MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. Pen-23-357

State of Maine
Appellee

v.

Corydon Judkins
Defendant/Appellant

On appeal from a conviction in the Penobscot County Unified Criminal Court

---

BRIEF FOR APPELLANT

Michelle R. King
Maine Bar No. 6418
Attorney for Defendant

Irwin & Morris
P.O. Box 7030
Portland, Maine 04112
(207) 772-0303

December 20, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Maine Cases:

Supreme Court Cases:

Federal cases:

Constitutional provisions:

PROCEDURAL HISTORY

The Appellant, Corydon Judkins, was indicted on May 24, 2023, with a Superseding Indictment issued on June 28, 2023, on the following charges:

Count I: Aggravated Assault, Class B, pursuant to 17-A M.R.S. § 208-D(1)(D);

Count II: Domestic Violence Criminal Threatening, Class B, pursuant to 17-A M.R.S. § 209-A(1)(B)(1), 1604(5)(B);

Count III: Domestic Violence Assault, Class C, pursuant to 17-A M.R.S. § 207-A(1)(B)(1);

Count IV: Obstructing a Report of Crime or Injury, Class D, 17-A M.R.S. § 758(1)(A).

[R. 13-14].

Pre-trial motions were heard in the Penobscot Superior Court on August 18, 2023, August 22, 2023, and on the first day of trial on August 23, 2023, (Mallonee, J., presiding). [Aug. 18, 2023, Mot. Tr. 1; Aug. 22, 2023, Mot. Tr. 1; Tr. I: 4]. At the August 18, 2023, motion hearing, Mr. Judkins' defense counsel made an oral motion to withdraw as counsel; the motion was denied. [R. 4; Aug. 18, 2023, Mot. Tr. 4-5]. Prior to trial, the State dismissed counts I, II, and IV, leaving only Count III, Domestic Violence Assault, Class C. [Tr. I: 4]. The two-

day trial began on August 23, 2023, and ended on August 24, 2023, with a guilty verdict on Count III. [Tr. II: 129].

Mr. Judkins was sentenced to the Department of Corrections for five (5) years, and a probationary term of two (2) years after completion of his incarceration. [R. 7]. Mr. Judkins filed a timely Notice of Appeal on August 29, 2023, [R. 8], and the case was subsequently docketed in this Court.

STATEMENT OF FACTS

On March 4, 2023, Officer Taylor Reynolds of the Bangor Police Department was dispatched to a residence in Bangor, Maine; he was in full uniform and wore a body cam. [Tr. I: 32-33]. Officer Reynolds arrived at the residence at 2:51 p.m., and his body cam had engaged when he activated the emergency lights on his cruiser. [Tr. I: 33].[1] Officer Reynolds walked through about eight inches of snow to the top of the stairs of the residence and knocked on the door. [Tr. I: 36]. He could hear a "concerned" female voice inside that told him to come inside. [Tr. I: 36]. Officer Reynolds did not feel the need to force entry into the residence. [Tr. I: 36-37].

Mr. Judkins then opened the door for Officer Reynolds. [Tr. I: 37]. Officer Reynolds immediately placed Mr. Judkins in handcuffs to detain, but not arrest,

[1] A portion of the body cam video and audio were admitted over objection. [Tr. I: 34].

him. [Tr. I: 38]. Mr. Judkins told Officer Reynolds that R.A.[2] had bit his finger, and Officer Reynolds could see blood on Mr. Judkins' finger and on his pants. [Tr. 44]. Officer Reynolds could see R.A. sitting on the couch, directly in front of the door; she was holding a packet of frozen or refrigerated chicken to her face and chest area. [Tr. I: 39]. Officer Reynolds noticed that R.A.'s face was swollen and bruised. [Tr. I: 39]. Officer Reynolds waited for other officers to arrive before he began speaking with R.A. [Tr. I: 40].[3]

R.A. went to St. Joseph's Hospital and was initially seen by a triage nurse, Kristine Hughes, and Jennifer Jenkins, a Physician's Assistant, at approximately 3:30 p.m. [Tr. I: 61, 127-128]. According to Ms. Hughes, R.A. had bruises on her face and left side of her chest. [Tr. I: 62]. P.A. Jenkins testified that R.A. was tearful, nervous, and clearly upset, and had redness, swelling, and bruising. [Tr. I: 128-129].

P.A. Jenkins' notes stated that R.A. was evaluated for a domestic violence altercation that had happened about one hour prior. [Tr. I: 129].[4] P.A. Jenkins' notes further indicated that R.A. reported she had been in an altercation with her boyfriend, and that he had placed his knee on her chest, strangled her, and punched her in the face and chest. [Tr. I: 130].

[2] Initials are being used to protect the anonymity of the alleged victim.
[3] The body cam video was played for the jury and entered as Exhibit 1. [Tr. I: 40].
[4] The notes were entered as Exhibit 6. [Tr. I: 130].

A Sexual Assault Forensic Examiner (SAFE) nurse, Stephanie Deredin, also evaluated R.A.[5] [Tr. I: 136]. Ms. Deredin saw R.A. at approximately 4:30 p.m. [Tr. I: 144]. According to Md. Denedin, R.A. reported that her entire left side was painful, as well as her spine and neck as she was flipped over in her chair and then strangled for approximately sixty seconds. [Tr. I: 145]. R.A. reported a number of other symptoms including raspy voice, ringing in her ears, and painful swallowing. [Tr. I; 147]. Ms. Denedin also noted that R.A. had a number of other medical conditions such as Chronic Pulmonary Obstructive Disease (COPD), which can cause a raspy voice and sore throat, [Tr. I: 170], Congestive Heart Failure, and Fibromyalgia, a nerve disease that can cause tiredness and body pain. [Tr. I: 171].

Officer Reynolds Body Cam:

At trial, and over multiple objections,[6] [Tr. I: 13-14, 34], Officer Reynolds' body cam video and audio was played for the jury. [Tr. I: 40].[7] At the 4:49 mark, Officer Reynolds comes into contact with Mr. Judkins as he opens the door; Officer Reynolds immediately handcuffs Mr. Judkins. Officer Reynolds informs Mr. Judkins that he is not under arrest, he's just being detained. [Ex. 1 at 5:13]. Back-up officers arrive on scene, and Mr. Judkins is taken from the apartment. [Ex.

[5] The SAFE nurse's report was admitted as Exhibit 7. [Tr. I: 142].
[6] Defense counsel objected on hearsay and 6th Amendment grounds. [Tr. I: 13-14, 34].
[7] The video was played from the 4:00 minute mark until the 10:23 minute mark. The audio was muted during the following times: 5:40, 6:18-7:23, 7:45-7:53, and 9:50-9:53. [Tr. I: 10-11].

1 at 9:05, 9:46]. After Mr. Judkins has been taken from the apartment, Officer Reynolds says: "What happened, [R.A.]?" [Ex. 1 at 9:55]. Although she does appear to be in discomfort, there are no outward signs that she needs immediate medical attention. [Ex. 1 at 9:55-10:23]. R.A. is calm, not crying. [*Id.*]. R.A. relates the following about the incident:

> He thinks I've been having these affairs and everything and it's just bullshit. And last night, night before last, he beat me real bad. This is the second part of it, this is from the first part of it. He just took my phone because I wanted to call the cops, and he won't let me call the cops. And he said if someone knocked on the door, and someone had already knocked on the door a couple of times, because he said not to say anything because he was going to kill me.

[Ex. 1 at 10:02-10:23].

In addition, during jury deliberation, the jury asked to see the body cam footage again, and were permitted to do so with the same audio conditions as during testimony. [Tr. II; 127].

Mr. Judkins testimony:

Mr. Judkins testified at trial to the following:

On February 27, 2023, Mr. Judkins and R.A. were at the same party in Glenburn, Maine. [Tr. II: 24]. They had an ongoing relationship but had not seen each other for a few months. [Tr. II: 44]. R.A. asked Mr. Judkins to spend her birthday with her the next day, and he agreed. [Tr. II: 24]. Over the course of the next few days, Mr. Judkins stayed at R.A.'s house. [Tr. II: 25-27]. On the evening

of March 3, 2023, Mr. Judkins went to bed at R.A.'s house at approximately 11:00 p.m. [Tr. II: 39]. The next day he woke up around 2:00 p.m. and went out to the dining room table where R.A. was seated. [Tr. II: 39]. R.A. began screaming and yelling at Mr. Judkins about his cellphone usage the previous days and accused him of cheating on her. [Tr. II: 39].

Mr. Judkins tried to explain that he was not cheating on her, nor was he on the cellphone with another woman while he was there. [Tr. II: 39-40]. Nevertheless, R.A. continued to scream and yell at him, calling him worthless and other profanities. [Tr. II: 40]. Upset, Mr. Judkins "stuck his middle finger up" at R.A. and said, "fuck you." [Tr. II: 40]. R.A. then jumped up, slapped Mr. Judkins on his head, grabbed his wrist, and bit his finger. [Tr. II: 40]. With Mr. Judkins' finger still in her mouth, R.A. attempted to sit down in a chair, but missed and she fell to the floor. [Tr. II: 40]. R.A. fell into the cat's water bowl, and Mr. Judkins grabbed the couch arm for support. [Tr. II: 40]. R.A.'s teeth were still clamped around Mr. Judkins' finger, and he was hunched over her yelling for her to let go of his finger. [Tr. II: 40].

R.A. Eventually released her jaws and stopped biting Mr. Judkins' finger. [Tr. II: 42]. He went to the sink to wash off his finger and to see how badly he was bitten. [Tr. II: 42]. When the police officer knocked on the door, Mr. Judkins did not initially open the door because he did not know it was locked. [Tr. II: 43]. Mr.

Judkins testified that he did not slap, hit or strangle, R.A. – he stated, "I never laid a finger on her." [Tr. II: 43].

ISSUES FOR REVIEW

I. Whether the lower court erred by admitting Officer Reynolds' body cam video, over objection, without R.A.'s testimony at trial in violation of the Confrontation Clause of the Sixth Amendment.

II. Whether Mr. Judkins was denied his Sixth Amendment right to counsel and a fair trial when the lower court denied his counsel's request to withdraw from the case one week prior to trial.

ARGUMENT

I. THE LOWER COURT ERRED BY ADMITTING OFFICER REYNOLDS' BODY CAM VIDEO, OVER OBJECTION, WITHOUT R.A.'S TESTIMONY AT TRIAL IN VIOLATION OF THE CONFRONTATION CLAUSE OF SIXTH AMENDMENT.

Even if R.A.'s statements to Officer Reynolds qualify as excited utterances, R.A.'s statements made after Mr. Judkins had been handcuffed and removed from the residence, and in response to Officer Reynolds asking, "What happened [R.A.]?" were the product of active interrogation by law enforcement for the purpose of building a criminal case that should have been excluded.

When determining whether a hearsay statement can be admitted when a witness is unavailable, the court must first assess if a hearsay exception applies and must

then determine whether admission of the statements violates the Confrontation Clause of the United States Constitution. *State v. Kimball*, 2015 ME 67, ¶ 17, 117 A.3d 585, 591. Here, the lower court made no determination beyond the ruling that R.A.'s statements should be admitted under the excited utterances hearsay exception. [Tr. I: 14]. Despite defense counsel's argument that the statements were "testimonial," the lower court failed to address the Sixth Amendment issue. [Tr. I: 14]. Nevertheless, because review of this issue is de novo, this Court can determine whether the admitted statements were testimonial and therefore violated the Confrontation Clause. *State v. Metzger*, 2020 ME 67, ¶ 13, 999 A.2d 947, 951. Each case is a fact-driven inquiry, and the burden is squarely on the State to demonstrate that the statement was nontestimonial. *Metzger*, 2020 ME at ¶ 13 (determining that as statement is nontestimonial where it was "elicited primarily for the purpose of resolving an ongoing emergency, not to establish or prove past events").

"In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witness against him." U.S. Const. art VI. In *Crawford v. Washington,* the United States Supreme Court held that all "testimonial" hearsay violates the Confrontation Clause unless the declarant is unavailable AND the defendant had a prior opportunity to cross-examine the declarant. *Crawford v. Washington*, 541 U.S. 36, 61, 68 (2004). Although in *Crawford*, the Court left open a complete definition of "testimonial," *Id.* at 68, later decisions have clarified

the term as it relates to excited utterances. *Davis v. Washington*, 547 U.S. 813 (2006). In *Davis*, the Court noted that:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Id. at 822. Because R.A.'s statements on Officer Reynolds' body cam were admitted, over objection, without her live testimony, this Court's analysis must determine whether R.A. was unavailable to testify, and whether her statements were "testimonial."

Here, R.A. was clearly unavailable to testify. On the morning of August 22, 2023, DA investigator Garry Higgins went to a residence to give R.A. a ride to court. [Tr. I: 48]. R.A. informed Investigator Higgins that she was not going to court because she was sick. [Tr. I: 50]. Investigator Higgins was informed by the prosecutor that he should not compel R.A. to go to court. [Aug. 22, 2023, Mot. Hearing 18]. At the motion hearing later that day, the prosecutor informed the court she had spoken with R.A., who understood she was under subpoena to testify. [*Id.* at 15-16]. In addition, in the week leading up to the motion hearing, the prosecutor had listened to a jail call between R.A. and Mr. Judkins, and R.A. had stated during that call that if she went to court, she would say she previously lied to the police

about the incident and would "plead the Fifth." [*Id*. at 18]. R.A. was not in court on either day of trial. Therefore, R.A. was unavailable. *See Kimball*, 2015 ME at ¶ 8 (victim, who was under subpoena and was arrested and brought into court and refused to testify, was unavailable)

This Court has set forth four factors in accordance with *Davis*, for determining whether statements made to the police are "nontestimonial:"

> (1) the [person] is speaking about events as they are actually happening;
> (2) it would be clear to a reasonable listener that the victim is facing an ongoing emergency;
> (3) the nature of the questions asked and answered objectively necessary and elicited for the purpose of resolving the present emergency; and
> (4) the victim's demeanor on the phone and circumstances at the time of the call evidence an ongoing emergency.

State v. Rickett, 2009 ME 22, ¶12, 967 A.2d 671, 675 (citing *Davis*, 547 U.S. at 827). *See also State v. Sykes*, 2019 ME 43, ¶ 25, 204 A.3d 1282, 1290. "An interrogation that initially serves to determine the need for emergency assistance may evolve into an interrogation solely directed at ascertaining the facts of a past crime." *Kimball*, 2015 ME ¶ 23. In *Hammon v. Indiana*, 547 U.S. 813 (2006), decided on a consolidated appeal with *Davis*, the United States Supreme Court contrasted the circumstances in that case with *Davis*, in determining that "the interrogation was part of an investigation into possibly criminal past conduct." *Id.* at 829. This factor is a touchstone of the analysis. Specifically, the Court determined that when the officer questioned the alleged victim, he was seeking to

determine "what happened" rather than "what was happening," and that tipped the scales in favor of finding that the statement was testimonial in nature. *Id.* at 829-830 (officer acknowledged that when he arrived he had heard no arguments or crashing and saw no one throw or break anything, and that there was no immediate threat to the victim).

Similarly, in *Rickett,* there were three 911 calls, made by the victim, but only the first and third were challenged on appeal. 2009 ME 22, ¶ 2-4. During the first call, the victim called 911 from her cellular phone and spoke to a Maine State Police dispatcher to request that an officer be sent to her home in Gray. 2009 ME at ¶ 2. In response to questioning by the dispatcher, the victim stated that she and Rickett had a verbal argument that escalated and resulted in Rickett grabbing her by the throat and punching her in the face. *Id*. The dispatcher asked questions to assess the situation, such as how her injuries were caused, the extent of her injuries, what had precipitated the fight, and whether Rickett had any weapons available to him. *Id*. In addition to answering each of these questions, the victim informed the dispatcher that Rickett had threatened to kill her if she called the police, and that she could not leave the area because Rickett had locked the car and had taken the keys. *Id*. The victim remained on the phone with the dispatcher until the police arrived. *Id*. at ¶ 3. The second and third 911 calls occurred the following day when the Defendant had returned to the victim's residence upon being released

on bail. *Id*. at ¶ 3. The second 911 call involved the victim placing the call to 911 and hiding the phone so it recorded the argument between her and Defendant. *Id*. at ¶ 3. The line eventually disconnected which prompted the 911 dispatcher to call the line back at which time the victim left the house to be able to speak freely on the phone. *Id*. at ¶ 3. She stated, in response to questions similar to those asked the previous day, that Rickett held her on the couch, placed a knife up against her, and threatened to harm and kill her. *Id*. at ¶ 3. The victim was still on the phone with the dispatcher when the defendant's brother arrived, and the defendant left the residence with his brother, while the call with the dispatcher continued. *Id.* at ¶ 14.

In concluding that the trial court properly found the circumstances of the 1st, and portions of the 3rd, calls to be non-testimonial and thus admissible, this Court observed:

> During [the victim's] first and third 911 calls, she was seeking aid from the police, not recounting past events. Throughout both calls, she was outside her home while her assailant was still inside, and she lacked the ability to leave to go to a place that would be safe for her. In addition, the questions asked and answered were of the type that would allow the officers who were called to investigate to assess the situation, the threat to their own safety, and the possible danger to [the victim]. At the point during the third call when [the defendant] left, ending the immediate danger to [the victim], the court concluded that the call had become testimonial and properly ordered that this portion of the call be redacted prior to trial.

Id. at ¶ 14. *Contrast Metzger*, 2020 ME at ¶ 17, 19 (ongoing emergency because the assailant was still at-large).

Here, although Officer Reynolds was initially dispatched to the residence for "a family fight," [Tr. I: 33], when he arrived at the residence he heard a voice telling him to come inside. [Tr. I: 36]. Officer Reynolds did not feel the need to force entry into the residence. [Tr. I: 36-37]. Once Mr. Judkins opened the door for Officer Reynolds, Mr. Judkins was immediately placed in handcuffs to detain him. [Tr. I: 37-38]. A few moments later, back-up officers arrived, and Mr. Judkins was removed from the home. [Ex. 1 at 9:46]. After Mr. Judkins has been taken from the apartment, Officer Reynolds then asked R.A.: "What happened?" [Ex. 1 at 9:55]. During this exchange, R.A. is calm, not crying. *Id*. [Ex. 1 at 9:55-10:23]. In response to this question, R.A. stated that:

> And last night, last night before last he beat me real bad. This is the second part of it, this is from the first part of it. He just took my phone because I wanted to call the cops, and he won't let me call the cops. And he said if someone knocked on the door, and someone had already knocked on the door a couple of times, because he said not to say anything because he was going to kill me.

[Ex. 1 at 10:02-10:23].

Similar to the circumstances involved in *Rickett*, where the defendant had already left the residence when the victim was speaking with the 911 dispatcher and the ongoing emergency had dissipated, there was no ongoing emergency here when R.A. gave her statement to Officer Reynolds. R.A. was safe, calm, and Mr. Judkins was no longer in the home as he was handcuffed and taken from the home by officers. Because Officer Reynolds' questions were seeking to determine "what

happened" rather than "what was happening," the answers given by R.A. were testimonial, and should have been excluded at trial when she was unavailable to testify. *Hammon,* 547 U.S. at 829-830 (reversing Hammon's conviction on the Confrontation Clause violation and remanding for further proceedings). Consequently, this Court should reverse Mr. Judkins' conviction.

II. MR. JUDKINS WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL AND A FAIR TRIAL WHEN THE LOWER COURT DENIED HIS COUNSEL'S REQUEST TO WITHDRAW FROM THE CASE.

Because Mr. Judkins was denied his Sixth Amendment right to counsel and a fair trial when the lower court denied his request to discharge his attorney one-week prior to trial, this Court should reverse his conviction. "In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense." United States Constitution, Amendment VI. The Sixth Amendment entitles every criminal defendant to the assistance of counsel at all critical stages of a criminal proceeding. *United States v. Wade,* 388 U.S. 218 (1967); *United States v. Batista,* 834 F.2d 1, 3 (1st Cir. 1987). A trial judge is required to order the substitution of counsel if, after hearing, it is demonstrated that there is a breakdown in the attorney-client relationship. *Jackson v Ylst,* 921 F.2d 882 (9th Cir. 1990). The First Circuit Court of Appeals has held that the Sixth Amendment right to counsel may be violated by a constructive deprivation of

counsel, even though counsel physically appears in court at the relevant proceeding. *United States v. Mateo,* 950 F2d 44, 47-50 (1st Cir. 1991). Although, the denial of a motion for withdrawal or substitution of counsel is discretionary, *State v. Clark,* 488 A.2d 1376, 1377 (Me.1985), when the defendant can establish "good cause, such as a conflict of interest, a complete breakdown of communication or an irreconcilable conflict which [could] lead[ ] to an apparently unjust verdict" the court must substitute new counsel. *State v. Goodine,* 587 A.2d 228, 229 (1991) (*quoting McKee v. Harris,* 649 F.2d 927, 931 (2d Cir.1981)).

There are three factors which appellate courts find of paramount concern in deciding whether a trial court abused its discretion in denying a motion for substitute counsel: (1) The timeliness of the motion; (2) the adequacy of the court's inquiry into defendant's complaint; and (3) whether the conflict between client and lawyer was so great that it resulted in a total lack of communication thereby preventing an adequate defense. *United States v. Iles,* 906 F.2d 1122, 1130, n. 8 (6th Cir. 1990); *United States v. Allen,* 789 F.2d 90, 92-93 (1st Cir. 1986).

As to the first factor, as the First Circuit has noted "'as trial approaches, the balance of considerations shifts ever more toward maintaining existing counsel and the trial schedule.'" *United States v. Diaz-Rodriguez*, 745 F.3d 586, 591-92 (1st Cir. 2014) (quoting *United States v. Teemer,* 394 F.3d 59, 67 (1st Cir. 2005)). Nevertheless, the court's efficiency interest in proceeding with trial does not trump

a defendant's right to effective assistance of counsel. *See Morris v. Slappy*, 461 U.S. 1, 11-12 (1983) ("[A]n unreasoning and arbitrary 'insistence upon expeditiousness in the face of a justifiable request for delay' violates the right to assistance of counsel.") (quoting *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964)). Here, the court placed too much weight on keeping the trial moving forward and gave short shrift to Mr. Judkins constitutional right to counsel.

Although Mr. Judkins request for new counsel, and defense counsel's motion to withdraw, was made one week prior to trial, it was made when the exigent circumstances arose. Mr. Judkins determined that his trial attorney was not providing him with adequate representation. [Aug. 18, 2023, Mot. Hearing at 4--5]. In requesting that the lower court allow her to withdraw, Mr. Judkins' trial attorney stated that "Mr. Judkins' concern is that I have not been doing an adequate job for him" and that he believed that the "lack of work has violated his constitutional rights." [*Id*. at 5]. Defense counsel argued that "if that's what he believes, I think I need to be out of the case because he does have very important constitutional rights." [*Id*.]. Mr. Judkins agreed with this assessment by his defense counsel. [*Id*. at 5]. Nevertheless, the lower court denied the motion stating, "given that the case is scheduled for trial next week, given the – that the jury has been empaneled, I'm going to deny the motion to withdraw. And [defense counsel] will remain on the case." [*Id*.]. This emphasis on the progress of the trial rather than on Mr. Judkins'

constitutional rights was an abuse of discretion. [Aug. 18, 2023, Mot. Hearing at 4-5].

In addition, the lower court's lack of adequate inquiry into the more precise reasons that Mr. Judkins sought to discharge his counsel, was also an abuse of discretion. This Court has noted that it is "always preferable for the court to make at least a threshold inquiry on the record as a matter of sound practice and in the interest of judicial economy." *Goodine*, 587 A.2d at 230. *See also Diaz-Rodriguez*, 745 F.3d at 590 ("[W]e have also held that the trial court must conduct an appropriate inquiry into the source of the defendant's dissatisfaction with his counsel.). Although "there is no invariable model for a trial court's inquiry into an allegedly embattled attorney-client relationship," the First Circuit has consistently required some "probe into the nature and duration of the asserted conflict." *United States v. Myers*, 294 F.3d 203, 207 (1st Cir.2002).

Here, the lower court merely asked Mr. Judkins if he agreed with defense counsel's summary that she was not adequately representing him – no further inquiry was made. [Aug. 18, 2023, Mot. Hearing at 5]. Had the lower court inquired, Mr. Judkins could have listed and discussed the myriad of concerns he had with his counsel's performance, and his concerns for the effects on his trial. He was not, however, provided with that opportunity. *See United States v. Prochilo*, 187 F.3d 221, 228-29 (1st Cir. 1999) (reversing conviction when court did not

inquire of defendant about the nature of the differences between him and his counsel). As a consequence, Mr. Judkins' counsel proceeded to represent him and did not adequately represent him.

Specifically, at the conclusion of the first day of trial, defense counsel stated to the judge, "I just want to alert the Court that Mr. Judkins has repeatedly said to me today that he wants me to call [R.A.] as a witness. I may be adding her to the witness list." [Tr. I: 178-179]. The trial judge noted that R.A. was already on the witness list and could testify. [Tr. I: 179]. Nevertheless, the next morning in chambers, defense counsel informed the court that she would call Mr. Judkins as a witness, and no one else. [Tr. II: 3]. Failure to call such an important witness, as requested by Mr. Judkins, was clearly the kind of inadequate performance that Mr. Judkins was trying to avoid by having his counsel removed. Failure of the lower court to do so was an abuse of discretion.

The third factor -- whether the conflict between client and lawyer was so great that it resulted in a total lack of communication thereby preventing an adequate defense – also weighs in favor of Mr. Judkins. A breakdown in the attorney-client relationship is shown where "differences between counsel and client [are] so deep, pervasive and well-found that effective legal assistance has been severely handicapped." *United States v. Mota-Santana*, 391 F.3d 42, 46 (1st Cir. 2004). Both Mr. Judkins and counsel requested a change in his representation;

Mr. Judkins first attempted to discharge his counsel, and then defense counsel moved to withdraw. [Aug. 18, 2023, Mot. Hearing at 4-5]. That the differences between Mr. Judkins and his defense counsel were deep and pervasive are clear – defense counsel refused the call R.A. as a witness, even though Mr. Judkins was adamant that he wanted her to testify and even though she was under subpoena. R.A.'s testimony was crucial in that she was going to recant her accusations against Mr. Judkins. [Aug. 22, 2023, Mot. Hearing 15-16, 18; Tr. I: 178-179]. Because the lower court failed to acknowledge the deep and pervasive breakdown between Mr. Judkins and his trial counsel, denying the motion to withdraw was an abuse of discretion.

Consequently, as Mr. Judkins Sixth Amendment Right to Counsel and a fair trial was violated, this Court should reverse his conviction.

CONCLUSION

For the foregoing reasons, this Court should vacate defendant's conviction.

/s/ Michelle R. King
Michelle R. King Bar No. ~ 6418
Attorney for Appellant Corydon Judkins

Irwin & Morris
183 Middle Street, 4th Floor
P.O. Box 7030
Portland, Maine 04112-7030
(207) 772-0303
mking@irwinmorris.com

CERTIFICATE OF SERVICE

I, Michelle R. King, attorney for Corydon Judkins, hereby certify that on this date, I made service of two copies of the foregoing brief and one copy of the Appendix, by email and First-class mail, to the following counsel:

Dated: December 20, 2023

Mark Rucci
Office of the District Attorney's Office
Penobscot County
97 Hammond St.
Bangor, ME 04401
Mark.Rucci@maineprosecutors.com

/s/ Michelle R. King
Michelle R. King Bar No. ~ 6418
Attorney for Appellant Corydon Judkins

Irwin & Morris
183 Middle St., 4th Floor
Portland, ME 04112-7030
(207) 772-0303
mking@irwinmorris.com