

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket Number. SOM-25-395

STATE OF MAINE v. DOUGLAS PERKINS

On Appeal from a criminal conviction entered by the Unified Criminal Court
sitting in Somerset County.

Brief for Appellee – State of Maine

Maeghan Maloney
District Attorney
Bar Number: 8792
Prosecutorial District IV

Amanda Seekins
Assistant District Attorney
Bar Number: 6102

Attorneys for the State
Office of the District Attorney
41 Court St.
Skowhegan, ME 04976

TABLE OF CONTENTS

Table of Cases and Other Authorities. 3

Procedural History. 5

Statement of Facts. 7

Issues Presented for Review. 11

Argument. 12

Conclusion. 26

Certificate of Service 28

TABLE OF CASES AND OTHER AUTHORITIES

Maine Case Law

<i>State v. McLain</i> , 2025 ME 87, ¶ 62, 345 A.3d 141.	20
<i>State v. Jandreau</i> , 2022 ME 59, ¶ 22, 288 A.3d 371.	21
<i>State v. Matatall</i> , 2018 ME 155, ¶ 7, 196 A.3d 1293.	25
<i>State v. Perry</i> , 2017 ME 74, ¶ 15, 159 A.3d 840.	12
<i>State v. King</i> , 2016 ME 54, ¶ 16, 136 A.3d 366.	12
<i>State v. Poulin</i> , 2016 ME 110, ¶ 28, 144 A.3d 574.	24
<i>State v. Cote</i> , 2015 ME 78, ¶ 9, 118 A.3d 805.	22
<i>State v. Bryant</i> , 2014 ME 94, ¶ 15, 97 A.3d 595.	15
<i>State v. Cruthirds</i> , 2014 ME 86, ¶ 37, 96 A.3d 80.	25
<i>State v. Ormsby</i> , 2013 ME 88, ¶ 11, 81 A.3d 336.	22
<i>State v. Dolloff</i> , 2012 ME 130, ¶ 35, 58 A.3d 1032.	18
<i>In re A.M.</i> , 2012 ME 118, ¶ 14, 55 A.3d 463.	25
<i>State v. Nightingale</i> , 2012 ME 132, ¶ 33, 58 A.3d 1057.	18
<i>State v. Pabon</i> , 2011 ME 100, ¶ 29, 28 A.3d 1147.	18
<i>State v. Poblete</i> , 2010 ME 37, ¶ 23, 993 A.2d 1104.	15
<i>State v. Dion</i> , 2007 ME 87, ¶ 22, 928 A.2d 746.	12
<i>State v. Hassan</i> , 2007 ME 77, ¶ 13, 925 A.2d 625.	12
<i>State v. Michaud</i> , 1998 ME 251, ¶ 4, 724 A.2d 1222.	14

State v. Sargent, 656 A.2d 1196, 1199 (Me. 1995).24

State v. Leavitt, 625 A.2d 302, 305 (Me. 1993). 25

State v. Lavoie, 562 A.2d 146, 150 (Me. 1989). 23

State v. Landry, 459 A.2d 175, 177 (Me. 1983). 25

Other Case Law

United States v. Ellison, 632 F.3d 727, 731 (1st Cir. 2010). 22

Statutes

17-A M.R.S. § 254(1) 5

PROCEDURAL HISTORY

On June 26, 2024, the State filed a complaint against Gregory Perkins (hereinafter “Perkins”) alleging five counts of Sexual Abuse of a Minor (Class C) 17-A M.R.S. § 254(1). (A. 3.) On August 15, 2024, the Somerset County Grand Jury returned an indictment with identical counts as the complaint. (A. 44-45.) Counts one through four alleged a minor with the initials **P.** as the named victim and count five alleged a minor with the initials **B.** as the named victim. *Id.*

On August 28, 2024, Perkins entered pleas of not guilty to all charges and the parties proceeded to engage in plea negotiations and pre-trial litigation. (A. 5-7.). While both the State and Perkins filed multiple pre-trial motions, there are only two motions and decisions that are at issue in this appeal. First, on April 2, 2025, Perkins filed a motion to suppress all statements that were obtained during his interview with law enforcement. (A. 46-51.) A hearing was subsequently held on this motion on May 29, 2025, and the motion was denied by written order of the court (*Mullen, C.J.*) on June 2, 2025. (A. 7, A 24-30.) On June 22, 2025, Perkins filed a motion to re-open or reconsider the motion to suppress based on newly discovered evidence. (A. 58-61.) This motion was likewise denied orally by the court prior to the start of trial. (A. 38-43.) The second motion at issue in this appeal was filed by Perkins on June 17, 2025 -- prior to the start of trial -- requesting discovery sanctions for failure to provide one of two CAC interviews of **P.** (A.

54-57.) The motion was denied by the court in a written decision on June 19, 2025.

(A. 31-33.)

Starting on June 24, 2025, a two-day jury trial occurred. (A. 10.) On June 25, 2025, the jury returned guilty verdicts on all counts. *Id.* A sentencing hearing was held on August 7, 2025, and Perkins was sentenced as follows:

- Count 1 – Sexual Abuse of a Minor against **P.** – Four years to the Department of Corrections. (A. 11.)
- Count 2 – Sexual Abuse of a Minor against **P.** – Three years to the Department of Corrections, consecutive to count 1. (A. 12.)
- Count 3 – Sexual Abuse of a Minor against **P.** – Three years to the Department of Corrections, all suspended, with a four year period of probation to follow; consecutive to count 2. (A. 12.)
- Count 4 – Sexual Abuse of a Minor against **P.** - Three years to the Department of Corrections, all suspended, with a four year period of probation to follow; consecutive to count 3. (A. 13.)
- Count 5 – Sexual Abuse of a Minor against **B.** - Three years to the Department of Corrections, all suspended, with a four year period of probation to follow; consecutive to count 4. (A. 14.)

Perkins timely filed this appeal.

STATEMENT OF FACTS

P. was fourteen years old when her older sister's thirty-year-old boyfriend engaged in sexual intercourse with her for the first time. (Tr. I¹ p. 62; State's Ex. 1.) Perkins first met **P.** when she was eleven years old, when Perkins first started dating **P.**'s older sister **H.**. (State's Ex. 1.) When **P.** first started spending time with Perkins, it was at the residence he shared with **H.**. (*Id.*) Often, **P.**'s other sister **A.** would be at the residence as well. (*Id.*) Although **P.**'s relationship with Perkins started out rough, she grew closer to him throughout the years. (Tr. I. 62.) Perkins and **H.** eventually had a daughter, **[REDACTED]**, when **P.** was 14 years old. (State's Exhibit 1; Tr. I. 63)

When **[REDACTED]** was three months old during the summer of 2023, shortly before **P.** started school, she found herself alone with Perkins in the bedroom of his residence. (State's Ex. 1.) Perkins started to touch and then kiss **P.**'s stomach. **P.** told him not to do that, and Perkins responded by telling her to try to focus on finding a movie to watch while he does things to her. (*Id.*) Perkins then started touching **P.**'s vagina before performing oral sex on her. (*Id.*) **P.** had her eyes closed and was hiding under a pillow during this time. (*Id.*) This made **P.** feel like she wanted to vomit and made her feel like a horrible and bad person. (*Id.*) After

¹ The jury trial transcripts are identified in this brief as follows:
6/24/25 - the first day of the trial – Tr. I
6/25/25 – the second day of the trial – Tr. II

Perkins was finished, he told **P.** not to tell anyone and then started crying. (*Id.*) **P.** felt so bad about what happened, she started comforting Perkins, telling him that it was okay and she would not tell anyone. (*Id.*) Over the next nine months, Perkins continued to engage in sexual intercourse with **P.** around ten times. (*Id.*) **P.** simply gave up and would let him do what he wanted to her because it was obvious that he would not listen to her. (*Id.*) These sexual interactions would take place in the car, in **P.**'s bedroom, in the bedroom Perkins shared with **H.**, and in **H.**'s car. (Tr. I. 76.) **P.**'s sister, **A.** would regularly see **P.** and Perkins flirting and going into **P.**'s room alone together with the door shut. (Tr. I. 122.)

In January of 2024, **H.** told **P.** that she was pregnant with Perkins' second child. (Tr. I. 63.) **P.** was in her room with one of her friends, **B.** (*Id.* at 64.) Perkins was present for this announcement. (*Id.*) After **H.** made the pregnancy announcement she went back into the living room with the rest of the family while Perkins stayed in the bedroom with **P.** and **B.** (*Id.* at 66). Once **H.** left the room, Perkins shut the door, came and sat on the bed with **P.** and **B.** started flirting with them and began touching their thighs. (*Id.* at 67.) Perkins then started kissing **B.** and put his hand down her pants. (*Id.* at 68.) **P.** then left the room. *Id.* When **P.** left, **B.** and Perkins were alone in the bedroom. (*Id.* at

103.) Perkins then engaged in sexual intercourse with **B.** (*Id.*) **B.** was also fourteen years old at this time. (*Id.* at 96.)

The illegal relationship between Perkins and **P.** continued until around February 2024. (Tr. I. 72-72; State’s Ex. 1). During that time, **P.** was at the trailer with Perkins and **A.** (Tr. I. 72-72.) **H.** was out of the residence at the laundromat with her infant child. (*Id.*) **P.** Perkins, and **A.** started watching a movie together in the living room. (*Id.*) At some point, **A.** fell asleep during the movie and Perkins had **P.** go with him into the master bedroom. (*Id.* at 74.) Perkins repeatedly asked **P.** to engage in sexual intercourse with him and she repeatedly told him no. (*Id.*) **P.** did however, start to perform oral sex on Perkins. (*Id.*) While **P.** was performing oral sex on Perkins, **A.** walked in the bedroom. (*Id.*) Justifiably, **A.** started “freaking out” when she saw her fourteen-year-old sister performing oral sex on thirty-year-old Perkins. (*Id.*) **A.** went into the living room, with Perkins and **P.** following her out. (*Id.* at 75.) Perkins attempted to calm **A.** down, claiming this was the first time anything had happened between him and **P.** and that it would never happen again. (*Id.*)

In late February 2024, **B.** reported to her Aunt what Perkins had done to her and **P.** (Tr. II. 10). This was subsequently reported to both the Department of Health and Human Services and Skowhegan Police Department. (*Id.*) Detective

Sergeant Kelly Hooper was assigned to investigate the allegations. (*Id.*) This investigation included attending Child Advocacy Center interviews for the children involved, interviewing adult witnesses, and eventually interviewing Perkins on March 27, 2004. (*Id. at 12-14; A. 24.*) At the time that Detective Sergeant Hooper interviewed Perkins, he was already aware of the investigations and allegations against him. (*Id.*) The interview with Perkins was audio recorded and admitted as State's Exhibit 7 during the trial. (*Id. at 15.*) During this interview Perkins made admissions to **P.** performing oral sex on him, and inculpatory statements surrounding his interactions with **P.** and **B.** (State's Ex. 7.) An arrest warrant was issued for the Defendant on June 26, 2024. (A. 3.)

ISSUES PRESENTED FOR REVIEW

- I. Whether the motion court committed reversible error in denying Perkins' motion to suppress his interview with Detective Sergeant Hooper.
 - a. Whether Perkins was subjected to a custodial interrogation without being advised of his *Miranda* rights.
 - b. Whether Perkins' statements to Detective Sergeant Hooper were involuntary.
 - c. Whether the non-custodial interview with Perkins was required to end because Perkins' made unclear statements regarding an attorney.

- II. Whether the trial court abused its discretion when imposing the sanction for the discovery violation.

ARGUMENT

I. The motion court did not err in denying Perkins' motion to suppress his interview with Detective Sergeant Hooper because it was a non-custodial voluntary interview where he did not invoke his right to an attorney.

- a. The motion court correctly determined that Perkins was not in custody at the time of his interview with Detective Sergeant Hooper.

The motion court properly denied Perkins' motion to suppress his recorded statements to Detective Sergeant Hooper. (A. 30.) Determinations of whether a person is in custody for *Miranda* purposes is a mixed question of law and fact. *State v. Dion*, 2007 ME 87, ¶ 22, 928 A.2d 746. As such, this Court is to review the motion court's factual findings for clear error and the legal determinations de novo. *State v. Cote*, 2015 ME 78, ¶ 9, 118 A.3d 805. The State may not offer a defendant's statements in its case-in-chief if those statements are obtained in violation of that person's *Miranda* rights. *State v. Perry*, 2017 ME 74, ¶ 15, 159 A.3d 840; *see also State v. King*, 2016 ME 54, ¶ 16, 136 A.3d 366. A *Miranda* violation occurs when a person is subjected to an in-custody interrogation and has not been advised of their constitutional rights as required. *Perry*, 2017 ME 74, ¶ 15, 159 A.3d 840.

"In order for statements made prior to a *Miranda* warning to be admissible, 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. Hassan*, 2007 ME 77, ¶ 13, 925 A.2d 625. The State does not dispute that Perkins

was subject to an interrogation, so the only concern for this Court is whether he was in custody at the time of the interrogation. To determine whether a person is in custody for *Miranda* purposes,, this Court has held:

To determine if a person was "in custody" for *Miranda* purposes, a court must 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 formal arrest." *State v. Holloway*, 2000 ME 172, ¶ 14, 760 A.2d 223 (quotation marks omitted). In conducting this analysis, a court may consider a number of factors, including

- (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.

State v. Perry, 2017 ME 74, ¶ 15, 159 A.3d 840 (citing *State v. Michaud*, 1998 ME 251, ¶ 4, 724 A.2d 1222).

Here, the motion court appropriately applied to *Michaud* factors and specifically reviewed each of them, finding the following:

The following facts are significant to the Court’s analysis in light of the *Michaud* factors: (1) the interview took place at the police station in a small, windowless room with a closed but unlocked door; (2) Hooper initiated contact with the Defendant; (3) Hooper did not believe she had probable cause to arrest the Defendant and communicated more than once that she did not intend to arrest him that day; (4) Hooper made it clear to the Defendant that the Defendant was the only suspect, and Defendant communicated that he was aware of the allegations against him; (5) Hooper made several misleading statements about the law and about the evidence she had against Defendant; (6) Defendant never expressed or indicated that he did not feel free to leave or refuse to answer questions; (7) only Hooper was present for the duration of the interview; (8) the interview lasted roughly one hour and six minutes; (9) Defendant was not physically restrained or blocked from exiting the interview room or the police station, but, as noted above, the interview took place in a small windowless room with the single door closed; (10) the interview remained fairly conversational and relatively calm throughout, although Hooper repeatedly asked for “honesty”; (11) Defendant transported himself to the police station.

(A. 28.)

Comparing the facts in this case to other cases decided by this Court, it is clear the Appellant was not in custody at the time of his interview. For example, in *Poblete*, this Court found the defendant was not considered to be in custody based

on the following: Poblete was not transported to the police station by law enforcement, the interview carried a causal and calm tone, and the detective told Poblete that he could end the interview at any time. *State v. Poblete*, 2010 ME 37, ¶ 23, 993 A.2d 1104. These factors specifically distinguished the case from previous findings in *State v. Hassan*, which both Perkins here, and the defense in Poblete, relied upon. 2007 ME 77, 925 A.2d 625. In *Hassan*, this Court held that the individual in custody because he had been transported to the police station in the back of a cruiser and was interviewed in a small windowless room by three detectives. *Id.* ¶ 19. Furthermore, this Court focused on the fact that *Hassan* displayed his thought that he was not free to leave and there were no remedial measures taken by law enforcement to inform him of the contrary. *Id.*

Given this Court's precedent, it is clear that Perkins was not in custody at the time of his interview with Detective Hooper. Clearly, the facts here are distinguishable from *Hassan*, given that Perkins transported himself to the station, was interviewed by one detective, and was told repeatedly that he was free to leave and not under arrest. (A. 24-30; *See also* State's Ex. 7.)

Further, and similarly to *Poblete*, Perkins drove himself to the police department, the interview with Perkins carried a causal and non-confrontation tone – to the point that both Perkins and Detective Sergeant Hooper were laughing throughout the interview – and Perkins was told at the start of the interview that he

was not under arrest and was free to leave at any time. (A. 25; *see also* State Ex. 7.) The motion court correctly concluded that a person in Perkins' position would have felt free to terminate the interview, and that Perkins' was not in custody for *Miranda* purposes. (A. 30.)

Furthermore, while Perkins argues the motion court should have reopened the motion to suppress on the eve of trial, it was not appropriate to do so. The "new evidence" that Perkins found days before the trial was set to start – and *months* after the motion to suppress was filed – was not new evidence at all. (Blue Br. 35.) In fact, this statement by Detective Sergeant Hooper had been contained in the discovery for the entirety of the case. (*Id.*) The statement that Detective Sergeant Hooper made during the motion hearing was essentially that she did not arrest Perkins following the interview because her investigation was not yet complete. (Mot. Tr. 45 (May 29, 2024).) She did not say that there was no probable cause developed, but rather she felt she "didn't have enough probable cause until this case completed – this investigation was completed and presented to the DA. There were still more witnesses to interview." (*Id.*) This is in *no way* contradictory to what she told **B.** previously – "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." (A. 60.) In fact, it is actually consistent, as she is articulating that the investigation must be complete prior to requesting an arrest warrant.

The idea that the motion court should reopen evidence on a decided motion, on the eve of trial, when no new evidence has been provided to Perkins, rather the purported evidence is the *same* as what was testified to at the motion hearing, is nonsensical. While Perkins suggests that it would have been better practice to admit the statement during the motion hearing, however, it was easily correctable to *reopen evidence* to a motion hearing days before trial begins goes against all notion of *res judicata*. If the trial and motions courts were to routinely allow litigants to reopen decided motion hearings because one side came up with new arguments, the court system would cease to effectively function. There was no new evidence turned over to Perkins in this case, there was not even new evidence discovered, rather, there was simply a different argument that *could've* been made previously. The motion court appropriately denied Perkins' motion to suppress on the basis that he was not in custody, and then appropriately denied the motion to reopen the motion to suppress on the eve of trial.

- b. Perkins' statements made during Detective Seargent Hooper's interview were voluntary.

Perkins further argues this Court should reverse because his statements admitted at trial were involuntary. With that, Perkins acknowledges he did not preserve any challenge regarding the admissibility of his statements based on voluntariness. (Blue Br. 38.) Challenges to a trial court's ruling that was not preserved by a defendant are reviewed by this Court under an obvious error standard.

State v. Dolloff, 2012 ME 130, ¶ 35, 58 A.3d 1032. To establish obvious error, a defendant has the burden to show there is “(1) an error, (2) that is plain, and (3) that affects substantial rights.” *State v. Pabon*, 2011 ME 100, ¶ 29, 28 A.3d 1147. However, even if those three factors are met, this Court will only reverse if it finds that “the error seriously affects the fairness and integrity or public reputation of judicial proceedings.” *Id.*

The State may not offer a defendant’s statements in their case-in-chief if those statements are involuntary. In order for a confession to be voluntary, it must be made by the “free choice of a rational mind.” *State v. Nightingale*, 2012 ME 132, ¶ 33, 58 A.3d 1057. “The State bears the burden of proving voluntariness beyond a reasonable doubt.” *State v. Bryant*, 2014 ME 94, ¶ 15, 97 A.3d 595. To determine the voluntariness of a statement, this Court has stated the following factors must be considered:

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.

Id. ¶ 16.

In *Bryant*, this Court found that the defendant’s statements were voluntary after multiple interviews with law enforcement. *Id.* ¶¶ 2-5. The first interview lasted

fifteen minutes and was done by one officer in the defendant's bedroom. *Id.* ¶ 2. The second interview lasted two hours in a police cruiser with two officers. *Id.* ¶¶ 4-5. In the interviews, the defendant was not restrained and was free to leave and he agreed to speak to law enforcement both times. *Id.* The interviews were calm, respectful, and contained no threats or trickery by law enforcement. *Id.* ¶ 3. After the second interview was completed, the defendant was allowed to leave the scene with friends. *Id.* ¶ 4.

Here, looking to the *Bryant* factors, there is no concern as to the voluntariness of Perkins' statements. The interview, conducted solely by Detective Hooper, occurred at the Skowhegan Police Department. (A. 23.) Prior to the interview, the Appellant had already been served with a protection from abuse order, which cited to the sexual assault allegations as its basis. (A. 24.) Perkins was well aware of what the interview would be about when he voluntarily came to the Skowhegan Police Department at the request of Detective Hooper. (*Id.*) Perkins even acknowledged his awareness of the investigation during the interview. (A. 25.) The sixty-nine minute fully recorded interview occurred in a closed room, with Detective Hooper making it clear to Perkins the door was closed only for noise purposes. (A. 23-24.) There

was no police trickery, threats, or promises during the interview, in fact the parties were so amicable laughter broke out on more than one occasion. (A. 24.)²

In comparison to *Byrant*, this interview has more favorable facts for the State, indicating that this Court cannot find obvious error and reverse. Simply put, the Appellant came to the police department voluntarily, had a cordial conversation with Detective Hooper, and then left the interview on his own accord. Based on the case law of this Court, there is simply no indication of involuntariness, even more so when reviewed under the obvious error lens, and Perkins' request for reversal on this ground should be denied.

- c. The *McLain* standard does not apply to this case because Perkins was not subjected to a custodial interrogation and did not invoke his right to counsel.

The motion court correctly determined that Perkins was not subjected to custodial interrogation. (A. 30.) Given that Perkins was not in custody, the *McLain* standard does not apply, and as such, his substantially ambiguous references to an attorney for the first time forty-five minutes into a sixty-nine minute interview do not render his statements inadmissible. *State v. McLain*, 2025 ME 87, ¶ 62, 345 A.3d 141. Given that this issue was not raised in the motion to suppress, this Court is to review the trial court's decision for obvious error.

² As noted above, the State made detailed arguments Perkins was not in custody at the time of this interview and *Miranda* warnings were not necessary.

“An issue is raised and preserved if there was a sufficient basis in the record to alert the court and any opposing party to the existence of that issue.” *State v. Jandreau*, 2022 ME 59, ¶ 22, 288 A.3d 371. In the six-page written motion to suppress, Perkins only references an attorney in one sentence in the “background” section: “[d]uring his one hour of questioning, Mr. Perkins was never read his *Miranda* rights even when he brought up concerns of a lawyer.” (A. 47.) The motion then goes on to raise the two very specific issues of whether Perkins was in custody and whether Detective Sergeant Hooper was required to read Perkins his *Miranda* rights. (A. 47-51.) Suppression of his statements based on an ambiguous invocation of an attorney was never raised. Furthermore, in the motion court’s written order, the ambiguous invocation of an attorney is only raised in context of discussing whether Perkins was subjected to a custodial interrogation. (A. 28.) The motion court specifically says “[a]lthough not directly relevant to the *Michaud* factors, the Court would also note that the Defendant mentioned getting an attorney.” (*Id.*) Clearly, this is not sufficient to alert the court and opposing party to the existence of that issue. *Jandreau*, 2022 ME 59, ¶ 22. 288 A.3d 371. If it had been, the motion court would have discussed it outside the context of the *Michaud* factors. However, if this Court were to determine that Perkins sufficiently raised and preserved this issue, this Court is to review the motion court’s factual findings

for clear error and the legal determinations de novo. *State v. Cote*, 2015 ME 78, ¶ 9, 118 A.3d 805.

This Court made an exceptionally clear determination in *Mclain* that if someone who is in custody makes any ambiguous invocation of privileges, such as the right to counsel, the law enforcement officer must stop the interview and clarify with that individual whether they are invoking that privilege. *McLain*, 2025 ME 87, ¶ 62, 345 A.3d 141. However, unlike in *Mclain*, Perkins was not in custody. *Supra I(a)*. Moreover, *Mclain* made his ambiguous invocation of his right to counsel at the start of his interview – before he made *any* incriminating statements. *McLain*, 2025 ME 87, ¶ 62, 345 A.3d 141. Here, Perkins made his first statement regarding an attorney forty-five minutes into the interview. (State’s Ex. 7.) As this Court held in *Ormsby*, if Perkins “was not in custody, then his Fifth Amendment rights could not have been invoked to bring about a constitutionally required end to questioning.” *State v. Ormsby*, 2013 ME 88, ¶ 11, 81 A.3d 336; *see also United States v. Ellison*, 632 F.3d 727, 731 (1st Cir. 2010); *State v. Nightingale*, 2012 ME 132, ¶ 19, 58 A.3d 1057 (stating that before the *Shatzer* rule limiting police reinterrogation of a suspect becomes relevant “a suspect must first invoke his or her *Miranda* right to counsel *while in custody*.” (emphasis added)).

In *Ormsby*, this Court held that his ambiguous statement of “do I need to talk to a lawyer” to which the detective responded “that’s up to you,” to not require the

end to questioning because Ormsby was not subject to a custodial interrogation. *State v. Ormsby*, 2013 ME 88, ¶ 20, 81 A.3d 336. That is directly comparable to our facts. Here, Perkins made three more ambiguous statements of (1) “I probably need to go get a lawyer” to which Detective Hooper responded “Okay, yeah”, (2) “I should probably do what my mother said and lawyer up” to which Detective Hooper responded “yeah, yeah” and (3) “I should probably try to get a lawyer even though I am broke as a [expletive].” To which Detective Hooper responded “Okay, well I guess I’d wait until the invest – you do what you need to do.” (State’s Ex. 7.)

The *McLain* decision did not change the analysis for non-custodial interrogations as asserted by Perkins but, instead, created the standard for custodial interrogations. (Blue Br. 22; *See also McLain*, 2025 ME 87, ¶ 62, 345 A.3d 141.) “The protection afforded by *Miranda* is confined to the custodial setting.” *State v. Lavoie*, 562 A.2d 146, 150 (Me. 1989). To put the same requirements on law enforcement for both custodial and non-custodial interrogations would require *Miranda* warnings to be given every time law enforcement interacts with the public, going directly against this Court’s robust jurisprudence. *See State v. Lavoie*, 562 A.2d 146, 150 (Me.1989); *State v. Ormsby*, 2013 ME 88, ¶ 11, 81 A.3d 336, 341; *McLain*, 2025 ME 87, ¶ 62, 345 A.3d 141. Regardless if this Court were to apply the obvious error standard or the de novo standard, the result is the same. Perkins was not in custody at the time of the interview, and as such, his ambiguous

question regarding his right to counsel does not require an end to questioning. *See State v. Ormsby*, 2013 ME 88, ¶ 23, 81 A.3d 336, 341.

II. The trial court did not abuse its discretion in the discovery violation imposed for P.’s first CAC interview.

While the State did commit a discovery violation in failing to provide one of the CAC videos capturing P.’s statements, the court appropriately imposed a sanction on the State for the violation. Rule 16 of the Maine Rules of Criminal Procedure requires that the State provide, as automatic discovery, “[w]ritten or recorded statements of witnesses and summaries of statements of witnesses contained in police reports or similar matter.” M.R.U. Crim. P. 16(a)(2)(I). When the State engages in a discovery violation, Rule 16(e) gives the trial court several possible sanctions, such as dismissal of the charges or granting of a continuance. M.R.U. Crim. P. 16(e).

This Court has held that dismissing a case for a discovery violation is “an extreme sanction that should be reserved for extreme cases.” *State v. Sargent*, 656 A.2d 1196, 1199 (Me. 1995). The choice of which sanction to impose “rests within the discretion of the presiding justice.” *Id.* This Court must review the trial court’s sanction for an abuse of discretion. *State v. Poulin*, 2016 ME 110, ¶ 28, 144 A.3d 574. More specifically, this Court must determine whether the defendant suffered a “prejudice” based on the trial court’s sanction decision. *Id.* Additionally, this Court

must “review the trial court's ‘procedural rulings to determine whether the process struck a balance between competing concerns that was fundamentally fair.’” *Id.* (citing *State v. Cruthirds*, 2014 ME 86, ¶ 37, 96 A.3d 80) (quoting *In re A.M.*, 2012 ME 118, ¶ 14, 55 A.3d 463). This Court has found it “will vacate a discovery sanction only if, ‘despite the court's effort to nullify or minimize [the] consequence,’ the violation of the State's discovery responsibility creates a prejudice that rises to the level of depriving the defendant of a fair trial.” *State v. Matatall*, 2018 ME 155, ¶ 7, 196 A.3d 1293 (quoting *State v. Leavitt*, 625 A.2d 302, 305 (Me. 1993)). Finally, the issue of “bad faith” on behalf of the State has been deemed to have no relevance to the determination of whether Rule 16 was violated. *State v. Landry*, 459 A.2d 175, 177 (Me. 1983). Rather, bad faith is only possibly relevant for “consideration in selecting a sanction” at the discretion of the trial court. *Id.*

In considering the sanction to impose here, the trial court put significance on the fact that this interview was not hidden from the defense, and that Perkins had been aware of its existence and content during the entire pendency of the case. (A. 32.) Furthermore, there was no evidence of bad faith by the prosecution. (A. 33.) The trial court notes that the demands on prosecutors with regard to discovery are extensive and the sanctions for the mistakes made should be tailored to each circumstance. (A. 32.)

While Perkins contends the “State kept a key piece of evidence . . . until less than a week before trial”, he ignores the fact that Perkins was aware this evidence existed from the inception of the case. (A. 55.) Perkins’ own motion for discovery sanctions references that the interview was described in “paragraph 108 of Detective Seargent Kelly Hooper’s Affidavit and Request for Arrest Warrant.” (*Id.*) This is not a situation where the State was refusing to provide, keeping, or hiding exculpatory evidence in the case. There was extensive discovery here, and it was obviously an error not to provide the first **P.** CAC. However, that error was corrected when the CAC was provided the day after the motion was filed by Perkins. (A. 32.) The trial court appropriately sanctioned the State not only by prohibiting the State from using the video in its case-in-chief; but *also*, allowing the video to be admitted as substantive evidence by Perkins in spite of the statutory prohibitions otherwise. (A. 33.) Without this sanction, it appears that the trial court would *not* have allowed this video to be admitted because of statutory prohibitions, giving Perkins a benefit that would not normally be permitted under Maine law. This is a sufficient and appropriate sanction given the circumstances of this violation.

CONCLUSION

For all the reasons detailed above, it is requested that this Court find that the trial court appropriately denied the motion to suppress and admitted Perkins’

statement at trial; and that the trial court appropriately sanctioned the State for the discovery violation. This Court should affirm the conviction.

Date:

Respectfully Submitted,

Amanda Seekins, Esq.
Attorney for the State
Bar No. 6102

CERTIFICATE OF SERVICE

I, Amanda Seekins, Assistant District Attorney, hereby certify that one (1) copies of the within Brief for Appellant were mailed to Appellant's Attorney addressed as follows:

James Mason
Attorney for the Appellant
16 Union Street
Brunswick, ME 04011
james@handelmanmason.com

The State has sent a native .pdf file for submission to the court (at lawcourt.clerk@courts.maine.gov).

Dated: _____

Amanda Seekins, Esq.
Attorney for the State
Bar No. 6102