STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

DOCKET NO. PEN-23-357

STATE OF MAINE

APPELLEE

v.

CORYDON JUDKINS

APPELLANT

ON APPEAL FROM THE PENOBSCOT COUNTY UNIFIED CRIMINAL DOCKET, BANGOR, ME

BRIEF OF APPELLEE

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STATEMENT OF THE FACTS

On March 4, 2023, Appellant Corydon Judkins (hereinafter "Judkins") assaulted the victim, punching her in the face and chest and strangling her in a harrowing attack that left significant visible injuries. (I Tr. 131.); State's Exhibits 2-5, 8. Officer Taylor Reynolds responded to the scene and knocked on the door of the victim's apartment with his body camera activated. State's Exhibit 1, 4:17-4:36; (I Tr. 33-34.). From the residence, a female voice pleaded with him to come in. State's Exhibit 1, 4:28-4:45; (I Tr. 36.). Reynolds was unable to enter until Judkins unlocked the door. (I Tr. 36.) Inside the apartment, he located the victim sitting on the couch, whimpering as she held a package of frozen chicken over her battered face and chest. State's Exhibit 1, 5:20-6:00, 7:23-7:45; (I Tr. 38-39.) Reynolds asked if either party was injured, and Judkins responded, "[w]e both are. She fucking biting my finger." State's Exhibit 1, 5:34-5:39. The parties were separated, and Reynolds asked the victim what happened. Twenty-three seconds of her recorded response was played to the jury over objection. (I Tr. 10-14.); State's exhibit 1, 10:00-10:23. The response was as follows:

> **Reynolds:** "What happened . . . ."
>
> **Victim:** "He thinks I've been having all these affairs and everything, and it's just bullshit. And last ni—the night before last—he beat me really bad. This is the second part of it, and

> this is from the first part, and he won't—he just took my phone because I wanted to call the cops—and he won't let me call the cops, and he said [indistinguishable] knocked on the door, and I'm sorry you had to knock a couple times because he said not to say anything because he was going to kill me . . . ."

State's Exhibit 1, 9:53-10:23. Judkins was arrested for domestic violence assault, and the victim was transported to St. Joseph's Hospital, where she spoke with a triage nurse and an emergency room triage physician assistant before undergoing an extensive examination by Sexual Assault Nurse Examiner (hereinafter "SANE") Stephanie Deredin. (I Tr. 60-61, 126-27, 136-39.) The victim reported what happened to her in statements that were largely admitted as pertinent to medical diagnosis, and SANE Deredin fastidiously documented numerous significant injuries to the victim's face, throat, back, and chest. State's Exhibit 7, 8; (I Tr. 145-60.)

Judkins was seen in custody, declared indigent, and had counsel appointed to represent him on March 6, 2023. (A. 1.) On August 18, 2023, two business days before trial was set to begin, his counsel made an oral motion to withdraw following an off-the-record conversation in chambers. For cause, she stated that Judkins was concerned that she "ha[d] not been doing an adequate job for him." (Transcript of August 18, 2023, Motion Hearing, 4-5.) (hereinafter "Aug. 18 Mot. Tr.") She further represented his belief that her "lack of work

ha[d] violated his constitutional rights." *Id.* The court (*Mallonee, J.*) inquired as to whether Judkins agreed with counsel's statements and ultimately denied the motion, noting that "the case [was] scheduled for trial next week . . . the jury has been empaneled . . . ." (Aug. 18 Mot. Tr. 5.)

Though under subpoena, the victim did not appear voluntarily for trial, and the State declined to effect an arrest, instead proceeding on other evidence to prove the charges. (Hearing on Motions, August 22, 2023, 15-16.) (hereinafter "Aug. 22 Mot. Tr."). In his case-in-chief, Judkins testified and intimated that the victim's injuries were self-inflicted when she punched herself repeatedly in the face while high on methamphetamine. (II Tr. 35-36.) He testified that he was also using methamphetamine while the two were together, but that ingestion of the drug has no effect on him other than wakefulness. (II Tr. 46-48.) Importantly, he tendered to the jury an alternative version of his conflict with the victim wherein she—mad that he had given her the middle finger—bit said finger as hard as she could. (II Tr. 40.) What followed was chaotic, but Judkins was adamant that he "never laid a finger" on the victim, even in self-defense. (II Tr. 43, 53.)

Judkins was charged by complaint dated March 6, 2023, with domestic violence aggravated assault (Class B), domestic violence criminal threatening (Class B), domestic violence assault alleging a prior conviction (Class C), and

obstructing report of a crime (Class D). (A. 1.) Judkins was indicted on May 24, 2023, and pled not guilty on June 6, 2023. (A. 2.) The State obtained a four-count superseding indictment on June 28, 2023. (A. 3.) The State later dismissed count four, (A. 3.), and Judkins was arraigned and entered pleas of not guilty on August 11, 2023. (A. 4.) The testimonial portion of the trial began on August 23, 2023, at which time the State dismissed counts one and two of its indictment, leaving one count of domestic violence assault (Class C). (A. 5.) Judkins was found guilty following a jury trial on August 24, 2023. (A. 6.)

STATEMENT OF THE ISSUES PRESENTED

I. Whether the court erred in admitting a portion of Officer Reynolds' body camera video showing twenty-three seconds of his interview of the victim?

A. While much of the video was admissible on independent grounds, the State concedes that admission into evidence of the portion of the video showing the officer's interview of the victim violated the Confrontation Clause.

B. Whether the error was harmless beyond a reasonable doubt, when the conviction was supported by evidence of the victim's statement to medical personnel, the admissible portion of the video at issue, the victim's medical records, and the testimony of medical personnel?

II. Whether the court abused its discretion in denying counsel's motion to withdraw when the motion was made two business days prior to trial after a jury was already empaneled?

ARGUMENT

I. The court erred in admitting a portion of Officer Reynolds' body camera video showing twenty-three seconds of his interview of the victim.

"In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." U.S. Const. amend. VI.[1] The right to cross-examine a witness is limited to "testimonial" evidence, which the Supreme Court has "described as 'typically a solemn declaration or affirmation made for the purpose of establishing or proving some fact.'" *State v. Kimball*, 2015 ME 67, ¶ 15, 117 A.3d 585 (citing *Crawford v. Washington*, 541 U.S. 36, 51 (2004)). In *Davis v. Washington*, the Supreme Court observed that "testimonial statements are those that are given 'when the circumstances objectively indicate that there is no . . . ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.* ¶ 16 (citing *Davis v. Washington*, 547 U.S. 813, 822 (2006)). This Court has analyzed Confrontation Clause challenges in the context of 911 calls and police response immediately thereafter using a four-part test. *State v. Metzger*, 2010 ME 67, ¶ 16, 999 A.2d 947 (citing *State v.*

[1] Judkins neither cited nor argued the Confrontation Clause under the Maine Constitution. This brief accordingly discusses only the federal right. Nonetheless, this court has historically treated the provisions as coextensive. *See State v. Mangos*, 2008 ME 150, ¶ 10, 957 A.2d 89.

Rickett, 2009 ME 22, ¶ 12, 967 A.2d 671). In this context, statements are nontestimonial when:

> (1) the caller is speaking about events as they are actually happening; (2) it would be clear to a reasonable listener that the victim is facing an ongoing emergency; (3) the nature of the questions asked and answered are objectively necessary and elicited for the purpose of resolving the present emergency; and (4) the victim's demeanor on the phone and circumstances at the time of the call evidence an ongoing emergency.

Rickett, 2009 ME 22, ¶ 12, 967 A.2d 671. Whether a statement is nontestimonial is reviewed *de novo*. *Id*. ¶ 13.

A. While much of the video was admissible on independent grounds, the State concedes that admission into evidence of the portion of the video showing the officer's interview of the victim violated the Confrontation Clause.

The protections afforded by the Confrontation Clause are limited to testimonial statements. *Crawford*, 541 U.S. at 53-54. The body camera footage admitted at trial as State's exhibit one is comprised of several minutes of footage, portions of which were muted for reasons stated on the record. (I T. 6-14.) The statement at issue on appeal is limited to the portion of the video between 9:53 and 10:23. The rest of the video is admissible and is not challenged on appeal.

As to the portion of the video containing the victim's response to Officer Reynolds asking her what happened, the State concedes that her answer is

testimonial and should have been excluded pursuant to the Confrontation Clause of the United States Constitution. While there are similarities between the testimony and attendant circumstances present in this case and those which the Court analyzed in *Metzger*, 2010 ME 67, 999 A.2d 947, on balance the State is forced to concede that the primary purpose of the question asked of this victim was "to establish or prove past events potentially relevant to later criminal prosecution" as opposed to asking questions to aid in the resolution of an ongoing emergency. *Davis*, 547 U.S. at 822.[2]

B. The error was harmless beyond a reasonable doubt, when the conviction was supported by evidence of the victim's statement to medical personnel, by the admissible portion of the video at issue, and by medical records and the testimony of medical personnel.

"Any error, defect, irregularity or variance that does not affect substantial rights shall be disregarded." M.R.U. Crim. P. 52(a).[3] However, "[w]hen a trial

[2] The primary distinguishing factors here include the time that the officer spent waiting for backup with the parties, the fact that both parties were present and immediately known to police, and the fact that Judkins was already detained in handcuffs and removed from the interior of the property at the time of the victim's statement. *See* State's Exhibit 1; *but see Metzger*, 2010 ME 67, 999 A.2d 947 (finding that that the victim's statements to police were nontestimonial when they occurred within three minutes of her 911 call, and when her assailant was still at large).

[3] The trial justice did not address the Confrontation Clause in ruling that the victim's statement was admissible. (I T. 14.) While Judkins' objection could have put the issue more squarely before the court, the State concedes that in uttering the phrase "when the officers arrive and my client is handcuffed and they're both just sitting there, there's no longer an emergency. So, anything that is said becomes testimonial" preserved the issue for harmless error review. (I T. 12.).

error is of constitutional magnitude, the appropriate harmless error inquiry is whether, after a review of the whole record, we are satisfied beyond a reasonable doubt that the error did not contribute to the verdict obtained." *State v. Warren*, 1998 ME 136, ¶ 17, 711 A.2d 851. Here, any error in admitting the portion of the video including twenty-three seconds of the victim's statement was harmless beyond a reasonable doubt.

Most of the video at issue in this appeal was admissible. In the portion properly admitted, the jury heard the victim pleading urgently with Officer Reynolds to please enter her apartment. State's Exhibit 1, 4:28-4:45. The cadence and tone employed underscored the need for immediate assistance. Upon entry, Officer Reynolds located the victim seated on her couch holding a package of chicken to her battered face and chest. *Id.*, 5:20-6:00, 7:23-7:45. Her breathing was labored, and her voice shook as she affirmed that she was injured. *Id.*, 5:34-5:35. For his part, Judkins looked off into the distance as he replied to the same question, "[w]e both are. She fucking biting my finger." *Id.*, 5:34-5:39. Both parties exhibited labored breathing, and the silence that eventually fell in the room was interrupted by the victim's occasional whimpers and Judkins' spontaneous statements that "[t]his [was] bullshit. *Id.*, 8:09-8:14. Any reasonable factfinder would be left with the clear impression that an altercation of some sort had recently occurred.

At the hospital, the victim reported to two separate providers that her injuries came either at her boyfriend's hand or from a domestic violence altercation. (I Tr. 62, 130-31.) The statements she made to three different medical professionals were properly admitted as statements made for medical diagnosis or treatment. M.R. Evid. 803(4). Nurse Jenkins noted that the victim appeared tearful and nervous and explained that an hour prior to arrival at the hospital, her boyfriend "placed his knee into her chest and strangled her." (I Tr. 128-31.) Later, he "shoved her or pushed her back over her chair and then began to punch her in the face and the chest." (I Tr. 131.) She said he "strangle[d] her for what . . . felt like a long time." *Id.* She presented as tearful as she told SANE Deredin that she was flipped over a chair and that "he came after her." (I Tr. 145.) She stated that she was strangled for sixty seconds. *Id.*

Importantly, these statements were corroborated by SANE Deredin's examination, which included meticulous photographic documentation of the victim's multiple and gruesome injuries. State's Exhibit 8. These injuries included petechiae, extensive bruising to both sides of the face, abrasions and bruising on the neck and chest, and multiple cuts and abrasions in other locations. (I Tr. 148-53.) She also had bruising and swelling on her back. (I Tr. 154.) To underscore the point, the severity of the injuries the victim suffered was further documented in photographs taken by Detective Steve Pelletier of

the Bangor Police Department during follow-up investigation 48 hours after the incident. State's Exhibits 2-5. The factfinder could be left with only one reasonable conclusion: this victim was assaulted.

If there existed any reasonable doubt as to the identity of the assailant—and the State suggests that by this point in the trial there was not—Judkins cleared it up when he took the stand and offered a version of events that the trial justice would later categorize as "broadly florid" and "obviously false." (II Tr. 158.) Judkins testified and intimated that the victim sustained her injuries when she repeatedly punched herself in the face. (II Tr. 35-36.) One need only look at the extent and location of the victim's injuries to pass judgment as to this contention. He further indicated that they were both smoking large amounts of methamphetamine, but that consumption of that drug has no effect on him apart from keeping him awake. (II Tr. 46-48.) Judkins testimony that he didn't touch the victim was also arguably inconsistent with his statements on scene. When Officer Reynolds entered the victim's apartment and asked if anyone was injured, Judkins responded while breathing heavily, "[w]e both are . . . ." State's Exhibit 1, 5:34-5:39.

The State asserts that the information above could lead this Court to conclude that any error in admitting the video at issue was harmless beyond a reasonable doubt. However, the State acknowledges the difficulty in holding

harmless even a twenty-three second video of the victim stating what Judkins did to her, when the only other description of events exists in paper transcriptions as recorded by three medical professionals. How, one might ask, can this video be considered harmless, when the jury was able to see her words and judge her affect without the crucible of cross-examination through which to test her claim?

The answer rests on the effect of Judkins' testimony on the number of reasonable explanations available to account for the victim's injuries. Apart from an incident where the victim reportedly fell over the back of a chair, Judkins testified that the injuries were self-inflicted. (II Tr. 35-36.) Judkins admitted a physical altercation and expressly disavowed self-defense, instead painting the victim as the aggressor and leaving no other explanation for the numerous injuries on both sides of the victim's face, her neck, and her chest, other than that she had repeatedly punched herself while "tweaking out" on methamphetamine. (II Tr. 35-36; 52-53.) This denial of self-defense and assertion that the victim was the sole aggressor during the most recent altercation left the jury with just two mutually exclusive narratives to consider: either the victim pummeled herself to the point of significant injury, or Judkins committed the crime of domestic violence assault. That the injuries had any

other origin could at this point be discounted; Judkins purported to know exactly how the victim was injured.

In the end, Judkins painted himself into a corner. By admitting to a physical fight where the victim obviously sustained injuries but denying that he employed any force against her, instead offering another dubious origin for the injures, the jury was left with no reasonable alternative irrespective of the twenty-three seconds of video at issue. Judkins assaulted the victim, and this Court can find beyond a reasonable doubt that the jury reached that conclusion not because it saw a video that should have been excluded, but because the victim's injuries, her statements to medical professionals, and Judkins' own testimony left no other reasonable explanation.

II. The court did not abuse its discretion in denying counsel's motion to withdraw when the motion was made two business days prior to trial after a jury was already empaneled.

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." U.S. Const. amend. VI. "The denial of a motion for withdrawal or substitution of counsel is generally discretionary with the court." *State v. Goodine*, 587 A.2d 228, 229 (Me. 1991) (quoting *State v. Clark*, 488 A.2d 1376, 1377 (Me. 1985)). "Although an indigent defendant has the right to be represented by a lawyer, he has no right to be represented by a lawyer other than the one who has been appointed to represent him except for

good cause." *Id.* at 229 (internal citation omitted). "Only when the defendant can establish 'good cause, such as a conflict of interest, a complete breakdown of communication or an irreconcilable conflict which [could] lead[ ] to an apparently unjust verdict' must the court substitute new counsel." *Id.* (citation omitted). While this Court has not endorsed any specific test pertaining to consideration of a motion to withdraw, the First Circuit has identified three primary factors for a court to consider: "the timeliness of the motion, the adequacy of the court's inquiry into the defendant's complaint, and whether the conflict between the defendant and his counsel was so great that it resulted in a total lack of communication preventing an adequate defense." *U.S. v. Allen*, 789 F.2d 90, 92 (1st Cir. 1986) (citation omitted).

The court did not abuse its discretion in denying the motion to withdraw, and the manner in which it conducted inquiry was satisfactory. Counsel made an oral motion to withdraw on Friday, August 18, 2023. (Aug. 18 Mot. Tr. 3-5.) Trial was slated to begin two business days later on Tuesday, August 22, 2023. *See Diaz-Rodriguez*, 745 F.3d 586, 591-92 (1st Cir. 2014) ("[A]s trial approaches, the balance of considerations shifts ever more toward maintaining existing counsel and the trial scheduled.") (quoting *U.S. v. Teemer*, 394 F.3d 59, 67 (1st Cir. 2005); *see also U.S. v. Poulack*, 556 F.2d 83, 86 (1st Cir. 1977) ("[T]he right of an accused to choose his own counsel cannot be insisted upon in a

manner that will obstruct reasonable and orderly court procedure.") (citations omitted); *see also U.S. v. Woodard*, 291 F.3d 95, 106 (1st Cir. 2002) (stating that a defendant's interest in being represented by counsel of his choice must be weighed against "the public's interest in the prompt, fair and ethical administration of justice.") (citation omitted).

While the testimonial portion of the trial did not actually begin until August 23rd, the 22nd was used to argue various motions. Notably, no motion to withdraw was raised at any prior point, putting the trial justice in a difficult position. Further, the oral motion referenced a non-specific breakdown in the attorney/client relationship and a potential violation of "important constitutional rights," as opposed to a conflict of interest which would necessarily require immediate action. (Aug. 18 Mot. T., 5.) Counsel for the Judkins declined to put the specific nature of the disagreement on the record,[4] and the court appeared reticent to have it described in more detail, perhaps concerned that to do so would potentially reveal trial strategy or other privileged communications. *Id*. Regardless of the reason, the information at the court's disposal was that Judkins sought to fire his attorney two business

[4] The record contains reference to a chambers conference regarding the motion to withdraw but no reference to the substance of those discussions. *See U.S. v. Prochilo*, 187 F.3d 221, 229 n. 8 (1st Cir. 1999) (noting that inquiry in chambers will often be sufficient when the accused questions counsel's representation "provided that the conference is on the record.").

days before trial because he believed she was "not working on his behalf." (Aug. 18 Mot. Tr. 5.); *see Diaz-Rodriguez*, 745 U.S. F.3d at 591-92. The court's refusal to grant the motion did not constitute an abuse of discretion, and Judkins cannot establish good cause as to why the motion should have been granted.

Judkins also argues on appeal that the court's failure to make adequate inquiry as to the reasons for the motion in itself constitutes an abuse of discretion. (Blue Br. 17.) While this Court has noted that it is "preferable" for the trial court to make a "threshold inquiry" as to the reasons for a motion to withdraw, it has never *required* that it do so except in dicta with regard to circumstances "clearly call[ing] for further inquiry by the court" such as a defendant voicing "objections to appointed counsel . . . a seemingly substantial complaint about counsel . . . or a question of the continued effective assistance of counsel." *Goodine*, 587 A.2d at 230 (court did not abuse its discretion in summarily denying a written motion to withdraw without hearing) (internal citations omitted).

Lack of affirmative case law notwithstanding, the court *did* make inquiry as to the reasons for the motion;[5] Judkins' contention is that the inquiry was so inadequate as to constitute an abuse of discretion. (Blue Br. 17.); *see U.S. v.*

[5] Both cases cited in Judkins' brief involve situations where a motion to withdraw was denied summarily with no inquiry by the presiding judge. *See Diaz-Rodriguez*, 745 F.3d at 589; *U.S. v. Prochilo*, 187 F.3d 221, 224-25 (1st Cir. 1999).

Myers, 294 F.3d 203, 207 (1st Cir. 2002) (requiring some "probe into the nature and duration of the asserted conflict" but declining to endorse an "invariable model."). Upon the court asking for the reasons for counsel's motion to withdraw, counsel offered an intentionally vague response which necessarily frustrated further inquiry. (Aug. 18 Mot. Tr. 5.) The court then spoke directly with Judkins, asking whether "[counsel] just now accurately summarize[d] what your concerns are?" *Id.* With the opportunity at hand to expound upon counsel's representation, Judkins simply answered, "[y]es." *Id.* The bald assertion that counsel was not "working on [Judkins'] behalf" and that the "lack of work violated his constitutional rights . . ." is only slightly more detailed than the motion to withdraw filed in *Goodine*, where counsel stated that "his services were no longer desired by the Defendant." (Aug. 18 Mot. Tr. 5.); *Goodine*, 587 A.2d at 229 n.1. The court in *Goodine* properly denied the motion without further inquiry. *Goodine*, 587 A.2d at 229.

This court conducted an inquiry as to the reasons for counsel's motion to withdraw and then asked Judkins if he agreed with counsel's argument. That the inquiry was not particularly fruitful does not amount to an abuse of discretion and itself tends to suggest the absence of any compelling need that the motion be granted. Looking to the three factors developed by the First Circuit, the court after inquiry of both counsel and Judkins knew that trial was

to start in two business days and had no other information tending to suggest that withdrawal would be otherwise appropriate or necessary. *See Allen*, 789 F.2d at 92 (citation omitted).

Importantly, Judkins is not without recourse as to his claim. Counsel's argument in support of her motion to withdraw referenced Judkins' concern that she "ha[d] not been doing an adequate job for him," and that these inadequacies may have "violated his constitutional rights." (Aug. 18 Mot. Tr., 5.) This is tantamount to a claim of ineffective assistance of counsel cognizable on post-conviction review. Judkins' argument that counsel was inadequate in failing to call R.A. as a witness is illustrative. (Blue Br. 18); (I T. 178-79.) This Court has no record from which to meaningfully evaluate that claim, and claims of ineffective assistance of counsel are properly left to post-conviction review.[6] *See State v. Hayes*, 2016 ME 39, ¶ 13, 134 A.3d 882 ("The appellant bears the burden of providing a record sufficient for us to consider the issues on appeal.") Similarly, the claim that Judkins' counsel did not adequately represent him is conclusory and cannot at this juncture be meaningfully evaluated.

Ultimately, while the court could have taken greater pains to illuminate the reasons for the motion, it did not abuse its discretion either by conducting

[6] *See Goodine*, 587 A.2d at 229-30 n. 2, n. 3 (noting that the record was insufficient to support claims of "representational deficiencies" and that post-conviction review was the more appropriate vehicle for some of Goodine's arguments).

an inadequate inquiry or in ultimately denying the motion to withdraw, especially when the proffered explanation came on the eve of trial. The court asked counsel why she was moving to withdraw and asked Judkins whether he agreed with counsel's assessment before denying the motion, noting that trial was slated to begin the next week. The inquiry was adequate and the ruling sound.

CONCLUSION

While the court erred in admitting audio of an interview with the victim violative of the Confrontation Clause of the United States Constitution, said error was harmless beyond a reasonable doubt when considering the nature and strength of the evidence against Judkins. Further, the trial court conducted adequate inquiry into the reasons for counsel's motion to withdraw and did not abuse its discretion in denying the motion. To the extent Judkins argues that his rights were violated due to ineffective assistance of counsel, that claim is properly left to post-conviction review. The verdict of the trial court should be affirmed.

Respectfully Submitted,

Dated: February 1, 2024

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CERTIFICATE OF SERVICE

I, Mark A. Rucci, Esq., Attorney for the State, hereby certify that on this 1st day of February 2024, I mailed two copies of the foregoing brief via U.S. mail, postage prepaid, to Appellant's attorney Michelle King, Esq., at P.O. Box 7030, Portland, ME 04112.

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