STATE OF MAINE
PENOBSCOT, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO.: Pen-25-24

STATE OF MAINE,

Appellee

v.

KENNETH RHOADES,

Appellant

ON APPEAL FROM THE PENOBSCOT COUNTY
UNIFIED CRIMINAL DOCKET

REPLY BRIEF OF THE APPELLANT KENNETH RHOADES

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INTRODUCTION

This reply focuses on the Confrontation Clause violation that occurred when the State introduced Mr. Rhoades's 0.16 Intoxilyzer test result through the testimony of Maria Pease, a State laboratory scientist who could not recall whether she personally inspected, tested, or certified the Lincoln Police Department Intoxilyzer used in this case. The State's brief argues that Ms. Pease's testimony was proper "expert testimony" under *State v. Williamson*, 2017 ME 108, and 29-A M.R.S. § 2431. That argument cannot survive *Smith v. Arizona*, 602 U.S. ____ (2025), and the Law Court's subsequent decisions in *State v. Thomas*, 2025 ME 34 and *State v. Gleason*, 2025 ME 52. Together, those cases establish that when an expert's testimony depends on out-of-court statements by a nontestifying analyst, those statements are testimonial and inadmissible unless the declarant is subject to cross-examination.

ISSUE PRESENTED

Whether admitting the Intoxilyzer test result through Maria Pease – who did not recall certifying the instrument and conveyed the certifying chemist's assertions that the Lincoln Intoxilyzer had "all the approvals done" – violated the Sixth Amendment under *Smith v. Arizona*, as applied in *State v. Thomas* and *State v. Gleason*.

ARGUMENT

1. Under *Smith*, the State violated the Confrontation Clause by using surrogate testimony from Maria Pease.

At trial, Ms. Pease testified that her "primary responsibility" was to ensure that Intoxilyzers were approved semi-annually (Trial Tr. at 93). She described the certification process — a chemist going to the site, running a series of controls, and affixing a signed approval label (id. at 95-96) — and stated that "the instrument in Lincoln has had all the approvals done" (id. at 97). Yet she admitted she was "not 100 percent sure" she performed that approval herself and had "no independent recollection." (id.)

In *Smith v. Arizona*, 602 U.S. ____ (2025), the U.S. Supreme Court held that an expert cannot circumvent the Confrontation Clause by relaying an absent analyst's statements when the expert's opinion depends on the truth of those statements. Such statements are testimonial if prepared for prosecution. Ms. Pease's testimony directly relayed the absent certifier's assertions that this Intoxilyzer was inspected, calibrated, and approved – statements made precisely to establish reliability for use in criminal prosecutions. Her testimony thus violated *Smith* and *Crawford v.*

Washington, 541 U.S. 36 (2004).

2. *State v. Thomas* and *State v. Gleason* confirm that surrogate-analyst testimony violates the Sixth Amendment.

State v. Thomas, 2025 ME 34, involved the testing of drug evidence. The Law Court held that a substitute chemist became a "conduit" when his opinion rested on an absent analyst's notes and results. Because the opinion's value depended on those statements being true, the testimony satisfied the hearsay prong under Smith. The Court vacated and remanded after concluding the violation was not harmless beyond a reasonable doubt.

State v. Gleason, 2025 ME 52, likewise applied *Smith* to the hearsay prong where a forensic supervisor summarized data and notes generated by other analysts; the Law Court rejected the pre-*Smith* view that such basis testimony is not for the truth. The Court vacated and remanded for a new trial. Together, *Smith*, *Thomas*, and *Gleason* foreclose the State's use of a surrogate to convey approval or certification assertions about this instrument.

Critically, these decisions also recognize the distinction between machine-generated data (which by itself is not a person's "statement") and human assertions captured in certificates, labels, approval logs, or analyst

notes. The State relied on human assertions about this instrument's approvals; that triggers *Smith's* rule. Machine-generated numbers (raw, non-hearsay outputs) are different from human approvals/stamps/ work-sheets asserting that a certain instrument was inspected, passed controls, and was approved on a particular date. Ms. Pease transmitted those human assertions, thus triggering the hearsay/confrontation analysis..

3. The State's reliance on 29-A M.R.S. § 2431 and *Williamson* cannot override constitutional confrontation rights.

The State contends that it satisfied § 2431 by presenting "expert testimony" about reliability, citing *State v. Williamson*, 2017 ME 108. But *Williamson* predates *Smith* and did not authorize the introduction of testimonial statements through a surrogate witness. Statutory "prima facie" provisions cannot supersede the Sixth Amendment. See *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). Even under *Williamson*, "expert testimony" must be based on personal knowledge or admissible facts. When that testimony rests on testimonial statements by another analyst, confrontation applies.

4. The error was not harmless beyond a reasonable doubt.

This trial turned almost entirely on the Intoxilyzer number. There were no field-sobriety tests, no dash- or body-cam footage, and no Intoxilyzer-room video. The alleged indicia of intoxication were contested. The .16 result – admitted only through surrogate testimony – was the linchpin of the State's case. As *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), and *Smith* recognize, surrogate admission of a lab result is rarely harmless because juries treat numerical blood-alcohol evidence as conclusive. The State cannot prove harmlessness beyond a reasonable doubt.

CONCLUSION

The admission of the .16 Intoxilyzer test result through surrogate testimony violated the Confrontation Clause under *Smith*, as applied by *Thomas* and *Gleason*. The State's reliance on § 2431 and *Williamson* cannot displace the Sixth Amendment; "expert testimony" may not serve as a conduit for an absent certifier's approval assertions. The error was not harmless given the record. Separately, the stop lacked objective, articulable facts beyond an uncorroborated visual estimate. Finally, the discovery ruling failed to address material prejudice from the State's late, ex parte-shielded *Giglio* disclosure. The judgment should be vacated and the matter remanded for a new trial, or, in the alternative, for suppression and dismissal, and such further relief as is just.

Dated: November 5, 2025

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CERTIFICATE OF SERVICE

I, James P. Howaniec, attorney for the Appellant, certify that I have made service of the foregoing Brief of the Appellant by sending a copy via email this date to:

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Dated: November 5, 2025

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