, an alleged victim's statements that the crime did not happen, until less than a week before the trial. It is insufficient to give the defendant what amounts to no relief for such a serious violation.

The relief offered by the Trial Court was both dagger and shield. Excluding P.'s testimony, or at a minimum the CAC recording, was appropriately tailored to the offense and should have been granted.

CONCLUSION

This Court should vacate the conviction of Mr. Perkins and remand the case back to the Trial Court for proceedings consistent with this Court's mandate.

Dated: December 1, 2025 /s/ James Mason

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CERTIFICATE OF SERVICE

As required by the M.R.App.P. 7(c)(1), I sent a native PDF version of this brief to the Clerk of this Court and the parties' counsel at the email addresses provided with entry of appearance. I will, when directed by the Clerk of Court under M.R.App.P. 7(c)(3), deliver ten paper copies of this brief to this Court's Clerk's office via U.S. Mail, and send two copies to opposing counsel at the addresses provided by that same Directory.

CERTIFICATE OF COMPLIANCE

I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

Dated: December 1, 2025

/s/ James Mason
_____
James Mason, Bar # 4206