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

LAW COURT DOCKET NO. Pen-24-62

STATE OF MAINE
Appellee

v.

JOHN J. HANSEN
Appellant

ON APPEAL from the Penobscot County
Unified Criminal Docket

REPLY BRIEF OF APPELLANT

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First Assignment of Error

I. Judgment as a matter of law is appropriate because [redacted]'s possession of a cellphone, which defendant knew about and permitted, precludes a conclusion that she was secreted and held in a place where she was unlikely to be found.

When the statute of conviction was enacted in 1975, it would have been inconceivable that a person holding and using a device with which she could contact anyone on earth, share her real-time location data, and send dozens of text-messages to her mother was somehow secreted and held in a place where she was unlikely to be found. Permitting a conviction for this variety of kidnapping – one without any force or threat of restraint – does not accord with society's conception of what it means to be "secreting and holding" someone in a place where she is unlikely to be found.

The State, seemingly following the court below, argues that an individual's continual possession and use of a smartphone to communicate with others is but "one factor to consider in the totality of the evidence." (Red Br. 9). But sometimes there are singular factors that obviate the rest of the evidence; this is one such occasion. [redacted] literally carried, with defendant's permission, a tracking device. She could communicate with her mother the entire time (other than when she shared it with defendant so he could call someone at "the bike shop"). The judge wondered aloud why she simply did not call her mother. She was able to terminate the ordeal by contacting law enforcement, when she chose to do so.

This is not *Haag*, in which, the State can only *guess*, the victims *might* have had access to a motel room phone. (Red Br. 9, citing *State v. Haag*, 2012 ME 94, 48 A.3d 207). Here, there was undisputed evidence and actual findings about [redacted]'s access to the smartphone.

In order to sustain a conviction here, this Court would have to obliterate the meaning of "secreting and holding" in a place "not likely to be found." Fact-finders have much discretion, of course; they do not, however, have leeway to stretch statutory terms beyond their breaking point. The result would be capacious meaninglessness.

Second Assignment of Error

II. Because the court found that defendant was a loving stepparent who meant only to protect his stepdaughter, 17-A M.R.S. § 301(2-B) provides a complete defense to the crime of kidnapping by restraint.

The State appropriately recognizes that "this Court must consider *de novo* whether 17-A M.R.S. § 301(2-B) applies in this case to provide a complete defense to the crime of kidnapping." (Red Br. 11-12). Its alternative contentions – that (A) "child of" unambiguously does *not* include stepchildren, and (B) legislative history somehow evinces the legislature's intent *not* to extend to stepchildren the defense established by § 301(2-B) – are, with all due respect, wide of the mark.

Rather, a stepchild is unambiguously a "child of," as demonstrated by common law and plain understanding. Even were that not the case, the legislative history of the provision indicates a desire to forestall prosecutions

of those involved in caring for their children. Lastly, if defendant is incorrect in these assertions, the legislature's intent is not discernible, thus requiring application of the rule of lenity in the favor of defendant.

A. "Child of" unambiguously includes stepchildren.

Respectfully, the State's reliance on Merriam-Webster Dictionary's definition of "child" – "'a son or daughter of human parents'" – does not move the needle, at least not in the State's direction. (Red Br. 12). First, this definition *includes* defendant – certainly, a "human" stepparent of Cadence's. Second, the State's definition places great relevance on the term "parent." And that is telling because "parent" is the federal term construed by other courts to unambiguously include stepparents. *See*, *e.g.*, *United States v. Floyd*, 81 F.3d 1517, 1523 (10th Cir. 1996) ("We are persuaded, after consulting the dictionary, that the word 'parent' is not ambiguous;" It includes stepparents). There is no reason for this Court to conclude differently: The plain meaning of "child of" includes stepchildren, so long as the defendant is acting *in loco parentis* to them.

While it is true that to obtain many forms of *legal* status, a parent must take some "affirmative action," (Red Br. 12-13), we are here talking about the *plain* meaning of "parent," not the legal sort.[1] In Maine, since at least

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[1] 1 M.R.S. § 72(2-A) merely defines "child" as "a person who has not attained the age of 18 years."

And, as for legal devises, "The word child in legal documents is not always confined to immediate offspring. It may include grand-children, step-children, children of adoption, &c. as may be necessary to carry out the intention." *Martin v. Aetna Life Ins. Co.*, 73 Me. 25, 27 (1881), citing Abbott's Law Dic. Art. Child.

common law, a stepparent acting *in loco parentis* is a parent of his stepchildren; that is demonstrated by *Guilford v. Monson*:

> [T]he common law rule is that a stepfather, as such, is not under obligation to support the children of his wife by a former husband, but that, if he takes the children into his family or under his care in such a way that he places himself in loco parentis, he assumes an obligation to support them, and acquires a correlative right to their services.

134 Me. 261, 264 (1936) (internal quotation marks and citation omitted). This Court will defer to such a common law meaning. *See State v. Falcone*, 2006 ME 90, ¶ 10, 902 A.2d 141 (looking to common law definitions); *see also Chapman v. United States*, 500 U.S. 453, 462-63 (1991) (where statutory term is undefined, first refer to common-law meaning, and only if there is none, revert to "ordinary meaning"). Both plain and common-law meanings encompass stepchildren.

B. Legislative history favors defendant.

In the Blue Brief (page 22 n. 4), defendant noted the Criminal Law Advisory Commission's motivation in proposing the defense was to avoid prosecutorial overbreadth. The State somehow "reads the same passage as compelling a different conclusion." (Red Br. 14). The State seems to argue that stepparents comprise "a much smaller subset of the population" than do biological parents, "thus reducing concerns of overbreadth." (Red Br. 14-15). Yet, it is clear from demographic shifts since the late 1970s that, if anything, the prevalence of stepfamilies is far more pronounced now than when the defense was proposed and enacted. The State's construction would deny those burgeoning number of stepparents the defense established by §

301(2-B), regardless of the fact that they are acting like parents, *i.e.*, *in loco parentis*. That does not comport with legislative intent.

C. If ambiguity remains, the rule of lenity favors defendant.

"The rule of lenity requires a court to resolve an ambiguity in favor of a defendant when there is no clear indication as to the legislative intent." *State v. Stevens*, 2007 ME 5, ¶ 16, 912 A.2d 1229. To be clear, defendant believes that both the plain and common language and the legislative intent available to us are dispositive in defendant's favor. Certainly, however, those measures do not support the State's construction of "child of." Thus, a decision in defendant's favor is called for.

CONCLUSION

For the foregoing reasons, this Court should vacate and remand for entry of judgment of acquittal as to Count II.

Respectfully submitted,

August 13, 2024

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CERTIFICATE OF SERVICE

I sent a native PDF version of this brief to the Clerk of this Court and to opposing counsel at the email address provided in the Board of Bar Overseers' Attorney Directory. I mailed 10 paper copies of this brief to this Court's Clerk's office via U.S. Mail, and I sent 2 copies to opposing counsel at the address provided on the briefing schedule.

/s/ Rory A. McNamara

STATE OF MAINE

SUPREME JUDICIAL COURT
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CERTIFICATE OF SIGNATURE

John J. Hansen

I am filing the electronic copy of this brief with this certificate. I will file the paper copies as required by M.R.App.P. 7A(i). 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).

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