

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

---

**Law Court Docket No. Pen-23-357**

---

**State of Maine**  
*Appellee*

v.

**Corydon Judkins**  
*Defendant/Appellant*

---

On appeal from a conviction in the Penobscot County Unified Criminal Court

---

***REPLY BRIEF FOR APPELLANT***

Michelle R. King  
Maine Bar No. 6418  
*Attorney for Defendant*

Irwin & Morris  
P.O. Box 7030  
Portland, Maine 04112  
(207) 772-0303

February 21, 2024

**TABLE OF CONTENTS**

Table of Contents ..... i

Table of Authorities.....ii

Argument.....1

**THE LOWER COURT’S ERROR IN ADMITTING THE TESTIMONIAL  
PORTION OF OFFICER REYNOLD’S BODY CAM WAS NOT HARMLESS  
AND THIS COURT SHOULD REVERSE MR. JUDKINS’ CONVICTION....1**

Conclusion .....5

Certificate of Service.....6

## **TABLE OF AUTHORITIES**

### **Maine Cases:**

<i>State v. Bonfanti</i> , 2023 ME 31, ¶ 12, 294 A.3d 137, 140	2, 5
<i>State v. Crooker</i> , 122 A. 865, 866, 868 (Me. 1923)	1
<i>State v. Dolloff</i> , 2012 ME 130, ¶ 34, 58 A.3d 1032, 1043	2
<i>State v. Johnson</i> , 2009 ME 103, ¶ 18, 982 A.2d 320)	2
<i>State v. Larsen</i> , 2013 ME 38, ¶ 24, 65 A.3d 1203, 1209	5
<i>State v. Shepley</i> , 2003 ME 70, ¶ 15, 822 A.2d 1147, 1151	3
<i>State v. Warren</i> , 1998 ME 136, ¶ 15, 711 A.2d 851, 858	1, 2, 3

### **Federal Cases:**

<i>Delaware v. Van Arsdall</i> , 475 U.S. 673, 684 (1986)	1, 2
<i>United States v. Eskridge</i> , 164 F.3d 1042, 1044 (7th Cir. 1998)	3
<i>United States v. Graham</i> , 47 F.4th 561, 569 (7th Cir. 2022)	2
<i>United States v. Olano</i> , 507 U.S. 725, 734 (1993)	2

### **Other Jurisdictions:**

<i>Commonwealth v. Wilson</i> , 113 N.E.3d 902, 917–918 (Mass. App. Ct. 2018)	3
<i>Commonwealth v. Vardinski</i> , 780 N.E. 2d 1278, 1287 (Mass. 2003)	3

## ARGUMENT

### **THE LOWER COURT’S ERROR IN ADMITTING THE TESTIMONIAL PORTION OF OFFICER REYNOLD’S BODY CAM WAS NOT HARMLESS AND THIS COURT SHOULD REVERSE MR. JUDKINS’ CONVICTION.**

The State concedes that the lower court erred by admitting R.A.’s statement shown on Officer Reynold’s body cam video from 10:00-10:23, thereby violating the Confrontation Clause of the United States Constitution. [State’s Br. at 6]. Nevertheless, the State claims that the error was harmless. [State’s Br. 8].

“The right of cross-examination is a substantive right and a most valuable and important one. By it the accused can test the interest, prejudice, motive, knowledge, and truthfulness of the witness, and nothing can be substituted for it.” *State v. Crooker*, 122 A. 865, 866, 868 (Me. 1923) (holding that error in not allowing proper cross-examination was not harmless). Because Constitutional errors raise significant concerns about whether a defendant receives a fair trial, the harmless error standard is applied. *State v. Warren*, 1998 ME 136, ¶ 15, 711 A.2d 851, 858 (“The harmless error doctrine ‘recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error.’”) (*quoting Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)). When “conducting a harmless error analysis [this Court] must be satisfied

that the record as a whole demonstrates beyond a reasonable doubt that the error did not affect the substantial rights of the defendant or contribute to the verdict obtained.” *State v. Bonfanti*, 2023 ME 31, ¶ 12, 294 A.3d 137, 140 (quoting *State v. Johnson*, 2009 ME 103, ¶ 18, 982 A.2d 320)). A constitutional error is not harmless “if there is a reasonable possibility that it contributed to the verdict, regardless of whether there was sufficient other evidence on which the defendant could have been convicted.” *Warren*, 1998 ME at ¶ 17. The State carries the burden of persuasion on appeal when this Court reviews for harmless error. *See State v. Dolloff*, 2012 ME 130, ¶ 34, 58 A.3d 1032, 1043 (citing *United States v. Olano*, 507 U.S. 725, 734 (1993)).

As the Law Court has determined:

Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

*Warren*, 1998 ME at ¶ 18 (quoting *Van Arsdall*, 475 U.S. at 683-684). “A Confrontation Clause violation is not harmless if these factors indicate to ‘the average juror’ that without the wrongfully admitted testimony, ‘the prosecution's case would have been significantly less persuasive.’” *United States v. Graham*, 47 F.4th 561, 569 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 1770 (2023) (quoting

*United States v. Eskridge*, 164 F.3d 1042, 1044 (7th Cir. 1998)). Any ambiguities are generally resolved in favor of the defendant. *State v. Shepley*, 2003 ME 70, ¶ 15, 822 A.2d 1147, 1151. *See also Commonwealth v. Wilson*, 113 N.E.3d 902, 917–918 (Mass. App. Ct. 2018) (when examining the harmless error standard for a Confrontation Clause violation the court “resolve[s] all ambiguities and doubts in the favor of the defendant”) (*quoting Commonwealth v. Vardinski*, 780 N.E. 2d 1278, 1287 (Mass. 2003)).

Here, there was a reasonable possibility that R.A.’s erroneously admitted statement on Officer Reynolds’ body cam contributed to the verdict regardless of the other evidence on which Mr. Judkins could have been convicted, *Warren*, 1998 ME at ¶ 17, because it was of great significance in the case. First, R.A. was the complaining witness, her credibility, as weighed against Mr. Judkins’ credibility, was at the heart of the case. [Tr. II: 107-108]. R.A.’s statement that “He thinks I’ve been having these affairs and everything and it’s just bullshit. And last night, night before last, he beat me real bad. This is the second part of it, this is from the first part of it” [Ex. 1 at 10:02-10:23], was not cumulative of other evidence because it introduced the concept that Mr. Judkins had previously assaulted R.A, which had no other support in the record,<sup>1</sup> and which was highly prejudicial to Mr. Judkins.

---

<sup>1</sup> The State had sought to introduce Mr. Judkins’ prior history of assaults via a Motion in Limine but withdrew the motion prior to trial. [Mot. Tr. Aug. 22, 2023, at 81; R.A. 5].

The second part of R.A.'s improperly admitted statement, "He just took my phone because I wanted to call the cops, and he won't let me call the cops. And he said if someone knocked on the door, and someone had already knocked on the door a couple of times, because he said not to say anything because he was going to kill me," [Ex. 1 at 10:02-10:23], was equally damaging for the jury to hear. There was no other evidence whatsoever that Mr. Judkins threatened to kill R.A. or told her not to answer the door.

In addition, during her closing argument, the prosecutor focused on R.A.'s statement and in particular, the two pieces of evidence that had no other support in the record:

You heard testimony that clearly fits within some of the spokes of the domestic violence power and control wheel. First, we'll just start with using coercion and threats. What did he say to her? He said to her, if you call the cops, I will kill you. He did not want her to answer the door. . . .

Using intimidation. I will kill you. Using emotional abuse. Using isolation, you better not answer the door. You answer that door, the cops are there and you call the cops, I will kill you. That's using isolation. And physical violence. We know that there is – was on March 3<sup>rd</sup> and 4<sup>th</sup> physical violence.

[Tr. II: 107].

That the jury homed in on this improperly admitted statement is evident from their request to view the body cam video again during their deliberations. [Tr. II: 127]. Thus, not only did the jury view this erroneously admitted statement once, but they were able to view it a second time, which surely exacerbated the error.

Although the State's case did not consist of just these improperly admitted statements, the other evidence submitted to support the State's theory, also came from R.A., but was admitted via a hearsay exception. There was no other corroborating evidence, and in fact, Mr. Judkins' testimony fully contradicted that produced by the State.

As a consequence, the trial court's error in admitting the portion of R.A.'s statement on the State's exhibit 1 from 10:02-10:23, was not harmless error and this Court must vacate Mr. Judkins' conviction because the error affected Mr. Judkins' substantial rights and contributed to the verdict that was obtained against him. *Bonfanti*, 2023 ME at ¶ 12. *See also State v. Larsen*, 2013 ME 38, ¶ 24, 65 A.3d 1203, 1209 (vacating judgment because the improperly admitted statements was the only piece of evidence offered by the State that supported their theory and the Court was not satisfied beyond a reasonable doubt that the properly admitted evidence alone would have persuaded the jury of defendant's guilt); *Wilson*, 113 N.E.3d at 918 (vacating the conviction because evidence admitted was not cumulative and there were no other corroborating witnesses).

### **CONCLUSION**

For the foregoing reasons, this Court should vacate Mr. Judkins' conviction.

/s/ Michelle R. King  
Michelle R. King Bar No. ~ 6418  
*Attorney for Appellant Corydon Judkins*



Irwin & Morris  
183 Middle Street, 4<sup>th</sup> Floor  
P.O. Box 7030  
Portland, Maine 04112-7030  
(207) 772-0303  
*mking@irwinmorris.com*

### **CERTIFICATE OF SERVICE**

I, Michelle R. King, attorney for Corydon Judkins, hereby certify that on this date, I made service of two copies of the foregoing brief and one copy of the Appendix, by email and First-class mail, to the following counsel:

Dated: February 21, 2024

Mark Rucci  
Office of the District Attorney's Office  
Penobscot County  
97 Hammond St.  
Bangor, ME 04401  
Mark.Rucci@maineprosecutors.com

/s/ Michelle R. King  
Michelle R. King Bar No. ~ 6418  
*Attorney for Appellant Corydon Judkins*

Irwin & Morris  
183 Middle St., 4<sup>th</sup> Floor  
Portland, ME 04112-7030  
(207) 772-0303  
*mking@irwinmorris.com*