STATE OF MAINE
YORK, SS.

UNIFIED CRIMINAL DOCKET
LOCATION: BIDDEFORD
Docket No.: YRKCD-CR-2022-00319

STATE OF MAINE, Plaintiff	)	
v.	)	MOTION TO SUPPRESS (STATEMENTS)
ANDREW HUBER YOUNG, Defendant	)	(*FILED VIA SHAREFILE*)

NOW COMES Andrew Huber Young by and through his attorney, David J. Bobrow, with this Motion to Suppress Statements:

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SUMMARY:

(1) This matter is currently before the Court on the Government's charge of Homicide, Class A.

(2) On or about May 21, 2022 at 4:20 P.M., Andrew Huber Young was involved in the accidental shooting of his niece, Octavia Huber Young, and family members in Wells, Maine.

(3) Shortly after the incident, Andrew walked into the police station in Wells, Maine.

(4) Andrew waited in the lobby, then was surrounded by numerous officers with guns drawn, and placed in handcuffs. Andrew waited for over three hours in the booking room before being brought to the interview room.

(5) At approximately 5:51 P.M., the police became aware that Octavia succumbed because of her injuries.

(6) At 7:46 P.M., an interview between Andrew and at least two members of law

enforcement occurred at the interview room.

(7) The interrogation lasted over an hour.

(8) An no time during the interview was Andrew informed that his niece was deceased.

(9) Andrew's effect during the interview varied between flat and non-emotional to angry, sobbing uncontrollably, and banging his head on the table.

(10) According to Dr. Eric Drogin, Andrew was suffering from post-traumatic stress disorder (hereafter 'PTSD') during the interview.

(11) Dr. Drogin asserts that PTSD will impact one's rational thinking.

(12) The Fifth Amendment {based on *Miranda*} requires "the exclusion of incriminating statements obtained during custodial interrogation unless the suspect fails to claim the Fifth Amendment privilege after being suitably warned of his right to remain silent and of the consequences of his failure to assert it." *Minnesota v. Murphy*, 465 U.S. 420, 430 (1984).

(13) Constitutional rights, including the right to counsel, may be waived as long as the waiver is voluntary, knowing, and intelligent. *State v. Caldwell*, 2003 ME 85, ¶¶ 8, 10, 828 A.2d 765, 767, 768; *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). "The State bears the burden of establishing a knowing, intelligent, and voluntary waiver of *Miranda* rights by a preponderance of the evidence." *State v. Coombs*, 704 A.2d 387 (Me. 1998). The State cannot meet this burden, therefore Andrew's statements should be excluded as a violation of

Miranda.

(14) A confession is admissible in evidence only if voluntary, and the State bears the burden of establishing voluntariness beyond a reasonable doubt. *State v. Coombs*, 704 A.2d 387, 390 (Me.1998). In order to find a statement voluntary, it must first be established that it is the result of defendant's exercise of his own free will and rational intellect. *State v. Rees*, 748 A.2d 976 (Me. 2000). The State cannot meet this burden, therefore, the statements by Andrew should be excluded as a matter of law.

ISSUES PRESENTED:

1) Were Andrew's initial statements in violation of *Miranda*?
2) Did Andrew provide a knowing and voluntary waiver of *Miranda*?
3) Did the officers continue to question Andrew in violation of the assertion of *Miranda*?
4) Were the statements made by Andrew voluntary?

STATEMENT OF UNCONTESTED FACTS[1]:

Andrew Huber Young had a difficult relationship with his brother, Ethan as they both resided with their parents at 97 Crediford Road in Wells, Maine. Discovery, *generally*. It was fraught with arguments and had devolved into fistfights on numerous

1 The facts are gleaned in this matter from the various reports and videos. Reference is made to each document by citation.

occasions. *Id.* On or about May 21, 2022, Andrew and his brother fought over a t-shirt that Ethan was wearing. *Report of Connor Walton* (hereafter *'Walton' Report*). The argument escalated and Andrew left with his girlfriend. *Id.* After he left, Andrew and his brother exchanged heated text messages. At one point, Ethan had stated he smashed Andrew's hamster cage. *Id*.; see also *text messages between Andrew and Ethan*. Andrew returned to the residence to check on his hamster. *Id*.; see also *statement of Candace Young*. Candace advised she would take care of the hamster. *Id*. At this point, the gun held by Andrew fired into the residence. *Id.* According to Ethan, he left the laundry room when the commotion started and started running when he saw his father duck. *Statement of Ethan*. The angle of Ethan's bullet wound suggests he was turned away from Andrew at the point of entry. See *hospital records, autopsy report*. Additional evidence suggests that the bullet that struck Ethan left his arm and entered the body of his niece. *Id.*

After the incident, Andrew left the residence and drove to the police station. Upon entering the police station, he called the dispatch to advise he was there turning himself in. *Dispatch audio*. He was in the waiting lobby when multiple officers entered the waiting area with guns drawn. *Video, waiting area*. Andrew was moved face down and placed in handcuffs. *Id. Miranda* warnings were not read. *Officer bodycams, generally*. Andrew was escorted to the booking room. *Id.* In the booking room, he was accompanied by Officer Piorier. *Piorier Report*. He was in the booking room for approximately three hours before he was brought to the interview room. *Booking Room Video*. At no time were his *Miranda* Rights read. He was never informed as to any specific charge at any

point in time. *Discovery, generally*. While he was in booking room, the officer asked him several questions to which Andrew responded. *Booking Room Video, Piorier Report*. Andrew asked if he would be released on bail. *Id*. Andrew asked several times if everyone was ok. *Id*. The officer specifically shut the communications radio off so that Andrew would not hear any updates. *Id.* Andrew displayed a range of emotions during those three hours, at times angry, at other times crying, and for much of the time, he placed his head on the bench. *Id.* After just over three hours, he was brought to the interview room. *Id.*

At the outset of the interrogation in the interview room, Andrew asked "is everyone ok?" *Transcript of Andrew Huber Young Interview, pg. 1*. The response was they are at the hospital, they went to different hospitals. *Id.* During the Officer's recitation of *Miranda*, Andrew asks the minimum for what he did and the officer's response was 'I want to hear your side of the story." *Id. at pg. 4*.

The officer never showed Andrew the form nor had him read or sign them. *Video of Interview*. Andrew then asks if they have a lawyer on the scene. *Id*. Later, Andrew states that he shouldn't be talking. *Trans. at pg. 8*. Andrew advises he never finished high school. He also interrupts them during the recitation of Miranda. *Video of Interview*. Approximately fifteen minutes into the interview, he begins sobbing uncontrollably. *Id*. Thirty-five minutes into the interview, he slams his head on the table. *Id*. At several points after this, he puts his head on the table. *Id.* During the interview, Andrew asks

about the baby getting shot.[2] *Trans. at pg. 12*. The response was 'I don't know exactly what her injuries are." *Id. at 13*.

It is clear Andrew had no concept of the seriousness of the situation as he inquired if he would get bail. *Id. at 23*. At several points during the interview, Andrew stated that the handcuffs were causing pain. *Id., generally*. He also asks several times if he can call his girlfriend. *Id., generally*. He also asked several times if his father was ok. *Id., generally, pg. 31*. He asked if he was going to spend the night at the police station. *Id. at 32*.

At no time during the interview did he make any statement suggesting he knew that anyone had been seriously injured. No evidence exists that Andrew knew or saw his niece in his brother's vicinity when the weapon was discharged.

2 He did not know that the baby had been shot, as he stated he heard an officer talking about it. *Id.*

MEMORANDUM OF LAW

I. THE STATEMENTS BY ANDREW SHOULD BE SUPPRESSED UNDER THE MAINE AND UNITED STATES CONSTITUTIONS

A defendant's confession is like no other evidence. It is probably the most probative and damaging evidence that can be admitted against him, and, if it is a full confession, a jury may be tempted to rely on it alone in reaching its decision. *Arizona v. Fulminante*, 499 U.S. 279, 295-96 (1991) There is nothing more damning than a confession. Its effect has been described as "incalculable." *People v. Miller*, 2013 IL App (1st) 110879, ¶ 82, 993 N.E.2d 988, 373 Ill. Dec. 429. Indeed, confessions constitute the strongest possible evidence the State may offer in the course of a criminal case. And because of the unparalleled weight accorded confessions in our legal system, courts should closely scrutinize confessions… . *People v. Hughes* 3 N.E.3d 297 (2013 App. Ct. Ill.)

A. Andrew Was Being Interrogated at the Wells Police Station

"[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980) (footnotes omitted); see also *State v. Fleming*, 239

A.3d 648 (Me. 2020). It is unarguable that the questions and actions of law enforcement were reasonably likely to elicit a response.

B. Andrew was Suffering from Post Traumatic Stress Disorder During the Interview

PTSD occurs when "[a]fter a traumatic incident that a person has either witnessed or directly experienced, they're left with ... traumatic symptoms or behaviors ... ."*People v. Reyes*, 2024 Cal. 5th Cir. App. App. Dis, LEXIS 203. Those symptoms and behaviors can manifest themselves in a multitude of ways. See Affidavit of Dr. Eric Drogin. It is within the realm of the expertise of Dr. Drogin to opine upon Andrew's state of mind immediately following the incident. See *People v. Cortes*, 2011 Cal. 6th Cir. App. Dis, LEXIS 186 ("…[T]he defendant can call an expert to testify that he had a mental disorder or condition (such as or PTSD, or dissociation), as long as that testimony tends to show that the defendant did or did not in actuality (as opposed to capacity) have the mental state (malice aforethought, premeditation, deliberation) required for conviction of a specific intent crime (as opposed to a general intent crime) with which he is charged, except that the expert cannot offer the opinion that the defendant actually did, or did not, harbor the specific intent at issue. Put differently, sections 28 and 29 do not prevent the defendant from presenting expert testimony about any psychiatric or psychological diagnosis or mental condition he may have, or how that diagnosis or condition affected him at the time of the offense, as long as the expert does not cross the line and state an opinion that the defendant did or did not have the intent, or malice aforethought, or any

other legal mental state required for conviction of the specific intent crime with which he is charged.")

According to the current edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR*; 2022), the exposure that serves as a Post-Traumatic Stress Disorder (PTSD) must include:

A. Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

1. Directly experiencing the traumatic event(s).

2. Witnessing, in person, the event(s) as it occurred to others.

3. Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.

4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains: police officers repeatedly exposed to details of child abuse) (p. 301).

Andrew's exposure clearly qualifies in this regard, in at least one and perhaps more instances. The matter clearly involved "a close family member" and was, although either would suffice, both "violent" and "accidental."

The trigger for PTSD can consist of others' actions and behaviors but also one's own. The article "PTSD: When the Crime Punishes the Perpetrator" (23 *Crim Just.* 39, 2009), observes that while "[v]ictims of crime often suffer this psychiatric condition as a result of the physical and/or emotional abuse inflicted upon them by their attackers, it is

also true that harming another human being, carries a high risk that the perpetrator will experience a severe case of PTSD." *Id.* at 39

1. PTSD Impacts One's Rational Thoughts

When a person experiences violence in the setting in which they are living, there is a huge literature on the impact of that violence and on their ability to make rational decisions it impacts their capacity to control their impulses and their emotions. *People v Jonathan H*, 2024 NY Slip Op 50419(U), 82 Misc. 3d 1226(A)208 N.Y.S.3d 482. The implications for Andrew extend beyond his experiences when interrogated to his situation throughout the full course of pretrial and trial proceedings:

> *A person who has PTSD will persistently avoid stimuli associated with the trauma, such as thoughts, feelings, or conversations about the traumatic incident as well as activities, situations, or people that will trigger recollections of the homicide or the assault.*
>
> *This avoidance of the triggers by the defendant who has self-inflicted PTSD will be severely tested by defense counsel who must actively implore the defendant to revisit the circumstances of the charged crime and discuss in detail with counsel the defendant's thoughts, feelings, and recollections of the homicide or violent assault.*
>
> *Additionally, the accused is forced throughout the pretrial and trial stages of a criminal prosecution to relive, often as a passive spectator, the traumatic experience of the crime through the testimony of witnesses, photographs, exhibits, and legal arguments. All of these circumstances, routine to the criminal trial process, have the potential to stimulate and aggravate the accused's PTSD.* "*When the Crime Punishes the Perpetrator*" (23 *Crim Just.* 39, 2009) pg. 40

PTSD can also be manifested by an "[i]nability to remember an important aspect of the traumatic event(s)." *DSM-5-TR*, 2022, p. 302.

Clearly subject to emotional distress when his behaviors were video and audio recorded prior to questioning, Andrew was also shown to be distressed when he was interacting with law enforcement directly. Facts, *generally*. He appeared confused, he wept, and he banged his head repeatedly on the table. *Id.* The *DSM-5-TR* (2022) additionally states that:

> *Frequently, an individual's reaction to a trauma initially meets criteria for acute stress disorder in the immediate aftermath of the trauma. Pg. 308*.
>
> *Individuals with acute stress disorder commonly engage in catastrophic or extremely negative thoughts about their role in the traumatic event, their response to the traumatic experience, or the likelihood of future harm. For example, an individual with acute stress disorder may feel excessively guilty about not having prevented the traumatic event or about not adapting to the experience more successfully*.
> *Id*. at 316.

C. <u>Andrew Was in Custody for Purposes of *Miranda* the Moment He was Placed in Handcuffs.</u>

The Fifth Amendment {based on *Miranda*} requires "the exclusion of incriminating statements obtained during custodial interrogation unless the suspect fails to claim the Fifth Amendment privilege after being suitably warned of his right to remain silent and of the consequences of his failure to assert it." *Minnesota v. Murphy*, 465 U.S. 420, 430 (1984). The purpose of the *Miranda* doctrine is to combat the specific characteristics of custodial interrogation that "work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda*

v. Arizona, 384 U.S. 436, 467 (1966). Accordingly, *Miranda* "does not apply outside the context of the inherently coercive custodial interrogations for which it was designed." *Roberts v. United States*, 445 U.S. 552, 560 (1980). "Custody" for purposes of Miranda must be "narrowly circumscribed" to effectuate the precise purpose of the warnings. See *Murphy*, 465 U.S. at 430. In determining whether a person was in custody for this purpose, therefore, a court must keep in mind that "[t]he warnings protect persons who, exposed to such interrogation without the assistance of counsel, otherwise might be unable to make a free and informed choice to remain silent." *Roberts*, 445 U.S. at 560-61. *Miranda* warnings would be required "as soon as a suspect's freedom of action is curtailed to a 'degree associated with formal arrest.'" *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). Andrew was not provided with *Miranda* warnings until he was brought to the interview room, over three hours after he was arrested. *Facts, generally*.

D. Andrew Did Not Provide a Knowing and Voluntary Waiver of *Miranda* Rights Once They Were Provided

Constitutional rights, including the right to counsel, may be waived as long as the waiver is voluntary, knowing, and intelligent. *State v. Caldwell*, 2003 ME 85, ¶¶ 8, 10, 828 A.2d 765, 767, 768; *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). "The State bears the burden of establishing a knowing, intelligent, and voluntary waiver of *Miranda* rights by a preponderance of the evidence." *State v.*

Coombs, 704 A.2d 387 (Me. 1998).

A person who is in custody and subject to interrogation must be advised of the rights referred to in *Miranda v. Arizona* in order for statements made during the interrogation to be admissible against him or her at trial. *State v. Bridges*, 829 A.2d 247, 254 (Me. 2003). This is because a "custodial interrogation [is] ordinarily conducted by officers who are acutely aware of the potentially incriminatory nature of the disclosures sought, [and that] the custodial setting [contains] inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Minnesota v. Murphy*, 465 U.S. 420, 429-30, 104 S.Ct. 1136 1143, 79 L.Ed.2d 409 (1984). As with all fundamental constitutional rights, every reasonable presumption must be indulged against waiver. *Michigan v. Jackson*, 475 U.S. 625, 633, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986); *State v. Watson*, 2006 ME 80, 900 A.2d 702 (Me. 2006).

When the officer read the *Miranda* warnings to Andrew, the circumstances show that there was not a valid waiver. The interview occurred after Andrew had been in custody for over three hours, in the police station interview room, while Andrew remained handcuffed. The statements were recited from a card without hesitation between each recitation.[3] The questions were not repeated and Andrew was never asked to read a document or initial a statement. A written waiver is helpful to determine if there is a valid waiver. *United States v. Fox* Criminal No. 03-26-P-H (D. Maine 2003). When

3 At the end of each section, the officer asked do you understand and proceeded to the next portion.

confronted with arguments against waiver, Courts generally demand more from officers. See *State v. Hazelton*, 330 A.2d 919 (Me. 1975)(Officer explained them (defendant's '*Miranda*' rights) to him. He did not read them from the card, he explained them to him … he explained to him that he was a police officer, that he wanted to talk to him about an incident that happened up on York Street and that he didn't have to talk if he didn't want to, and that anything he said could be used against him in a court of law; that he had the right to an attorney before any questioning started and during any questioning, and while he was questioning him … to stop and ask for an attorney … If he could not afford an attorney, one would be found for him. He asked if he understood that, and he said 'yes.' Detective Thurston testified that he had also informed the defendant that if he wished, he could make a telephone call.)

1. Andrew Did Assert His *Miranda* Rights

When confronted with questions about the propriety of post-invocation questioning concerning the right to counsel, courts are bound by the rule of *Edwards v. Arizona*, which requires that, once an accused has invoked his right to have counsel present, so long as he remains in custody, he may not be subjected to further interrogation until either counsel has been made available to him, or he reinitiates further communication with the police. 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981).

In this matter, Andrew asked if there was an attorney on site. See *State v. Capitan*, 363 A.2d 221 (Me. 1976)(the police read the defendant his *Miranda* warnings and, after a waiver, began questioning him. When the defendant suddenly announced that he intended

to consult his lawyer about the matter in question, the police abruptly broke off the interrogation and returned the defendant to his cell). See also *State v. Stone*, 397 A.2d 989 (Me. 1979); *State v. Grant*, 2008 ME 14, 939 A.2d 93 (Me. 2008)("Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his *Fifth Amendment* privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.")

When an individual invokes, even ambiguously, the right to remain silent or the right to an attorney, he or she has invoked the *Miranda* rights. *State v. Holloway*, 760 A.2d 223, 226, 228 (Me. 2000)(vacating the murder conviction because two detectives improperly continued to question an unwarned suspect after he repeatedly stated that he had said everything he had to say). At no time did the officer seek clarification on the assertion of *Miranda* rights. See *Davis v. United States*, 512 U.S. 452, 461(1994)(noting that it is good police practice to clarify whether a suspect is asserting the *Miranda* rights); *State v. Alley*, 841 A.2d 803, 811 (Me. 2004).

E. The Police Failed to Disclose Information that Would Have Indicated the Seriousness of the Situation and All Other Factors Impacted Any Waiver or Statements by Andrew MakingThem Involuntary

It is proper to analyze 'voluntariness' applying the primacy approach. See *State v. Reeves*, 2022 ME 10, ¶ 41, 268 A.3d 281; *State v. Cadman*, 476 A.2d 1148, 1150 (Me. 1984). Only if the Court determines that the Maine Constitution does not protect Andrew, then the Court would look under the Federal interpretation of the United States Constitution. See *Reeves* at 48; *Cadman*, 476 A.2d at 1151. There is no need to examine a federal violation if the state constitutional provision provides the relief sought by the defendant. See *Massachusetts v. Upton*, 466 U.S. 727, 736, 104 S. Ct. 2085, 80 L. Ed. 2d 721 (1984) (Stevens, J., concurring) Under the Maine Constitution, voluntariness is examined by both internal and external factors to determine whether a defendant's statements are the product of the free choice of a rational mind, and not a product of coercive police conduct; and whether, under all the circumstances, the admission of the statements would be fundamentally fair. *State v. Dodge*, 2011 ME 47, ¶ 12, 17 A.3d 128.

A confession is admissible in evidence only if voluntary, and the State bears the burden of establishing voluntariness beyond a reasonable doubt. *State v. Coombs*, 704 A.2d 387, 390 (Me.1998). In *State v. Collins*, the Maine Law Court noted that federal decisions do not serve to establish the complete statement of controlling law but rather to delineate a constitutional minimum or universal mandate for the federal control of every

State. 297 A.2d 620 (1972). The relationship between federal and state control is demonstrated by *Collins* and the preceding Supreme Court decision in *Lego v. Twomey*, where the United States Supreme Court held on due process grounds that the prosecution must prove by a preponderance of the evidence that a defendant's statement was voluntary in order for it to be admissible. 404 U.S. 477 (1972). The Supreme Court stated, however: "of course, the States are free, pursuant to their own law, to adopt a higher standard. They may indeed differ as to the appropriate resolution of the values they find at stake." *Id*. In *Collins* this Court exercised its authority and adopted the more stringent standard of proof beyond a reasonable doubt to secure more effectively the guarantee of freedom from self-incrimination. *Collins* at 627.

A challenge to the admission in evidence of a confession on the ground that the confession is involuntary implicates the right against self-incrimination contained in article I, section 6 of the Maine Constitution ("The accused shall not be compelled to furnish or give evidence against himself or herself . . . but by judgment of that person's peers or the law of the land.") and the right to due process under that same section and article I, section 6-A. *Id.*

In order to find a statement voluntary, it must first be established that it is the result of the defendant's exercise of his own free will and rational intellect. *State v. Rees*, 748 A.2d 976 (Me.2000). The voluntariness requirement protects against objectionable police practices, protects the mental freedom of the individual, and preserves the quality of fundamental fairness in the criminal justice system. *State v. Mikulewicz*, 462 A.2d 497,

500 (Me.1983). Factors that the Court considers in determining voluntariness are: "details of the interrogation, duration of the interrogation, location of the interrogation, whether the interrogation was custodial, recitation of the *Miranda* warnings, number of officers involved, persistence of the officers, police trickery, threats, promises or inducements made to the defendant, the defendant's age, physical and mental health, emotional stability, and conduct." *Rees* at 977. If the statements were not voluntary, and were not the result of free will and rational intellect, then use of the statements at trial would potentially violate {Andrew's} rights under the Fifth and Fourteenth Amendments of the United States Constitution and Art. I, Section 6 of the Constitution of Maine. *State v. Edwards,* Cumberland Sup. Court, *J. Studstrup,* May 4, 2007. The Maine Supreme Court has previously identified three values that are served by the voluntariness requirement: "(1) it discourages objectionable police practices; (2) it protects the mental freedom of the individual; and (3) it preserves a quality of fundamental fairness in the criminal justice system." *State v. Sawyer,* 772 A.2d 1173, 1176 (Me. 2001) quoting *State v. Mikulewicz,* 462 A.2d 497, 500 (Me. 1983).

Under the factors enunciated in *Rees*, the statements were involuntary. The interrogation took place in the police station interview room. Two experienced officers were present. While the tone was subdued, the interrogation was certainly designed to elicit incriminating statements. This was an attempt to extract additional information from Andrew. The defense concedes that this action, by itself, will not render a statement involuntary but it is a factor in the determination of voluntariness. See *State v. Knight,*

482 A.2d 436, 442 n.4(Me.1984)("mere admonitions or exhortations … will not, *by themselves*, render a statement involuntary.")(*emphasis added*). Andrew had little to no experience with law enforcement and had never been interviewed before. He also had just turned 19 years-old. He was suffering from PTSD which impacted his rational thought. See Section I(B) *infra*. His emotions were scattered, angry at times, sobbing uncontrollably and banging his head on the table. See Facts, *generally*. Most importantly, the officers failed to disclose information that would have put Andrew on notice that his statements could implicate him in the death of his niece.[4] This was intentionally deceptive.[5] The Maine and United States Constitution tolerance for the use of deception as an investigatory tactic by the police is not boundless. See, e.g., *Lynumn v. Illinois*, 372

4 The statement that he aimed the gun at his brother's chest has a completely different connotation if Andrew knew that his niece died. What may very well have been a statement of bravado becomes a confession that cannot be suggested as statement in truth beyond a reasonable doubt. It should be noted that the interrogation of Andrew included many statements about his brother and Andrew displayed anger towards him during many of these responses. This further reinforces that the nature of the continued interrogation created an atmosphere for Andrew to make statements, not for their truth, but out of anger at his brother.

5 In New Jersey, the statements would be inadmissible for this reason. See *State v. Vincenty*, 237 N.J. 122, 134, 202 A.3d 1273 (2019)("Law enforcement officials [must]make a simple declaratory statement at the outset of an interrogation that informs a defendant of the essence of the charges filed against him.") This information is indispensable to a knowing and intelligent waiver of rights." *State v. A.G.D.*, 835 A.2d 291, 178 N.J. 56 (N.J. 2003). See also *State v. Geno* 417 Mont. 135(Mt. 2024)(failing to inform Geno that charges had been filed and that Geno would be arrested by the end of the interview weigh in favor of the defendant in considering whether a confession is voluntary). Under Federal Law, it would be a violation of the basis of Fed.R.Crim.P. 4(c) (3) which requires that "[u]pon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the *officer must inform the defendant of the warrant's existence and of the offense charged* (emphasis added). See *Bryson v. United States* 419 F.2d 695 (D.C. App. 1968)("The information provision of the Rule might serve three different purposes. First, it might prevent any unexplained detention of a lawfully arrested defendant. Since upon discovery of the gun, the officers promptly charged appellant with carrying a dangerous weapon, he suffered no such injury. Second, *by informing him of the warrant and charges against him, the Rule might safeguard an arrestee's privilege against self incrimination*. … (emphasis added).

U.S. 528, 534, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963); *United States v. Byram*, 145 F.3d 405, 408 (1st Cir.1998) (stating that police trickery that rises to the level of coercion may result in determination that a confession is involuntary); *State v. Coombs*, 704 A.2d 387, 390 (Me. 1998). A deception that actually compromises a suspect's ability to make a "free choice of a rational mind," is inherently coercive and fundamentally unfair. See *Commonwealth v. DiGiambattista*, 813 N.E.2d 516, 524 (Mass.2004)('ongoing research has identified the use of false statements as a significant factor that pressures suspects into waiving their rights and making a confession… .) Other state courts have addressed police trickery in similar fashion. See *State v. Patton*, 826 A.2d 783 (N.J. Super. Ct.App.Div.2003); *State v. Cayward*, 552 S.2d 971 (Fla.Dist.Ct.App.1989); *Sheriff, Washoe County v. Bessey*, 914 P.2d 618 (Nev.1996); *Lincoln, Jr. v. State*, 882 A.2d 944 (Md.Ct.Spec.App.2005); State v. Phillips, 30 S.W.3d 372 (Tenn.Crim.App. 2000).

Intentional deception, no matter the reason, by law enforcement risks "the criminal law [being] used as an instrument of unfairness." *Schneckloth v. Bustamonte*, 412 U.S. 218, 225, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). As the Supreme Court explained, "voluntariness" has reflected an accommodation of the complex of values implicated in police questioning of a suspect. At one end of the spectrum is the acknowledged need for police questioning as a tool for the effective enforcement of criminal laws... . At the other end of the spectrum is the set of values reflecting society's deeply felt belief that the criminal law cannot be used as an instrument of unfairness, and that the possibility of unfair … police tactics poses a real and serious threat to civilized notions of justice." *Id.*

Schneckloth and half a century of confession cases have recognized that police coercion, like in this matter, may be “implied," “subtle," and “psychological.” See, e.g., *Id*. at 226-29, 93; *Haynes v. Washington*, 373 U.S. 503, 515, (1963); *Blackburn v. Alabama*, 361 U.S. 199, 206, 80; *Moran v. Burbine*, 475 U.S. 412, 426, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986) (“[T]he Court has recognized that the interrogation process is ‘inherently coercive’ and that, as a consequence, there exists a substantial risk that the police will inadvertently traverse the fine line between legitimate efforts to elicit admissions and constitutionally impermissible compulsion." (*emphasis supplied*)). The Supreme Court of New Hampshire has similarly recognized the concerns of statements made to law enforcement:

> “A confession is a special type of evidence. Its acceptance basically amounts to conviction. Confessions are usually obtained in the psychological atmosphere of police custody and in the greatest secrecy in which the cards can be stacked against the accused. He has no means of combating the evidence produced by the police save by his own testimony. The stakes are too high and the risk of error too great to permit a determination of admissibility to be decided by a balance of probabilities.” *State v. Phinney*, 117 N.H. 145, 146 (1977).

Courts are required to decide whether a confession represents the suspect's free and voluntary decision to acknowledge criminal wrongdoing, free from coercion by the police. Sometimes, however, the issue is not so much whether the confession was the product of police coercion but whether the interrogation methods used by the police,

which often include sophisticated psychological ploys and techniques, caused the suspect to make a false admission. See, e.g., B. Garrett, "*The Substance of False Confessions*," 62 Stan. L.Rev. 1051, 1060 (2010)("People have long falsely confessed not just in cases involving police torture or the 'third degree' but also in cases involving psychological techniques commonly used in modern police interrogations.")

Over the past two decades, scholars, social scientists, and writers have identified at least 250 cases in which they determined that people likely falsely confessed to crimes. New cases are regularly identified." *Id.*

A false confession[6] may seem counterintuitive to most, but "[a] variety of factors can contribute to a false confession during a police interrogation." Innocence Project, "*False Confessions*," available at http://www.innocenceproject.org/understand/False-Confessions.php. They include "*duress*, coercion, intoxication, diminished capacity, mental impairment, *ignorance of the law*, fear of violence, the actual infliction of harm, the threat of a harsh sentence, and a *misunderstanding of the situation*." *Id*. (emphasis added).

The common denominator is a decision that "confessing will be more beneficial to them than continuing to maintain their innocence." *Id*. In one study involving forty proven cases of false confessions, "innocent people not only falsely confessed, but they also offered detailed information i.e. 'inside information' that only the actual criminal

6 As discussed in *fn. 4*, a 'false confession' may be one statement that is made not necessarily for its truth, but in response to the questions and based on the lack of condor by the interrogators.

could have known. *Id.*

Because it was later determined that these people were not at the crime scene, in many cases, the police likely disclosed those details during the interrogations by telling exonerees how the crime happened." B. Garrett, *supra*, 62 Stan. L.Rev. at 1054. This further highlights the fragile balance that exists during the police-suspect interaction process. This fragile balance was prevalent here where the police had vital information that they intentionally withheld and were also, even unintentionally, subtly shift the conversation to Andrew's brother, which produced his emotionally laden reactions and statements.

"{{T}here is data to} suggest that interrogation-induced false confession{s} may be a bigger problem for the American criminal justice system than ever before. Although we do not presently know the frequency with which police elicit confessions from the innocent, researchers have discovered and documented far more cases of false confession in recent years than in any previous time period." S. Drizin & R. Leo, " *The Problem of False Confessions in the Post-DNA World*," 82 N.C. L.Rev. 891, 921 (2004); see *id.*, at 891-92 (analyzing " demographic, legal, and case-specific descriptive data from ... 125 [documented] cases" of interrogation induced false confessions). It is clear that police-induced false confessions are the leading cause of wrongful convictions. *Facts and Figures*, FalseConfessions.org (2009), available at http://falseconfessions.org/fact-a-figures.

Even if the Court is convinced as to the veracity and intent of Andrew's statements at the incredibly high standard of beyond a reasonable doubt, every other voluntariness factor weighs in favor of suppression. As discussed, *infra*, vital information was withheld, the location of the interrogation was at the Wells Police Station, the interrogation was custodial and Andrew had been in custody for over four hours with an hour of specific interrogation, the recitation of *Miranda* warnings was problematic, there were two very experienced officers involved, Andrew had just turned 19 years-old, he had little prior involvement with law enforcement, and there were significant emotional stability issues. See *State v. George*, 2012 ME 64, ¶ 21, 52 A.3d 903. Courts recognize that youth, education, and experience increase susceptibility to police coercion. See *Hughes*, 3 N.E.3d 297 ("We agree that youth (19 years old at the time of interrogation) and lack of education (only attended school to the ninth grade) heightened his vulnerability to the coercive tactics used on him") citing *People v. Starling*, 64 Ill. App. 3d 671, 675, 381 N.E.2d 817, 21 Ill. Dec. 490 (1978) (suppressing statement of inexperienced 18-year-old defendant); *People v. Braggs*, 209 Ill. 2d 492, 519, 810 N.E.2d 472, 284 Ill. Dec. 682 (2003)("Custodial interrogation trades on the weaknesses of individuals, the young and mentally infirm are the most vulnerable."). A defendant not having had a meaningful interaction with the criminal justice system, such as undergoing an interrogation and suffering the consequences of his statements are important factors to consider. *People v. Johnson*, 208 Ill. 2d 53, 99, 803 N.E.2d 405, 281 Ill. Dec. 1 (2003)("It

is the experience of giving up rights and actually suffering consequences as a result thereof that causes people to comprehend the significance of those rights.")

The factors presented here are far more defendant favorable than *State v. Ackers*, where there was no suggestion of police trickery and the defendant had far more experience with law enforcement as well as being much older. 2021 ME 43. See also *State v. Hunt*, 2016 ME 172, 151 A.3d 911 (Me. 2016)(some individuals may be particularly susceptible to coercive police tactics). Even when police conduct is exemplary, a confession may be excluded to safeguard the other values protected under the Maine Constitution. See *Collins*, 297 A.2d at 626 n.5 ("The value to which reference is now being made extends significantly beyond the deterrence of police, or prosecution, brutality or lawlessness. There are countless instances in which official conduct in procuring the confession is exemplary, and yet the utterances of the accused, for other reasons, will not be in fact the product of his free will and rational intellect."); e.g., *Rees*, 2000 ME 55, ¶¶ 2, 9, 748 A.2d 976 (affirming the suppression of statements made by the defendant based on his mental condition and not any improper police activity). The officers' beliefs or even noble subjective intentions are also irrelevant.[7] In determining voluntariness, the question is not whether the special agent reasonably believed that Andrew could provide and was providing a voluntary consent, but rather whether

7 The Government may argue that the officer's motivations were to spare Andrew the knowledge that his niece had died.

Andrew in fact could and did provide such consent. See *State v. Glenn*, 2021 ME 07; see *Hopkins*, 2018 ME 100, ¶ 44, 189 A.3d 741

It is the State's burden to prove the voluntariness of Andrew's statements to the police beyond a reasonable doubt. Because the actors for the State used deceptive and objectionable police practices, as well as the other factors of the of the interrogation, the State cannot meet that burden. Accordingly, the statements should be excluded.

WHEREFORE the Andrew Huber Young respectfully requests that this Honorable Court suppress all statements made during the interrogations at the Wells Police Station on May 21, 2022 together with any and all other relief that this honorable Court deems fit and just.

RESPECTFULLY SUBMITTED:
ANDREW HUBER YOUNG
By His Attorney
DAVID J. BOBROW, Bar No. 9164
P.O. Box 366
9 Bradstreet Lane
Eliot, Maine 03903
(207) 439-4502

Date: 08/28/2024

/s/ David J. Bobrow, Esq.
David J. Bobrow, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this date I emailed a copy of this Motion to: Robert Ellis, Esq.

Date: 08/28/2024

/s/ David J. Bobrow, Esq.
David J. Bobrow, Esq.