

**Maine Supreme Judicial Court
Sitting as the Law Court**

Docket No. Pen-25-267

State of Maine,

Appellee,

v.

Malek Taleghan,

Appellant.

On Appeal from the Unified Criminal Docket,
Penobscot County

Appellant's Brief

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Statement of the Case

On August 6, 2024, Malek Taleghan was charged with operating under the influence with a refusal to submit to a chemical test, 29-A M.R.S. § 2411(1-A)(C)(1) (Class D) (Count 1), and failure to sign a uniform summons and complaint, 17-A M.R.S. § 15-A(1) (Class E) (Count 2). (A. 3, 13.) He pled not guilty and requested court-appointed counsel, which the trial court granted. (A. 3-4.) After an initial dispositional conference in the Millinocket District Court, the case was transferred to Bangor for a jury trial. But due to Taleghan's transportation difficulties—his license was suspended and he lived alone—he individually submitted a handwritten request to have the case returned to Millinocket. (A. 21.) The trial court wrote a note on Taleghan's letter reading, "Granted. Will have to sign jury waiver." (A. 21.) Taleghan's letter did not provide that Taleghan wished to waive his right to a jury trial; it only provided that he wanted the case to be tried in Millinocket because his circumstances made it difficult to attend "many sessions of the court" some 70-80 miles away.

On April 9, 2025, the matter was back before the Millinocket District Court for a Scheduling Hearing. (Scheduling Hearing Transcript ("Sch. Tr.") 1.) The trial court called the case, but Taleghan had already left the courthouse because his attorney had told him that he was all set and could leave. (Sch. Tr. 2-3.) The trial

judge observed that no jury trial waiver was in the file and explained that the rules require a written waiver executed in open court. (Sch. Tr. 4-6.) M.R.U. Crim. P. 23(a) (“[a]ll cases in the Unified Criminal Docket shall proceed to jury trial unless the defendant, with the approval of the court, waives a jury trial in writing signed by the defendant in open court”). The judge recessed and asked Taleghan’s attorney to contact him so that he could return and execute a waiver. (Sch. Tr. at 6-7.)

The case resumed about an hour later, with Taleghan now in the courtroom. (Sch. Tr. at 7.) The full colloquy leading Taleghan to waive his right to a jury trial was as follows:

THE COURT: You are charged in this matter with one count of criminal OUI and one count of failing to sign a summons. And I have here a document that is known as a Waiver of Jury Trial.

THE DEFENDANT: Yes.

THE COURT: It indicates that you are the person charged in this proceeding, that you’ve seen a copy of the criminal complaint that I just mentioned, that you’re aware of your right to a jury trial, and that you have no desire to have a jury trial and therefore waive that right. If you agree with all those statements, then you can sign this document after you review it, all right?

THE DEFENDANT: Yes, sir.

MR. ALMY: Make sure you (indiscernible) jury trial right there.

THE COURT: You’ll date it. Today is April 9th.

DEFENSE COUNSEL: It’s not the best. Sorry.

THE COURT: That's fine.

DEFENSE COUNSEL: Thank you.

Thank you, Your Honor.

THE COURT: All right. Mr. Taleghan has signed the waiver, and I will approve his waiver of the right to jury trial. All right.

(Sch. Tr. at 7-8; A. 22.) After that, the trial court advised the parties that the case would be scheduled for trial. (Sch. Tr. at 8-9.)

At the bench trial held on May 21, 2025, the State presented three witnesses: Corporal Bradley Fitzgerald, Sergeant Jesse Gee, and Barbara Michaud. (Bench Trial Hearing Transcript ("Trial Tr.") 1-4, 53, 65, 71.) Fitzgerald testified that on July 19, 2024, he was monitoring traffic in Millinocket when he observed Taleghan's vehicle take a wide right turn from Congress Street onto Central Street. (Trial Tr. 6:25-10:25.) He followed Taleghan and witnessed several instances of erratic driving before conducting a traffic stop. (Trial Tr. 11:1-15:19.) Upon questioning, Taleghan explained that he had one beer that evening and disclosed that he had a heart condition for which he took medication, though he stated the medication does not prohibit driving. (Trial Tr. 20:18-21, 22:16-25.)

Taleghan was directed to perform three field sobriety tests. First was the horizontal gaze nystagmus test, administered by Sergeant Gee. (Tr. 23:3-14.) Second was the walk-and-turn test, during which Taleghan made several errors.

Taleghan mentioned before beginning the test he suffered from vertigo. (Trial Tr. 23:13-27:16.) Third was a writing exercise, where Taleghan was instructed to print the alphabet from C to W, write the date and time, print his name, and sign his name. (Trial Tr. 28:10-18.) Taleghan completed the exercise listing C through Q correctly and omitted R through V before writing W, did not write the date, and refused to sign his name. (A. 14.)

After the field sobriety tests, Fitzgerald asked Taleghan to rate himself on a scale from 1 to 10, with 1 being “stone-cold” sober and 10 being “the most intoxicated he’s ever been[.]” (Trial Tr. at 30:20-31:2.) The instructions did not identify what number corresponded to feeling impaired. (Trial Tr. at 30:20-31:2.) Taleghan rated himself as a 2. (Trial Tr. at 30:20-31:2.) Fitzgerald then arrested Taleghan and transported him to the police department for a breath test. (Trial Tr. 31:1-32:11.) Taleghan refused the breath test and to sign the implied consent form, and later refused to sign the summons after being warned that doing so was a crime. (Trial Tr. 35:14-25, 40:5-41:3.)

Defense counsel asked Fitzgerald questions about the layout and condition of the roads, confirmed that Taleghan mentioned a heart condition and vertigo, asked why there was no offer of a blood test, and established that Taleghan was later transported by ambulance to the hospital due to breathing problems. (Trial Tr.

44:8-53:18.) Otherwise, the defense did not challenge the administration or reliability of the field sobriety tests.

Next, the State called Gee. Gee testified about his proficiency in administering the HGN test, noting his completion of the Advanced Roadside Impaired Driving Enforcement (ARIDE) course. When asked to describe what he meant when he referred a subject's eyes "jerking" during the test, he responded "Bouncing? I – I don't know . . . That's just the term we've used." (Trial Tr. 61:9-14.) When asked about the mechanics of checking for lack of smooth pursuit, he stated he holds the stimulus "at least six inches in front of his face, and then I go – I try to time it four seconds each side. I don't know exact speed, but I try to do it within, like, go four seconds out this way and then four seconds this way." (Trial Tr. 61:18-22.) Gee saw six out of six clues indicating impairment. (Trial Tr. 60:11-15.) Defense counsel did not cross-examine Sergeant Gee. Notably, counsel did not question Gee about whether Taleghan's vertigo might have caused the HGN that Gee allegedly observed. *Schultz v. State*, 664 A.2d 60, 77 (Md. Ct. Spec. App. 1995) (identifying vertigo as one of the many alternative factors mentioned as possible causes of HGN). *See also State v. Taylor*, 1997 ME 81, ¶ 13 n.11, 694 A.2d 907 (citing *Schultz* with approval observing that *Shultz* identifies alternative causes of HGN).

Finally, the State called Barbara Michaud. Michaud testified about Taleghan's demeanor at the police station. (Trial Tr. 66:17-70:8.) On cross-examination, defense counsel focused on whether Michaud had called Taleghan a "son of a bitch" and whether she was angry with him, which Michaud denied. (Tr. 70:12-71:21)

After the State rested, Taleghan was directed to the witness stand. (Trial Tr. 71:25-72:19.) The trial court did not advise Taleghan of his privilege against self-incrimination. (Trial Tr. 71:25-72:19.) Nor did it inquire about whether Taleghan wished to waive that privilege. (Trial Tr. 71:25-72:19.) The colloquy was as follows:

MR. ALMY: No, Your Honor, that's all I have of this witness. State rests.

THE COURT: Okay. State rests. Attorney Locke?

MR. ALMY: Yes, Your Honor.

THE COURT: Okay. Sir, we'll have you come right up here to the witness stand.

THE DEFENDANT: Yes, sir.

THE BAILIFF: If you just come up the steps and face the Judge, please, and raise your right hand.

THE COURT: Sir, do you swear to tell the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: I do.

**MALEK TALEGHAN, HAVING BEEN DULY SWORN,
TESTIFIED AS FOLLOWS:**

THE COURT: Please have a seat. State your first and last name for the record and spell both.

THE DEFENDANT: Yes, sir. My name is Malek Taleghan,
M-A-L-E-K T-A-L-E-G-H-A-N.

(Trial Tr. 71:25-72:19.) Taleghan testified and was cross-examined, and the defense rested after his testimony. [Trial Tr. 71-119] Brief rebuttal testimony was provided by Sergeant Gee. (Trial Tr. 120:25.)

The State argued in closing that Taleghan's testimony corroborated that he was under the influence that evening, because his testimony of what happened was so different from that of the two officers. (Trial Tr. 121:1-122:9.) The State's closing argument also emphasized Taleghan's erratic operation of his vehicle and the results of the field sobriety tests—all of which went largely unchallenged during the evidentiary phase of the trial. (Trial Tr. 121:1-122:9.) The defense's closing argument simply asserted that Taleghan was "fine" and "okay to drive" without challenging the State's evidence:

Rebuttal. Basically, that -- that he indicated that he was fine, that he was okay to drive. He did drive. Having the foresight to go around the bumps and bruises on the roads, if you will. And you - he's not guilty.

(Trial Tr. 122:13-17.)

The trial court found Taleghan guilty. (Trial Tr. 123:1-127:18.) It sentenced him to 96 hours incarceration, a \$600 fine, and 150-day loss of license on Count 1

(operating under the influence), and a \$200 fine on Count 2 (refusing to sign a summons). (A. 9-13.) Taleghan filed his notice of appeal the day after trial. (A. 7.)

Issues Presented for Review

1. Whether Taleghan knowingly, intelligently, and voluntarily waived his privilege against self-incrimination before testifying at trial.
2. Whether Taleghan knowingly, intelligently, and voluntarily waived his right to a jury trial.

Standard of Review

When considering if a defendant has waived a fundamental constitutional right, although this Court reviews factual findings for clear error, “the ultimate issue of waiver has a ‘uniquely legal dimension,’ which merits independent appellate review.” *State v. Tuplin*, 2006 ME 83, ¶ 13, 901 A.2d 792. *See also State v. Ouellette*, 2006 ME 81, ¶ 21, 901 A.2d 800.

Argument

I. Taleghan did not knowingly, intelligently, and voluntarily waive his privilege against self-incrimination before testifying.

The United States Constitution provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself[.]” U.S. Const., amend. V. The privilege “is an essential constitutional protection that is widely regarded as a cornerstone of our adversarial system of criminal justice.” *United States v. Castro*, 129 F.3d 226, 229 (1st Cir. 1997) (citing *Michigan v. Tucker*, 417 U.S. 433, 439 (1974)). Like its federal counterpart, the Maine Constitution’s privilege against self-incrimination provides that “[t]he accused shall not be compelled to furnish or give evidence against himself or herself[.]” Me. Const., art. I, sec. 6. *See also State v. McLain*, 2025 ME 87, ¶ 31, 345 A.3d 141. “These provisions of the respective Constitutions have crystallized into absolute guaranties that common law privilege which is and always has been one of the cherished rights of the English and American peoples.” *Gendron v. Burnham*, 82 A.2d 773, 780 (Me. 1951).

Because Taleghan’s testimony implicates state and federal constitutional concerns, this Court’s “primacy approach requires us to analyze claims under the Maine Constitution before analyzing claims under the federal constitution.”

McLain, 2025 ME 87, ¶ 29. When construing the Maine Constitution, the Court

“look[s] first at the text and then at Maine precedent to determine whether either provides a definitive answer to the question posed.” *Id.* ¶ 30. If not, the Court proceeds “to examine, without limitation, the general purpose of the provision at issue, its historical context, any related statutes, and the common law, together with sociological and economic considerations and relevant precedent from other jurisdictions.” *Id.* Although the above-quoted constitutional text does not itself speak to the safeguards necessary to ensure a valid waiver of the privilege against self-incrimination, recent case law supports the need for an explicit showing of a knowing, intelligent, and voluntary waiver of the privilege.

In *McLain*, the defendant was subjected to custodial interrogation and made a series of ambiguous and equivocal statements about whether he was willing to answer questions. *Id.* ¶ 63. If left to federal law alone, the resulting statements would have likely been admissible because the Supreme Court does not require an explicit waiver of the privilege against self-incrimination by persons subject to custodial interrogation; instead, an accused must unambiguously invoke his or her privilege. *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010). But this Court charted a different course, observing that “[t]he *Thompkins* approach to waiver prioritizes obtaining evidence over ensuring that a waiver of a constitutional right is truly knowing, voluntary, and intelligent[,]” and “[t]hat has not been the Maine

approach.” *McLain*, 2025 ME 87, ¶ 58. Prioritizing “the importance we give to the privilege against self-incrimination[,]” this Court held a clear and unequivocal waiver is required, “like we require for all waivers of constitutional rights.” *Id.* ¶¶ 61-62.

As *McLain*’s reasoning observes, Maine precedent reflects “strong commitment to ensuring that rights under the Maine Constitution are protected.” 2025 ME 87, ¶ 37. *See, e.g., Verizon New Eng. v. PUC*, 2005 ME 16, ¶ 14, 866 A.2d 844 (requiring a “clear and unequivocal” waiver of a corporation’s First Amendment rights); *Jacques v. Am. Home Assurance Co.*, 609 A.2d 719, 721 (Me. 1992) (holding that an insurance company did not “clearly and unequivocally” waive its due process right to notice of a claim); *Gendron v. Burnham*, 82 A.2d 773, 784 (Me. 1951) (rejecting the argument that a grand jury witness waived his privilege against self-incrimination as to all questions which he refused to answer without specifically asserting the privilege). When discussing an accused’s in-court testimony, this Court has also stressed that “[g]reat care should undoubtedly be taken to protect the rights of the accused[,]” and that “[h]e should be fully informed of his legal rights, when called upon or admitted to testify as a witness in a matter in which his guilt is involved.” *State v. Gilman*, 51 Me. 206, 225 (Me. 1862). And finally, this Court has observed that “every reasonable presumption must be

indulged against waiver” of a fundamental constitutional right. *State v. Watson*, 2006 ME 80, ¶ 15, 900 A.2d 702. As elucidated above, a defendant’s right to remain silent during their own criminal trial is a fundamental constitutional right of the highest order.

These authorities all point to holding that, as with other contexts, article I, section 6 requires a clear and unequivocal waiver of the privilege against self-incrimination before a defendant testifies in a criminal trial. This is a logical extension of *McLain* because it prioritizes ensuring a truly knowing, voluntary, and intelligent waiver over the mere minutes that are otherwise saved by assuming a tacit waiver on the part of the speaker. 2025 ME 87, ¶ 58. The reasons justifying an explicit waiver are even greater at trial than in other contexts. Whereas a subject facing custodial interrogation can at least change their mind and stop answering questions, a waiver of the privilege at trial is irrevocable. Once the defendant testifies, the prosecution gains an unfettered right “to cross-examine [the accused] upon such statement with the same latitude as would be exercised in the case of an ordinary witness[.]” *State v. Butsitsi*, 2013 ME 2, ¶ 12, 60 A.3d 1254 (quoting *Fitzpatrick v. United States*, 178 U.S. 304, 315 (1900)).

To be sure, this Court has held that an explicit waiver of the right to testify is not required when a defendant elects to remain silent at trial—yet the best practice

may yet be for the trial judge to pose a neutral question. *Tuplin*, 2006 ME 83, ¶ 19. Although the right to testify and privilege against self-incrimination are inherently linked in that the assertion of one necessarily waives the other, that does not mean that the process for waiving the right to testify at trial must be the same as the process for waiving the privilege against self-incrimination at trial. First, the privilege against self-incrimination is among those special fundamental rights requiring constitutional safeguards to ensure its waiver is knowing, intelligent, and voluntary, and which cannot be presumed from a silent record. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (holding that a waiver of the privilege against self-incrimination, the right to trial by jury, and the right to confront one's accusers cannot be presumed from a silent record). Second, the consequences of waiving the right to testify are different than the consequences of waiving the privilege against self-incrimination. Whereas waiving the right to testify leaves the State to its evidence and proof, waiving the privilege against self-incrimination transforms the trial into an inquisitional process where the accused is examined under oath about whether they committed the crime.

Turning to the facts here, nothing even implicitly establishes that Taleghan knowingly, intelligently, and voluntarily waived his right to remain silent—much less an explicit waiver as mandated under the Maine Constitution. After the State

rested, the Court directed Taleghan to the witness stand where he was sworn, questioned, and cross-examined by the State. Nothing in the record shows, for example, that Taleghan understood that he had the right to remain silent; understood that his decision to exercise that right could not be used as evidence against him; understood that by testifying, he would expose himself to cross-examination by the prosecutor; personally made the decision to testify; or understood that he had the personal right to exercise his right to remain silent even if his counsel recommended otherwise. *See, e.g., Rock v. Arkansas*, 483 U.S. 44, 53 (1987) (“[The Fifth Amendment’s privilege against self-incrimination] is fulfilled only when an accused is guaranteed the right ‘to remain silent unless he chooses to speak in the unfettered exercise of his own will.’” (quoting *Harris v. New York*, 401 U.S. 222, 230 (1971) (Brennan, J., dissenting))). The record is devoid of even the most basic assurance—much less an explicit waiver—that Taleghan knowingly, intelligently and voluntarily waived the “cherished right[]” to remain silent at trial. *Gendron*, 82 A.2d at 780. Even if analyzed as a matter of federal law, the silent record below fails to show that Taleghan effectively waived his privilege against self-incrimination. *See Boykin*, 395 U.S. at 242.

II. Taleghan did not knowingly, intelligently, and voluntarily waive his right to a jury trial.

The right to jury trial guaranteed by the Sixth Amendment to the United States Constitution and article I, section 6 of the Maine Constitution. U.S. Const., amend. VI; Me. Const., art. I, sec. 6; *Baldwin v. New York*, 399 U.S. 66, 73 (1970) (holding that the Sixth Amendment right to a jury trial attaches in any criminal prosecution where the possible penalty exceeds six months); *Ouellette*, 2006 ME 81, ¶ 11 (observing that the Maine Constitution guarantees a right to a jury trial in all prosecutions). A defendant’s waiver of their right to a jury trial is effective only if it is knowing, voluntary, and intelligent. *Id.* ¶¶ 12, 28.

The Maine Rules of Unified Criminal Procedure provides that all cases shall proceed to a jury trial “unless the defendant, with the approval of the court, waives a jury trial in writing signed by the defendant in open court, but the absence of a writing in such a case shall not be conclusive evidence of an invalid waiver.” M.R.U. Crim. P. 23(a). Just as the absence of a waiver is not conclusive evidence of an invalid waiver, a signed waiver provides “no guarantee the waiver comports with constitutional requirements.” *United States v. Robertson*, 45 F.3d 1423, 1432 (10th Cir. 1995), cert. denied, 516 U.S. 844 (1995). Rather, “[t]here appears to be unanimous agreement among those circuits that have addressed the issue that trial courts should inform defendants, on the record, of the nature of the right to trial by

jury and the consequences of waiving that right before a waiver is accepted -- the only dispute being whether such a dialogue should be mandated by a supervisory rule or strongly suggested to the district courts.” *Id.* To that end, “[d]efendants should be informed that (1) twelve members of the community compose a jury; (2) the defendant may take part in jury selections; (3) jury verdicts must be unanimous; and (4) the court alone decides guilt or innocence if the defendant waives a jury trial.” *Id.* at 1432; *United States v. Cochran*, 770 F.2d 850, 853 (9th Cir. 1985). As Justice Kennedy wrote as a judge on the Ninth Circuit:

Courts discussing the validity of a defendant’s waiver of a jury trial under Fed. R. Crim. P. 23(a) have emphasized the importance of detailed questioning of the defendant in open court at the time of the waiver. *See, e.g., United States v. David*, 167 U.S. App. D.C. 117, 122-123, 511 F.2d 355, 360-62 (1975) Indeed, even when a defendant has signed a written stipulation waiving his right to a jury trial, courts have recognized that “it is better practice for a district judge when advised by a defendant that he desires to waive his right to a jury trial, to interrogate the defendant so as to satisfy himself that the defendant is fully apprised of his rights and freely and voluntarily desires to relinquish them. Such an interrogation would provide the district judge with an additional factual basis on which to grant or withhold his approval of the waiver.” *United States v. Hunt*, 413 F.2d 983, 984 (4th Cir. 1969).

United States v. Reyes, 603 F.2d 69, 71 (9th Cir. 1979). This approach “(1) [] more effectively insures voluntary, knowing and intelligent waivers ... (2) [] promotes judicial economy by avoiding challenges to the validity of waivers on appeal (as in

this case) or in habeas proceedings ... and (3) [] emphasizes to the defendant the seriousness of the decision[.]” *Cochran*, 770 F.2d at 852.

As discussed in more detail in Part I, *McLain* recognizes this Court’s longstanding and wide-ranging commitment to protecting rights under the Maine Constitution. 2025 ME 87, ¶ 37 (“[the Law Court’s] precedent demonstrates a strong commitment to ensuring that rights under the Maine Constitution are protected”). Consistent with that commitment, and with the other decisions discussed above, this Court should hold that an effective waiver of the right to a jury trial under article I, section 6 of the Maine Constitution requires that defendants be informed of the nature of the right to a jury trial and the consequences of waiving it. For all the positives of *McLain*, a dissenter could at least critique that its holding may occasionally come “at the expense of highly probative evidence.” *Id.* ¶ 58. But no such societal cost is due from simply taking a couple of minutes ensuring that a defendant’s waiver of a jury trial is truly knowing, intelligent, and voluntary.

Turning to the facts, the record fails to show that Taleghan personally understood his right to a jury trial, and entered a knowing, intelligent, and voluntary waiver of that right. The topic of waiving the right to a jury trial did not come from Taleghan—it came from the Court in response to Taleghan’s written

request to have the trial moved to Millinocket. Thus, it was not as if Taleghan deliberately sought out to have his case decided by one judge rather than twelve jurors. At the April 9 hearing, the trial judge told Taleghan that the form indicates that he is aware of his right to a jury trial, and that he has no desire to have a jury trial and therefore waives that right. (Sch. Tr. 7:11-22.) That description contains none of the facts that a defendant must understand to intelligently waive their right to a jury trial. *See State v. Hill*, 2014 ME 16, ¶ 10, 86 A.3d 628 (holding that a waiver of the right to counsel was ineffective where the elements of that right were not explained to the defendant); *United States v. Shorty*, 741 F.3d 961, 967 (9th Cir. 2013) (holding that a jury trial waiver was ineffective where a defendant was not informed that a jury verdict must be unanimous or that he could help choose the jury); *Robertson*, 45 F.3d 1423, 1432 (10th Cir. 1995) (holding that a motion to waive jury trial signed by counsel was ineffective because the record did not show that the defendant personally understood her right and knowingly waived it); *United States v. Delgado*, 635 F.2d 889, 890 (7th Cir. 1981) (reversing a conviction where the jury trial waiver colloquy with a represented-defendant did not show the defendant understood the right to a jury trial); *Commonwealth v. Hughes*, 536 Pa. 355, 374, 639 A.2d 763, 772 (Pa. 1994) (“Prior to accepting a defendant’s waiver of his right to a jury trial, the trial court must conduct a colloquy wherein it apprises the defendant

of the three essential elements of a jury trial: that the jury would be selected from members of the community; that the verdict must be unanimous; and that the defendant would be allowed to participate in the selection of the jury.”); *Lopez v. United States*, 615 A.2d 1140, 1147 (D.C. 1992) (holding that a jury waiver by a represented defendant was inadequate where there was no showing the defendant understood that a jury verdict must be unanimous). The form in this case is likewise sparse in its description—it reads that the defendant is “fully aware” of his right to a jury trial but contains nothing about what that right means. Thus, the record consists of a written waiver document that fails to effectively evidence a knowing, intelligent, and voluntary waiver of the right to a jury trial, and a transcript that fails to show Taleghan personally understood the fundamental right he was giving up.

The fact that Taleghan was represented by counsel does not change things. If representation by counsel were enough, *Robertson* and other authorities would be wrong because the court could assume that counsel probably talked with their client about the right to a jury trial and consequences of waiving it. 45 F.3d at 1432-33 (holding a jury waiver invalid even though the defendant was represented by counsel). Similarly, in *Hill*, this Court held the waiver of the right to counsel was ineffective even though predecessor counsel explained, as an officer of the court,

“[i]f it puts your mind at ease, Your Honor, we have discussed this. Mr. Hill is highly intelligent . . . and I believe he knows—he’s making a knowledgeable and informed decision. It may not be the decision I would recommend, but he knows what he’s doing.” 2014 ME 16, ¶ 3. There is even less here than in *Hill*: the trial court did not ask counsel if she had explained the nature of the right to a jury trial to Taleghan, or if Taleghan understood that explanation. Nor did the waiver form include anywhere for defense counsel to affirm that the defendant was made aware of their rights. Finally, trial counsel’s apparent unfamiliarity with the process for waiving a jury trial, including the need for Taleghan to be physically at the courthouse to execute a waiver in open court under Rule 23(a), makes any assumption that Taleghan was sufficiently counseled about this fundamental right unwarranted. Likewise, the totality of the record as described in the above Statement of the Case undermines any confidence that Taleghan’s constitutional rights were protected throughout the trial court proceedings.

In sum, this Court cannot conclude that Taleghan personally understood his right to a jury trial and entered a knowing, intelligent, and voluntary waiver of that right. Considering “the strong presumption against finding a waiver of fundamental constitutional rights, *see Johnson v. Zerbst*, 304 U.S. 458, 82 L. Ed.

1461, 58 S. Ct. 1019 (1938),” *Robertson*, 45 F.3d at 1433, this Court should reverse for a jury trial.

Conclusion

Taleghan requests that the Court vacate his convictions, and remand for a jury trial at which his earlier testimony, obtained in violation of his privilege against self-incrimination, will be inadmissible.

Respectfully submitted,

Dated: January 9, 2026

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Certificate of Service

I hereby certify that on the date stated below I caused an electronic copy of this document to be served on the following counsel via email. In addition, upon acceptance of this brief by the Court, two paper copies of this brief will be served on the following counsel.

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