

STATE OF MAINE

AROOSTOOK, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET #: ARO-25-0417

STATE OF MAINE

APPELLEE

V.

TIMOTHY BURNS

APPELLANT

ON APPEAL FROM THE SUPERIOR COURT

AROOSTOOK COUNTY

****BRIEF OF APPELLEE****

STATE OF MAINE

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Statement of Facts and of Procedural History

The defendant was charged on January 25, 2023, by a warrant request and criminal complaint. The Court approved and set bail on the warrant request. The warrant was executed on May 22, 2023. The defendant was arraigned on an Indictment on July 6, 2023. The defendant made a series of attorney changes and requests for continuance and filed several pretrial motions. The trial court held a hearing on the defense motion to compel discovery on May 30, 2025. The trial court denied the motion to compel on June 05, 2025. Trial was held on August 21, 2025. The jury returned a verdict of Guilty on August 22, 2025. The defendant was sentenced on August 26, 2025, and this appeal followed.

Issues Presented

1. **Whether the Trial Court abused its discretion in denying the motion to compel?**
2. **Whether the Trial Court abused its discretion in allowing a witness to be recalled?**
3. **Whether the Trial Court committed obvious error by not declaring a mistrial *sua sponte*?**

Introduction

The State concurs that the proper standard of review on a motion to compel discovery is abuse of discretion by the Trial Court. Likewise, the State concurs that trial presentation including the timing, sequence, and recalling of witnesses is subject only to an abuse of discretion by the Trial Court. The proper standard of review for the defendant's assertion for prosecutorial error in the closing argument is obvious error rather than harmless error – and then only if there is actual error. “A defendant who fails to move for a mistrial due to an improper closing remark or to request other relief ‘is taken to have acquiesced in the corrective measures adopted by the trial justice.’ *State v. Rose*, 622 A.2d 78, 79 (Me. 1993).” *State v. Eastman*, 1997 ME 39, 14. “Having so acquiesced, this Court will review for obvious error only.” *Id.* Prosecutorial error is not presumed as the defendant implies.

Argument

1. The Trial Court properly exercised discretion in deciding the motion to compel.

Rule 16(a) covers discovery by the defendant and “automatic discovery” provided by the State, which the defendant need not make a specific request for. Rule 16 (a) 2 provides the affirmative duty of the State attorney to provide the defendant: A) police reports and other documents used by the prosecutor in deciding to charge the defendant. In this case the defendant was charged via a warrant request. The warrant request was accompanied by a statement of probable cause. The Trial Court reviewed the application and issued a warrant. The defendant has access to the warrant packet, which contained the “police reports and other documents” used by the prosecutor to support the charge. The requested discovery falls outside of this section.

Rule 16 (a) 2 (B) provides that the State must turn over “a statement describing any testimony or other evidence *intended to be used against the defendant . . .*”. The requested discovery was not intended to be used against the defendant.

Rule 16 (a) 2 (F) provides that the State must turn over “any books, papers, documents, electronically stored information . . . that the State *intends to use as evidence in any proceeding or that were obtained or belong to the defendant.*” The requested discovery was not intended to be used as evidence by the State and neither belonged to nor were obtained from the defendant.

The requested discovery bears no rational relationship to the “automatic discovery” rules. The Trial court did not abuse its discretion in failing to address the defendant’s assertions that the requested discovery met the requirements of “automatic discovery.”

Rule 16 (d) 2, permits a defendant to request the Court to compel the State to provide documents and other evidence that are “material and relevant to the preparation of the defense.” In this case, the Trial Court made specific findings that the requested materials are neither material nor

relevant to the preparation of the defendant's case. The basis for materiality and relevance was articulated in a fashion that the documents were "potentially exculpatory." After a full hearing the Trial Court disagreed and issued an order to that effect. *Appendix*, at 31-33. "Materiality" under Rule 16 (d) 2 is broader in scope than it is under Rule 16 (a) 2 (D), which codifies the *Brady* doctrine. If the requested discovery is both immaterial and irrelevant to the preparation of the defense it does not "tend[] to create a reasonable doubt of the defendant's guilt as to the crime charged."

2. The Trial Court properly exercised its discretion by allowing a witness to be recalled and correcting the record with accurate testimony.

Trial Courts are vested with broad discretionary powers in the manner and scope of witness testimony, including recalling of witnesses by either party. In *State v. Burbank*, 163 A.2d 639 (1960), the Trial Court allowed the State to reopen its case after the defendant requested a directed verdict and after the Trial Court indicated that it was inclined to agree with the defendant. After reopening the case, the Trial Court allowed the State to recall a witness and supplement the record. There cannot be a more "prejudicial" impact to a defendant than this scenario provides. Noting that possibility, this Court declared:

"We are fully aware of and recognize the rights of a respondent in a criminal prosecution. A Justice presiding in a criminal case not only has the responsibility of protecting the rights of one accused of crime but also an equal responsibility to the people of the State to the end that justice is not thwarted by mistake or inadvertence. The presiding Justice under the circumstances of this case was well within his rights and his discretionary powers of trial procedure in permitting the State to reopen and present further evidence after the respondent's motion for a directed verdict of not guilty had been made. This exception is overruled."

Id., at 643-644. The Trial Court in the current matter exercised proper discretion.

3. The Trial Court did not engage in “obvious error” by failing to declare a mistrial.

Assuming, for the sake of argument only, that the State’s comment was improper, the defendant’s request for relief must still fail. “A defendant who fails to move for a mistrial due to an improper closing remark or to request other relief ‘is taken to have acquiesced in the corrective measures adopted by the trial justice.’ *State v. Rose*, 622 A.2d 78, 79 (Me. 1993).” *State v. Eastman*, 1997 ME 39, 14. Having so acquiesced, this Court will review for obvious error only. *Id.*

“Error is obvious only when it is so highly prejudicial and so taints the proceedings as virtually to deprive the defendant of a fair trial.’ *State v. Eaton*, 669 A.2d 146, 150-51 (Me. 1995) (stating that, although six prosecutorial statements were ‘close to the line,’ they did not rise to the level of depriving the defendant of a fair trial).” *State v. Young*, 2000 ME 144, 5. Moreover, where a Trial Justice has taken corrective action that will be deemed to have adequately cured any perceived prejudice except in extraordinary circumstances. “Nor does it appear from the record that comments made by the prosecutor reflect bad faith on his part. See *State v. Bennett*, 658 A.2d 1058, 1063 (Me. 1995) (noting that only where there are exceptionally prejudicial circumstances or prosecutorial bad faith will curative instructions be deemed inadequate to cure the prejudice).” *Id.*, at 7. The State did not act in bad faith by using a phrase deemed unsavory by the Trial Court moments before the closing argument. The defendant did not ask for a mistrial, nor would one have been warranted under the circumstances. The State’s comment was not so highly prejudicial, nor was the Trial Court’s corrective measures so inadequate, as to deny the defendant a fair trial.

CONCLUSION

Neither the Trial Court nor the State did anything in this trial to unduly prejudice the defendant or in any way deprive him of a fair trial by jury. The appeal should be denied.

February 10, 2026
Date



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CERTIFICATION OF SERVICE

I hereby certify that 2 copies of the foregoing Brief for Appellee have been forwarded this date to Neil Predergast, Esq., Counsel for the Appellant.

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