

**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

---

**Reply Brief**

---

Tyler J. Smith, Bar No. 4526  
LIBBY O'BRIEN KINGSLEY & CHAMPION, LLC  
62 Portland Road, Suite 17  
Kennebunk, ME 04043  
(207) 985-1815  
tsmith@lokllc.com

*Attorney for Appellant Malek Taleghan*

## Table of Contents

|                                                                                                                                                                                                          |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Table of Authorities .....                                                                                                                                                                               | 3  |
| Introduction.....                                                                                                                                                                                        | 4  |
| Reply Argument.....                                                                                                                                                                                      | 5  |
| I. <i>McLain</i> supports requiring an explicit waiver of the privilege<br>against self-incrimination when a defendant testifies at trial,<br>and <i>State v. George</i> does not suggest otherwise..... | 5  |
| II.   The jury waiver argument as framed in the opening brief is<br>ripe for consideration on direct appeal.....                                                                                         | 7  |
| Conclusion.....                                                                                                                                                                                          | 9  |
| Certificate of Service.....                                                                                                                                                                              | 10 |

## Table of Authorities

### Cases

|                                                              |         |
|--------------------------------------------------------------|---------|
| <i>State v. Buntsitsi</i> ,<br>2013 ME 2, 60 A.3d 1254 ..... | 7       |
| <i>State v. George</i> ,<br>2012 ME 64, 52 A.3d 903 .....    | 5, 6, 7 |
| <i>State v. Mank</i> ,<br>501 A.2d 809 (Me. 1985) .....      | 7, 9    |
| <i>State v. McLain</i> ,<br>2025 ME 87, 345 A.3d 141 .....   | 5, 7, 8 |

### Other Authorities

|                                                                            |   |
|----------------------------------------------------------------------------|---|
| 1 Cluchey & Seitzinger, <i>Maine Criminal Practice</i> § 23.5 (1985) ..... | 7 |
|----------------------------------------------------------------------------|---|

## **Introduction**

This appeal turns on whether Taleghan waived two fundamental constitutional rights during his bench trial: his privilege against self-incrimination and his right to a jury trial. He did not.

First, after the State rested its case, Taleghan was directed to the witness stand, sworn, and questioned without advisement that he had the right to remain silent, that no adverse inference could be drawn from silence, and that testifying would irrevocably expose him to full cross-examination by the prosecutor. Under this Court's recent reaffirmation that constitutional waivers must be clear, the record does not show a knowing, intelligent, and voluntary waiver of the privilege against self-incrimination before Taleghan testified.

Second, the idea of waiving a jury trial was made by the trial court, not Taleghan, in response to Taleghan's request to have the case tried closer to his home. The trial court's Rule 23(a) colloquy consisted largely of asking Taleghan to sign a form waiving a jury trial, without explaining the basic attributes of a jury trial or taking any steps to ensure that Taleghan was entering a knowing, intelligent, and voluntary waiver of that right. Under principles akin to those described in the self-incrimination issue, this colloquy failed to constitute a knowing, intelligent, and voluntary waiver of his right to a jury trial.

## Reply Argument

### **I. *McLain* supports requiring an explicit waiver of the privilege against self-incrimination when a defendant testifies at trial, and *State v. George* does not suggest otherwise.**

In *State v. McLain*, 2025 ME 87, 345 A.3d 141, this Court held that, under the Maine Constitution, the police must obtain an express waiver of the privilege against self-incrimination before starting a custodial interrogation. This rule speaks to Maine’s commitment to “ensuring that a waiver of a constitutional right is truly knowing, voluntary, and intelligent,” and the “importance we give to the privilege against self-incrimination[.]” *Id.* ¶ 58, 61-62. Taleghan argues these principles also require that a trial judge take a few moments, probably less than a minute or two in many cases, to ensure that a testifying defendant has in fact made a knowing, voluntary, and intelligent waiver of their privilege.

The State, in contrast, likens the situation here to that in *State v. George*, 2012 ME 64, ¶ 14, 52 A.3d 903. The defendant in *George* testified before a grand jury, was later indicted herself, and sought to suppress her grand jury testimony because she was a target of the investigation and not expressly informed of her Fifth Amendment rights. *Id.* ¶¶ 7-8. The Court noted that, as a general proposition, grand jury witnesses must invoke their privilege against self-incrimination. *Id.* ¶ 15. It elaborated, however, that “[w]hether the Constitution

requires that a witness who is, in fact, a target of a grand jury investigation, but has not yet been charged with a crime, be issued a warning informing her of her Fifth Amendment right not to answer incriminating questions during the investigation has not been decided.” *Id.* ¶ 17. In the end, the issue was not decided, because George was not a target of the investigation at the time the testimony was given. *Id.* ¶ 19.

With this understanding, *George* is not on point because it left undecided whether a target of a grand jury investigation who is herself testifying at the grand jury must be given explicit warnings about her privilege against self-incrimination. Plus, Taleghan was not just a target of an investigation—he was standing trial. So even had *George* held that a target of a grand jury investigation need not be given warnings before testifying, Taleghan would have a strong argument that his situation is more compelling. And finally, *George* was careful to qualify that Maine was free to enact greater protections under the state constitution, 2012 ME 64, ¶ 19, n.5—something that has been clarified as to the privilege against self-incrimination in *McLain*.

The State’s reliance on *George* is also misplaced because it focuses on the wrong part of that decision. Specifically, the State cites portions of the decision talking about voluntariness, not the privilege against self-incrimination, so the

observations about the nature of grand jury testimony is of limited value to the question presented in this appeal. *Id.* ¶¶ 20–24. (Red Br. at 8-9 (citing only portions of *George* dealing with voluntariness).) And in any event, being a witness at a grand jury is very different from taking the stand in one’s own criminal trial. A grand jury witness is free to invoke their privilege against self-incrimination on a question-by-question basis, and can even suspend questioning to consult with counsel about whether to claim the privilege in response to a particular question. In contrast, a testifying defendant irrevocably subjects himself or herself to the will of the prosecutor as cross-examiner. *State v. Butsitsi*, 2013 ME 2, ¶ 12, 60 A.3d 1254. Taking a few seconds to ensure a testifying defendant truly understands the gravity of their decision adheres to the protective approach to the privilege against self-incrimination that this Court announced in *McLain*.

## **II. The jury waiver argument as framed in the opening brief is ripe for consideration on direct appeal.**

Apart from its position that the waiver was valid, the State asserts that the jury waiver issue is not ripe for consideration under *State v. Mank*, 501 A.2d 809 (Me. 1985). *Mank* provides that “[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.” *Id.* at 811 (quoting 1 Cluchey & Seitzinger, *Maine Criminal Practice* § 23.5, at 23-9 (1985)). This argument fails in two respects.

First, the language from *Mank* on which the State relies should be overruled. After being decided in 1985, *Mank* appears to have been cited in just two other published decisions, with the most recent citation occurring in 2001. *State v. Gordon*, 2001 ME 34, ¶ 10, 766 A.2d 75; *State v. Curtis*, 588 A.2d 738, 738 (Me. 1991). *Mank* also contains no substantive analysis of why the lack of a waiver must be “clear” on the record, much less an analysis specific to the Maine Constitution. And most importantly, *Mank* lacked the benefit *McLain*’s more recent analysis of the requirements to waive fundamental constitutional rights under the Maine Constitution. *McLain*, 2025 ME 87, ¶ 37 (“[o]ur precedent demonstrates a strong commitment to ensuring that rights under the Maine Constitution are protected”). Aligning the right to a jury trial with other rights, this Court should hold that the record must affirmatively show a valid, knowing, and intelligent waiver of a jury trial.

Second, even taking *Mank* at face value, the record clearly shows the absence of a valid waiver. The fundamental argument in the opening brief has two components: (i) establishing the on-the-record requirements for ensuring a knowing waiver, both in general and under the Maine Constitution (Blue Br. at 22-24), and (ii) whether Taleghan entered a knowing, intelligent, and voluntary waiver

under that standard (Blue Br. at 24-28). So even under *Mank*, the issue is ripe for consideration on this record.

### **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: April 17, 2026

/s/ Tyler Smith

Tyler J. Smith, Bar No. 4526

Libby O'Brien Kingsley & Champion, LLC

62 Portland Road, Suite 17

Kennebunk, Maine 04043

(207) 985-1815

[tsmith@lokllc.com](mailto:tsmith@lokllc.com)

## **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.

R. Christopher Almy Esq.  
Penobscot County District Attorney's Office  
97 Hammond Street  
Bangor ME 04401  
[r.christopher.almy@maineprosecutors.com](mailto:r.christopher.almy@maineprosecutors.com)

Dated: April 17, 2026

/s/ Tyler Smith  
Tyler J. Smith, Bar No. 4526  
Libby O'Brien Kingsley & Champion, LLC  
62 Portland Road, Suite 17  
Kennebunk, Maine 04043  
(207) 985-1815  
[tsmith@lokllc.com](mailto:tsmith@lokllc.com)