

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 REPLY BRIEF

James M. Mason
Maine Bar No. 4206

HANDELMAN & MASON LLC
Attorneys for Appellant
16 Union Street
Brunswick, ME 04011
(207) 721-9200

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REPLY ARGUMENT

I. **Detective Hooper’s deceptive techniques should have required the Suppression Court to grant the Motion to Suppress.**

The State’s opposition to reopening the suppression hearing and its defense of the custody determination share a common deficiency: both depend on accepting Detective Hooper’s testimony at face value. But the record contains evidence – evidence the Trial Court was never asked to consider – that directly contradicts Det. Hooper’s sworn statements about probable cause. One month before interviewing Perkins, she told an alleged victim’s family with absolute certainty that she would arrest him and send him to jail. At the suppression hearing, she testified that she lacked probable cause. The Trial Court relied on that testimony without knowing about Det. Hooper’s statements to that family. The Trial Court needed to have had the opportunity to do so, and mistakenly denied itself that opportunity when the motion to reopen was refused.

A. **The State misunderstands the concept of *res judicata*.**

The State argues that the request to reopen the motion to suppress hearing “days before trial begins goes against all notion [sic] of *res judicata*.” Red Br. 17. This is a complete misunderstanding of the doctrine. “The doctrine of *res judicata* prevents the relitigation of matters already decided: The law is plain that [parties] cannot again come forward in the same legal mission against the same parties to secure a remedy ... previously denied.” *Portland Water Dist. v. Town of Standish*,

2008 ME 23, ¶ 7, 940 A.2d 1097 (alterations in original). However, “claim preclusion bars the relitigation of a claim only if (1) the same parties or their privies are involved in both actions; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision in the second action were, or might have been, litigated in the first action.” *State v. Gagne*, 2019 ME 7, ¶ 13, 199 A.3d 1179, 1184 (*quoting Johnson v. Samson Constr. Corp.*, 1997 ME 220, ¶ 6, 704 A.2d 866). There is neither a “prior” action nor a “final judgment” here. Orders denying motions for suppression of evidence, like other motions made in advance of trial, are not final judgments. *See Di Bella v. United States*, 369 U.S. 121, 131, 82 S.Ct. 654, 7 L.Ed.2d 614 (1962) (“Orders granting or denying suppression in the wake of such proceedings are truly interlocutory, for the criminal trial is then fairly in train.”)¹

Further, the matter at issue – whether or not the trial court should *reopen* the motion to suppress hearing – was not litigated previously. The analysis for that

¹ Perhaps the State meant to argue collateral estoppel. The Court *has* barred motions to suppress when, “[i]n a separate proceeding between the same parties, collateral estoppel bars relitigation of issues that were actually litigated in the first proceeding.” *State v. Moulton*, 481 A.2d 155, 161–62 (Me.1984) (original order on suppression motion was not invalidated by re-indictment on more serious charges since defendant had “every incentive to litigate” at the first hearing “fully and vigorously”) (*quoting* Restatement (Second) of Judgments § 27 (1982)); *see also State v. Hider*, 1998 ME 203, 715 A.2d 942. This argument might have more merit if Perkins had filed a new motion to suppress. Instead, it was a motion to reopen the previous hearing to present evidence the Trial Court did not hear the first time around relevant to the credibility of the State’s only witness.

question requires the Trial Court to weigh a number of factors, 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. As was addressed in the blue brief, the trial court did not engage in that analysis, but simply denied the motion. Blue Br. 34-36.

Further, the State waves its hand at the mere idea of reopening the evidence of the motion to suppress as “nonsensical.” Red. Br. 17. The “purported evidence,” they argue, “is the *same* as what was testified to at the motion hearing” and is “in *no way* contradictory to what she told **B.** previously.” Red Br. 16-17 (emphasis in original). It is a bold position to take, given how Hooper acted to deceive Perkins into making statements. Even bolder, when considering the critical nature of the credibility of Det. Hooper in the Trial Court's determination that Perkins was not in custody. This evidence, which was not given to the Trial Court at the suppression hearing, would have had a direct bearing on Det. Hooper's credibility. The evidence the Trial Court refused to consider goes directly to the heart of its custody determination.

B. Det. Hooper's statements to the alleged victim and her family undermine those she made under oath in the suppression hearing.

Det. Hooper did not tell **B.** and her family that “we have to wait until the end of the investigation” or “the decision whether to arrest Perkins has to be made

by the District Attorney.” No, she said, “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.” App. 60. A month before interviewing Perkins, she spoke with absolute certainty. Under questioning from the Court at the suppression hearing, however, she did not display such certainty.

Det. Hooper repeatedly testified she did not have probable cause to arrest Mr. Perkins at the time of her interview. When asked by the State on direct examination whether she had probable cause to arrest Mr. Perkins when she spoke to him, Det. Hooper answered:

For my criminal investigation? No, because there were so many moving parts. We had the CACs done, but I had several more people to interview. I truly needed to do justice for both sides, which is his side and their side. So my investigation was over a long period of time.

Transcript of Motion to Suppress Hearing, May 29, 2025 (“M.Tr.”) at 12. She was asked again a few minutes later on cross, “At the time that you spoke to him, you had no probable cause to arrest him?” Id. at 27. Det. Hooper said

My case was not completed. For me, the probable cause that I needed would be at the end of this investigation, because there were several more people to interview. And they could have been credible witnesses, or they could have benefited the defense, either/or. Three more people needed to be interviewed because they were present during the reported allegations -- or in the room.

Id. at 27-28. She was pressed on probable cause, and again she responded the same. Id. at 34.

Telling a victim's family that the suspect is going to jail and discussing the logistics of his incarceration is not the language of an officer who believes she lacks probable cause. The State's attempt to reframe it as "articulating that the investigation must be complete prior to requesting an arrest warrant," Red Br. 16, strips the statement to the family of its plain meaning.

C. Det. Hooper's credibility is central to the custody determination, not peripheral to it.

Police deception is central to the custody determination. The Trial Court found that "Hooper did not believe she had probable cause to arrest" was a key factor – arguably the key factor – in the custody determination. App. 28. If Det. Hooper's credibility on this point is undermined, the analysis under *State v. Michaud*, 1998 ME 251, 724 A.2d 1222, shifts materially. Her repeated assurances to Perkins that he would not be arrested were affirmatively deceptive rather than reassuring. The State cannot simultaneously argue these statements are "consistent" and defend the Trial Court's reliance on Det. Hooper's claim of no probable cause. It cannot ask this Court to selectively agree with only the Trial Court's conclusions that support the State's arguments.

The State argues this case is more like *State v. Poblete*, 2010 ME 37, 993 A.2d 1104, and is distinguishable from *State v. Hassan*, 2007 ME 77, 925 A.2d 625. But the State overlooks Det. Hooper's behavior when dismissing the comparison to *Hassan*, specifically, the deliberate deception to get Perkins to

incriminate himself. In *Poblete*, the detective did not make misleading statements about the law or lie about the intent to arrest. The State argues the interview had “no threats or trickery,” even attempting to point to the conversational tone of the interrogation. Red Br. 20. This, unfortunately, ignores the Trial Court's conclusions finding Det. Hooper made “several misleading statements about the law and about the evidence.” App. 28. The Trial Court made this assessment even before hearing about Det. Hooper’s interview with **B.** and her family. In this regard, this case is more like *State v. King* 2016 ME 54, ¶ 20, 136 A.3d 366 (“aggressive interrogation, replete with accusations and deceptive suggestions designed to elicit an incriminating response,”) and *State v. Bridges*, 2003 ME 103, ¶ 29, 829 A.2d 247 (“false or misleading statements about evidence they purportedly uncovered”), both cases where suppression was upheld.

Viewing the *Michaud* factors through the lens of Det. Hooper’s actual conduct, not merely her suppression hearing testimony, the conclusion is clear: Perkins was in custody. He was interrogated for 69 minutes in a windowless room at the police station by a detective who had already decided to arrest him, who misrepresented the law to elicit incriminating statements, who fabricated the existence of DNA evidence, and who deflected his repeated attempts to invoke the right to counsel. That the interview was conversational in tone does not make it

any less coercive in substance. The Trial Court's contrary finding rests on a credibility determination it was never given the full record to make.

D. Det. Hooper's deceptions rendered Mr. Perkins' statements involuntary.

The State's voluntariness argument fails due to the same overconfidence in the strength of Det. Hooper's testimony. The State once again argues there were "no police trickery, threats, or promises during the interview," Red Br. 20, despite the Suppression Court's findings to the contrary. App. 28. The deception by Det. Hooper, throughout the conversation, created an atmosphere in which Mr. Perkins's words would be used against him.

This Court has recognized that deceptive police tactics can work against the interests of justice. *See State v. Williams*, 2020 ME 128, ¶ 42, 241 A.3d 835 (identifying the values of discouraging objectionable police practices, protecting the mental freedom of the individual, and preserving a quality of fundamental fairness in the criminal justice system). The voluntariness test used by this Court provides a litany of factors designed to protect constitutional principles. *See State v. Athayde*, 2022 ME 41, ¶ 30, 277 A.3d 387. While no single factor of this Court's voluntariness test is dispositive, the State's characterizations of those factors related to Det. Hooper's actions show how it failed to prove beyond a reasonable doubt that Mr. Perkins' statements were voluntary.

The State is unwilling to even engage with the idea that Det. Hooper was anything other than an ideal investigator. Left unacknowledged in the State's brief is the fact that Det. Hooper went into the interview intending to arrest Mr. Perkins, even if she would not do it that day. Nor did the State try to explain Det. Hooper's misstatements of the law about the age of consent, which were made in hopes of eliciting a response from Mr. Perkins, or her references to Perkins about DNA evidence she did not have. *See State v. Hunt*, 2016 ME 172, 151 A.3d 911 (officers told a defendant that if he confessed to them that day, he would not be put on the sex offender's registry); *see also State v. Dodge*, 2011 ME 47, ¶ 14-16, 17 A.3d 128. Finally, it did not even acknowledge in its voluntariness argument that Det. Hooper intentionally chose not to give the *Miranda* warnings at the start of the interview. *See Athayde* at FN 7 (“[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.”); *Dodge* at ¶ 18, FN 8 (“[W]hen the police delay giving a *Miranda* warning until after confession in a strategic effort to coerce the confession, the police misconduct may sufficiently taint all of the individual's statements, notwithstanding later warnings, and suppression is required.”).

Even under the obvious error standard of review, the Suppression Court's failure to find the State had failed to prove voluntariness beyond a reasonable

doubt was plain, and this Court “cannot in good conscience let the conviction stand.” *State v. Harper*, 613 A.2d 945, 954 (Me. 1992).

II. Mr. Perkins invoked the right to counsel, and Det. Hooper was required to stop questioning.

The moment Mr. Perkins invoked the right to counsel, Det. Hooper should have stopped questioning until she clarified that he was giving up that right. She did not, and all of his subsequent statements should have been suppressed.

A. If Mr. Perkins were in custody, *McLain* would apply directly.

Under *State v. McLain*, “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.” 2025 ME 87, ¶ 62, 345 A.3d 141.

The State notes that Perkins’ first reference to a lawyer came 45 minutes into the interview, as though timing diminishes the invocation. Red. Br. 22. *McLain* draws no such distinction. A suspect does not forfeit the right to counsel by initially cooperating. The invocation of counsel does not, by itself, retroactively render prior statements inadmissible, but those prior statements have no effect on what happens after the invocation. Additionally, the State characterizes Mr. Perkins’ statements as “ambiguous,” Red Br. 23, but never explains how “I should probably

do what my mother said and lawyer up” combined with “I don't think I need to say anymore” is more ambiguous than “It depends” and “Is there a lawyer here?”.

McLain at ¶ 66. Under *McLain*, even ambiguous invocations require the officer to stop and clarify. Hooper did the opposite.

B. *McLain's* protections, however, are not limited to custodial interrogation.

The State reads *McLain* as applying only to custodial interrogations and argues that because Perkins was not in custody, his three invocations of the right to counsel are irrelevant. Red Br. 20-24. This misreads the decision and ignores the independent force of article I, section 6 of Maine's Constitution.

The cases cited by the State are all rooted in federal law. Red. Br. 22-23. *See State v. Ormsby*, 2013 ME 88, 81 A.3d 336; *United States v. Ellison*, 632 F.3d 727 (1st Cir. 2010); *State v. Nightingale*, 2012 ME 132, 58 A.3d 1057. The State never engages with the argument that *McLain's* reasoning – rooted in Maine's distinct constitutional history – supports protections beyond the federal floor regardless of custody status. *McLain's* holding rests on Maine-specific foundations: the longstanding commitment to voluntariness predating *Miranda*; sociological research showing intimidated individuals use hedged language even when asserting rights; the concern that continued questioning makes suspects view objection as futile; and the need to protect vulnerable populations. ¶¶ 41-49, 55, 59-61.

These concerns are not custody-dependent. They are present whenever law enforcement questions a suspect in an inherently coercive environment; here, a windowless room at the police station, for 69 minutes, as the sole suspect in a child sex abuse case. The State's position creates an absurd incentive: if officers can deliberately structure an interrogation to avoid triggering "custody" while conducting aggressive questioning, a suspect's invocations of the right to counsel can be ignored entirely. Here, Det. Hooper deliberately chose not to give *Miranda* warnings, structured the encounter to avoid the appearance of custody, and then used the absence of custody to justify ignoring his invocation.

Finally, as anticipated in the Blue Br. 24-25, the State argues the issue was not preserved. Red Br. 21. But the trial court specifically addressed the invocation in its written order, App. 26, 28 and distinguished *State v. Holloway*, 2000 ME 172, 760 A.2d 223 on this basis. A trial court does not discuss and decide an issue it was not "alerted" to. *See State v. Jandreau*, 2022 ME 59, ¶ 22, 288 A.3d 371. Even under obvious error review, the result is the same: Det. Hooper's deliberate deflection of three invocations of the right to counsel, followed by the State's use of post-invocation statements at trial, satisfies all four prongs of the obvious error test.

III. The Trial Court did not actually impose a sanction, even though it intended to.

While it is good that the State admits it violated the discovery rules by failing to provide the first CAC interview of P.E., Red Br. 24, it cannot bring itself to acknowledge that it also committed a *Brady* violation by failing to provide clearly exculpatory material. Nonetheless, it follows the concession by essentially asserting the defense is partially to blame because it should have filed its motion for sanctions earlier. Happily, it is all water under the bridge, the State suggests, because the Defense got a remedy for the violation.

An empty gesture is still an empty gesture. The State says the sanction was an appropriate one because the defense got a benefit it would not have otherwise – the ability to play the first CAC recording after the second one had been played by the State. Red. Br. 26. This was the same logic of the Trial Court as well. App. 33. Both the State and the Trial Court are relying on a dubious interpretation of 16 M.R.S. § 358(3).

The State was able to play the second CAC interview in the manner it did because the 16 M.R.S. § 358(3) carves out a hearsay exception to Rule 802 of the Maine Rules of Evidence, specifically:

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.

However, as is clear from both the language of the section and its legislative history, the legislature intended to allow any other recording to be used if admissible under *other* methods permitted by the Maine Rules of Evidence. First, the rule itself specifically states it “establishes an exception to the hearsay rule.” *Id.* Further, in the majority report of the Judiciary Committee Amendments, the “Summary” section noted that “The amendment also clarifies that all of the other Maine Rules of Evidence apply to the admissibility of the recording.” Comm. Amend. “A” to S.P. 324, L.D. 765 (131st Legis. 2023 – First Special Session).

Nothing in this language suggests that the recordings are not permitted to be offered if they fall under another rule of the evidence rules, such as for impeachment under Rule 801(d) as a prior inconsistent statement. P.E.’s first CAC interview directly contradicts her second. This statute does not authorize the State to dictate which pieces of evidence are admitted solely because they go first at trial. Nor does it allow the State to immunize an alleged victim from impeachment by choosing which recording to play.

The Court’s discovery sanction was, in essence, no sanction at all. The Trial Court noted it had the “broad discretion to impose various sanctions, **including no sanction at all.**” App. 32 (emphasis in original). This is not in dispute. However, it intended to impose a sanction, when in fact it did not. A sanction must be “tailored to the individual circumstances of each case, with a focus on fairness and

justice.” *State v. Reed-Hansen*, 2019 ME 58, ¶ 10, 207 A.3d 191. The State withheld a recording in which the primary complainant denied any abuse for sixteen months, and the Trial Court’s chosen remedy gave Mr. Perkins nothing more than what the rules of evidence already entitled him to use. When a court intends to sanction but selects a remedy that has no practical effect, the discretion has not been exercised; it has misfired. Exclusion of P.E.’s testimony, or at a minimum, the second CAC recording, would have been proportionate to the violation. The Trial Court’s order was not.

CONCLUSION

For the reasons set forth in the Appellant’s Brief and this Reply, the conviction of Mr. Perkins should be vacated. The Trial Court’s suppression ruling rests on a record that was incomplete in a material respect: Detective Hooper’s credibility on the central question of probable cause was never tested against her own prior statements. That deficiency infected the custody determination, the voluntariness analysis, and the treatment of Mr. Perkins’ repeated invocations of the right to counsel. The Trial Court’s discovery sanction compounded the problem by offering no meaningful remedy for the State’s sixteen-month withholding of an exculpatory recording. This Court should vacate and remand for proceedings consistent with its mandate.

Dated: February 24, 2026 /s/ James Mason

James Mason, Bar #4206
Attorney for Appellant
16 Union Street
Brunswick, ME 04011
(207) 721-9200
james@handelmanmason.com

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: February 24, 2026

/s/ James Mason

James Mason, Bar # 4206