

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

LAW COURT DOCKET NO. PEN-25-267

**STATE OF MAINE
APPELLEE**

v.

**MALEK TALEGHAN
APPELLANT**

ON APPEAL FROM THE PENOBSCOT COUNTY
UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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ARGUMENT

In this appeal, Defendant argues that he did not knowingly, intelligently, and voluntarily waive his privilege against self-incrimination or his right to a jury trial. The State contends that Defendant's constitutional rights were honored and waived knowingly, intelligently, and voluntarily. The State argues against Defendant's construction of Maine's constitutional privilege against self-incrimination. Additionally, the State argues any error in the self-incrimination issue was harmless, and that the jury trial issue is not ripe for consideration.

I. Defendant voluntarily waived his privilege against self-incrimination.

Defendant was represented by counsel at trial. After the State rested, the trial court acknowledged defense counsel and then swore in Defendant. Defendant's attorney conducted direct examination of Defendant, which included admitting five exhibits through Defendant's testimony. Defendant testified to his version of the events of the arrest. Afterwards, the State prosecutor cross-examined Defendant.

The instant analysis turns on voluntariness alone, not whether Defendant knew his rights. *Miranda* rights to know of the right to remain silent do not apply outside a custodial interrogation. "[A]ny such warning would be

incorrect, for there is no such right.” *United States v. Mandujano*, 425 U.S. 564, 580 (1976) (warning a grand jury witness of the risks of self-incrimination or perjury is inappropriate).

The Court determines voluntariness of a statement made by a defendant by a totality-of-the-circumstances analysis. *George*, 2012 ME 64, ¶ 21, 52 A.3d 903. The factors to be considered include:

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.

State v. Sawyer, 2001 ME 88, ¶ 9, 772 A.2d 1173.

Here, Defendant was not in custody, was not in an oppressive environment, and was not mentally impaired or incapable of comprehending the trial proceeding. Defendant testified to his sophistication as a businessman with higher education. There was no subpoena or interrogator compelling Defendant to testify. Nothing infringed on Defendant's ability to invoke the privilege against self-incrimination. Accordingly, the Court should find Defendant's statements at trial were voluntary.

A. The Maine constitutional privilege against self-incrimination does not require explicit waiver when a defendant testifies at their own trial.

Defendant argues he did not waive his privilege against self-incrimination when testifying in his own defense at trial because the waiver was not explicit. In interpreting the Maine Constitution, the Law Court looks first at the text first, second at Maine precedent, and third at factors including “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.” *State v. McLain*, 2025 ME 87, ¶ 30, 345 A.3d 141.

When analyzing the text of the Maine Constitution, this Court “ha[s] consistently interpreted the Maine privilege co-extensively with the federal privilege,” and has observed that “[t]hese two constitutional provisions are so similar in nature and identical in purpose that precedent with respect to the construction of the one may well serve as precedent for the construction of the other.” *State v. Eastman*, 1997 ME 39, ¶ 12, 691 A.2d 179 (quotation marks omitted).

Regarding the federal privilege, this Court has held that “[t]he privilege is not ordinarily self-executing, it must be affirmatively claimed when self-incrimination is threatened, and a defendant may lose its benefit inadvertently,

without making a knowing and intelligent waiver, simply by failing to invoke it.” *State v. Richard*, 1997 ME 144, ¶ 12, 697 A.2d 410. In the instant appeal, Defendant has conceded that to use the federal Constitution’s protections, “an accused must unambiguously invoke his or her privilege.” (Blue Br. 17.) The Maine constitution does not contain text to justify bifurcating the construction of the privilege against self-incrimination with the federal privilege. *See* Me. Const. art. I, § 6.

The second authority the Court will consult is Maine precedent. *McLain*, 2025 ME 87, ¶ 30, 345 A.3d 141. In *McLain*, it was at this step of the analysis that this Court departed from the standards of the federal privilege, requiring that in a custodial interrogation, police must clarify any ambiguous invocation of the privilege against self-incrimination. *See id.* ¶ 58. This approach differs from the federal standard, which permits police to continue questioning unless the suspect affirmatively and unambiguously invokes the privilege. *See id.* ¶ 54. The federal privilege follows a majority holding of the Supreme Court of the United States, while the Maine privilege follows the dissent. *See id.* ¶ 59 (citing *Berghuis v. Thompson*, 560 U.S. 370, 410 (2010) (Sotomayor, J., dissenting)). Justice Sotomayor’s dissent proposed that ambiguous invocations in police interrogations should be clarified. *Thompson*, 560 U.S. at 410.

The *McLain* rule does not apply to the instant case for two reasons. First, Defendant was not in a custodial interrogation when he testified at trial. Second, Defendant did not make any ambiguous statements to invoke the privilege.

Defendant was not subject to custodial interrogation like the accused in *McLain*. Defendant was in a courtroom setting. Courtroom environments, such as a trial or grand jury hearing, are not custodial interrogations.

The subject of a custodial interrogation is confronted with an interrogation environment [that] is created for no purpose other than to subjugate the individual to the will of his examiner. In contrast, the subject of a grand jury interrogation is confronted with an environment conducive to truth telling, because the witness has been placed under oath; however, placing one under oath is not inherently coercive.

George, 2012 ME 64, ¶ 22, 52 A.3d 903 (alteration in original) (citations omitted) (quotation marks omitted). In *George*, a grand jury witness incriminated herself when testifying. The circumstances of the instant case are closer to a grand jury hearing, as discussed in *George*, than to a custodial interrogation, as discussed in *McLain*, because testifying at trial also takes place in a courtroom environment. “A grand jury witness's interrogation is not analogous to a custodial interrogation.” *Id.*

In *George*, the defendant testified to a grand jury about her husband’s murder and in doing so, incriminated herself in the offense. The defendant had access to counsel before testifying. *Id.* ¶ 23. On appeal after her conviction, the

defendant argued that she should have been expressly informed of her Fifth Amendment privilege, but this Court disagreed, holding that “[t]here was no constitutional requirement that the prosecutor advise [the defendant] of . . . her privilege against self-incrimination at the . . . grand jury proceeding.” *Id.* This Court affirmed the conviction because the defendant’s grand jury testimony was voluntary under the totality of the circumstances. *Id.* ¶ 22.

An express waiver of the privilege against self-incrimination was not required in the instant Defendant’s trial. Such waiver is not required at grand jury hearings. Here, Defendant was represented by counsel, while in *George*, the defendant merely had access to counsel before her grand jury testimony. The Court should follow *George*, the more analogous precedent, rather than *McLain*.

Additionally, Defendant did not make any ambiguous statements that might be construed as an effort to invoke the privilege against self-incrimination. In *McLain*, the accused made ambiguous statements about his willingness to continue being questioned. *McLain*, 2025 ME 87, ¶ 26, 345 A.3d 141. Here, Defendant’s trial counsel conducted a direct examination, which included the admission of five exhibits, with no ambiguous indications of unwillingness from Defendant.

The final factors to consider in the constitutional analysis, that of historical context and statutes, also oppose construing the Maine Constitution to require an explicit waiver of the self-incrimination privilege at trial. *Id.* ¶ 30.

Defendant's requested constitutional construction is against the grain of historical context. The federal and state constitutions protect citizens from the government, but not from regrets over strategic legal choices. *See id.* ¶¶ 40–46. The State had already rested its case, and Defendant controlled the mode of the presentation. The government had already played its last card and there was nothing left to protect against in the context of compelled self-incrimination.

II. Defendant knowingly, intelligently, and voluntarily waived his right to a jury trial.

The instant waiver complies with the Maine Rules of Unified Criminal Procedure, which permit a defendant to “waive[] a jury trial in writing signed by the defendant in open court,” subject to court approval. M.R.U. Crim. P. 23(a). In this case, Defendant signed the waiver in open court. (A. 22.)

On the other hand, federal law does not require the signing to be before a judge, but does require that “before any waiver can become effective . . . the express and intelligent consent of the defendant” must be had, “[a]nd the duty of the trial court in that regard is not to be discharged as a mere matter of rote, but with sound and advised discretion.” *Patton v. United States*, 281 U.S. 276,

312 (1930), abrogated on other grounds by *Williams v. Florida*, 399 U.S. 78 (1970). Some other jurisdictions impose stricter, more specific requirements for an effective waiver, such as requiring a court to advise a defendant of the three essential elements of a jury trial. *See, e.g., Lopez v. United States*, 615 A.2d 1140, 1147 (D.C. 1992).

Here, after Defendant returned to court to execute the waiver, the judge asked, “you’re aware of your right to a jury trial . . . right?” (Sch. Tr. 7.) Defendant said yes. (Sch. Tr. 7.) The trial court, which was in the best position to gauge whether Defendant’s waiver was effective, accepted the waiver.

In the instant case, the waiver is valid. The voluntariness is evident by Defendant’s wish for a more convenient venue and re-appearance to the hearing after going home. The trial court met its duty to confirm the express and intelligent consent of Defendant when the judge personally described the waiver document to Defendant.

A. The issue regarding waiver of jury trial is not ripe for consideration.

Post-conviction review is the proper mechanism to request review of jury waiver issues when some evidence of waiver is in the record. “A defendant may challenge a purported waiver of jury trial on direct appeal only if it is clear on the record of the case that there was no valid waiver of jury trial.” *State v. Mank*, 501 A.2d 809, 811 (Me. 1985) (quotation marks omitted). “Thus, post-

conviction relief would be the appropriate proceeding wherein the appellant might be able to show that the jury waiver was neither voluntarily nor intelligently executed.” *State v. Boilard*, 359 A.2d 65, 68 (Me. 1976).

Here, Defendant’s signed waiver is on the record. (A. 22.) This Court has held that when a signed writing of waiver is on the record, in a Class D or E charge, and the Defendant was present in case proceedings, at least some validity to the waiver is present:

Defendant argues for the first time on appeal that he was never informed of his right to a jury trial. On the record is a writing signed by the attorney of record waiving defendant's right to jury trial Defendant, although present throughout the proceedings, never challenged the waiver in the trial court. On this record, it is not clear that there was no waiver of jury trial.

State v. Curtis, 588 A.2d 738, 738 (Me. 1991) (citations omitted) (quotations omitted).

In the instant case, Defendant signed the waiver of a jury trial himself, in open court, while his attorney was present. The record demonstrates that here, it is not clear that there was no waiver of a jury trial.

Defendant must seek relief in post-conviction review, not direct appeal because “[i]t is not obvious on the record that there was a denial of his right to trial by jury so as to require [this Court] to disturb his conviction on direct appeal.” *State v. Sanders*, 515 A.2d 1155, 1155 (Me. 1986).

CONCLUSION

Defendant knowingly, intelligently, and voluntarily waived his privilege against self-incrimination. The *McLain* rule does not apply here because Defendant was not in a custodial interrogation when he testified in his own defense at trial, and Defendant did not make ambiguous statements about his willingness to answer questions. Without the heightened requirements of *McLain*, the record demonstrates that Defendant waived his privilege against self-incrimination. Furthermore, although the issue regarding waiver of Defendant's right to a jury trial is not properly before this Court on direct appeal, the record shows that Defendant knowingly, intelligently, and voluntarily waived his right to a jury trial. The Court should therefore affirm the conviction.

Signature page follows.

Respectfully submitted,

Dated: April 3, 2026

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CERTIFICATE OF SERVICE

On April 3, 2026, I sent native PDF versions of this brief to the Clerk of the Law Court and Attorney Tyler Smith by email. I will deliver ten hard copies to the Law Court and two copies to opposing counsel Tyler Smith at Libby O'Brien Kingsley & Champion, LLC, 62 Portland Road, Suite 17, Kennebunk, ME 04043.

Dated: April 3, 2026

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