

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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LAW DOCKET NO. KEN-25-278

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STATE OF MAINE,

Appellee

v.

DUSTIN FOSTER,

Appellant

ON APPEAL FROM THE SUPERIOR COURT  
COUNTY OF KENNEBEC

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APPELLANT'S BRIEF

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## STATEMENT OF FACTS AND PROCEDURAL HISTORY

Dustin Foster is charged by indictment with the following: 1) Unlawful Trafficking of Scheduled Drugs (Class B) (17-A M.R.S.A. § 1103(1-A)(A)); and 2) Unlawful Possession of Scheduled Drugs (Class C) (17-A M.R.S.A. § 1107-A(1)(B)(8)). (A. at 29.)

On February 07, 2025, at approximately 1925 hours, Analyn Green made a distressed call to 911 seeking help for her boyfriend, Dustin Foster. *Hearing Def. Ex. 1* entitled “02-07-25 19. 22.17 Emergency (NG911-1) - 2.wav.” Ms. Green testified that at the time she made this 911 call, she was worried that Mr. Foster was experiencing an overdose. (Tr. at 25.) Ms. Green told 911 dispatch that she thought she needed medical attention for Mr. Foster but was not sure. Ms. Green communicated that she thought Mr. Foster had “relapsed” and was acting erratically in their bedroom. *Hearing Def. Ex. 1* at 00:12-00:26. Ms. Green emphasized several times that Mr. Foster needed help. *Id.* at 0:00-1:00. Despite Ms. Green’s pleas in the 911 call, Deputy Reynolds directly contradicted what Ms. Green said, stating that "Analyn [Green] wanted Dustin [Foster] to get evaluated for using fentanyl, but he had not overdosed." (A. at 39.) Furthermore, in the 911 call, the dispatcher asked Ms. Green if Mr. Foster would take any Narcan, another indication that Mr. Foster needed medical attention. *Hearing Def. Ex. 1.*

Despite all of this information supporting that Mr. Foster was experiencing a medical emergency, the police cancelled the request for rescue at the scene. (A. at 41.) Upon arrival at the scene, Mr. Foster's backpack was searched incident to arrest, resulting in the recovery of alleged drug paraphernalia and 15.03 grams (including the baggie) of alleged presumptive positive Fentanyl Compound or Methamphetamine. (A. at 39.)

On April 17, 2025, Mr. Foster filed a Motion to Determine Immunity Pursuant to 17-A M.R.S. § 1111-B. (A. at 30.) On May 20, 2025, the trial court held a hearing on the Motion to Determine Immunity. *See Transcript*. After listening to the 911 call (Defendant's Exhibit 1 at hearing), testimony from the caller to 911, and testimony from a Delta Ambulance supervisor/EMT, the trial court denied the Motion. Mr. Foster filed a Motion for Reconsideration and Findings of Fact on May 27, 2025. (A. at 33.) The trial court issued orders denying that motion on May 30, 2025. (A. at 7, 26.) Mr. Foster timely appealed from the rulings, filing a Notice of Appeal on June 5, 2025. (A. at 5.)

**ISSUE PRESENTED FOR REVIEW**

Was Mr. Foster a protected person entitled to immunity under 17-A M.R.S.

§ 1111-B?

## ARGUMENT

### **I. Mr. Foster was a protected person entitled to immunity under 17-A M.R.S. § 1111-B.**

#### **A. Preservation and Standard of Review**

“Statutory interpretation is a question of law that we review de novo.” *State v. Beaulieu*, 2025 ME 4, ¶ 14, 331 A.3d 280, 286, citing *State v. Santerre*, 2023 ME 63, ¶ 8, 301 A.3d 1244. The issue of whether Mr. Foster was entitled to immunity is preserved for appeal because it was raised below and decided by the unified criminal court.

Generally, parties are prevented from appealing from orders that precede the rendering of a final judgment. *See generally State v. Me. State Emps. Ass’n*, 482 A.2d 461, 463-64 (Me. 1984). However, Mr. Foster’s current interlocutory appeal is reviewable under the death knell exception to the final judgment rule. *State v. Beaulieu*, 2025 ME 4, ¶ 13, 331 A.3d 280, 286. The death knell exception “permits an appeal from an interlocutory order where substantial rights of a party will be irreparably lost if review is delayed until final judgment.” *Id.* at ¶ 10, quoting *Webb v. Haas*, 1999 ME 74, ¶ 5, 728 A.2d 1261. As in *Beaulieu*, Mr. Foster is challenging the denial of a dispositive motion claiming statutory immunity; as in *Beaulieu*, Mr. Foster’s appeal is reviewable under the death knell exception.



**B. The trial court erred when it denied Mr. Foster’s Motion to Determine Immunity.**

17-A M.R.S. § 1111-B (2023) was enacted, in part<sup>1</sup>, to protect certain individuals from prosecution when an emergency call is made for a suspected drug-related overdose. The statute, sometimes referred to as Maine’s Good Samaritan Law, applies “[w]hen a medical professional or law enforcement officer has been dispatched to the location of a medical emergency in response to a call for assistance for a suspected drug-related overdose.” 17-A M.R.S. § 1111-B. The immunity extends to the person who called for assistance, the person experiencing a suspected overdose, and anyone rendering aid at the location of the suspected overdose. *See* 17-A M.R.S. § 1111-B(1)(B). Whether a call is “for assistance for a suspected drug-related overdose” depends on the subjective thoughts and beliefs of the caller; he or she must actually suspect that a drug-related overdose has occurred. *See State v. Beaulieu*, 2025 ME 4, ¶ 19. The content of the call for assistance must reflect the caller’s suspicion, “although **no specific wording is necessary for the call to qualify.**” *Id.* (*emphasis added*). This is because

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<sup>1</sup> This Court observed that the legislative record relating to 17-A M.R.S. 1111-B “reveals a purpose of the statute more focused than simply saving lives” but also to “incentivize individuals” near an overdose “to call 9-1-1 without fear of prosecution.” *State v. Beaulieu*, 2025 ME 4, ¶ 18 n.5.

“[r]equiring precise wording would produce absurd results” and frustrate legislative intent. *Id.* ¶ 19 n.8, 331 A.3d 280, 289.

**i. Mr. Foster met his burden of production; the trial court erred when it failed to shift the burden to the prosecution.**

§ 1111-B(4) specifies how a defendant can assert their claim of immunity under the section. Through a motion to determine immunity, the defendant can move the court prior to trial to decide whether the defendant is immune to prosecution under § 1111-B(2). *See* 17-A M.R.S. § 1111-B(4). Once the defendant has filed the motion and “presented evidence to establish immunity,” the burden shifts to the prosecution to prove by clear and convincing evidence that the “grounds for immunity do not apply to the defendant.” *Id.*

**a. Mr. Foster met his burden of production.**

In a criminal trial, a defense is raised “if the evidence is sufficient to make the existence of all facts constituting the defense a reasonable hypothesis for the fact finder to entertain.” *State of Maine v. Dyer*, 2001 ME 62, ¶ 4, 769 A.2d 873, 875 (citing *State of Maine v. Christen*, 1997 ME 213, ¶ 4, 704 A.2d 335, 337). Then the burden shifts to the State to disprove it. *See* 17-A M.R.S. § 101(1). The court “must view the evidence in the light most favorable to the defendant.” *Id.*

Similarly, the burden on the defendant to establish immunity is to present evidence that puts immunity at issue or generates the issue; this is the same burden

as raising a defense in a criminal case. The defendant need only present enough evidence to raise the issue.

In this case, the defendant met his burden of production. Despite bringing a motion and introducing evidence that included a 911 call for medical assistance on which the caller identified the use of drugs by using the word “relapse” (Immunity Hearing Def. Ex. 1), clear witness testimony from the caller that she believed Mr. Foster was experiencing a drug-related overdose (Tr. 25), and an actual response to the scene by medical professionals (Tr. 45, A. at 41), the trial court did not “think that the presentation made by the defense has implicated the State’s burden to present countervailing . . . evidence.” (Tr. at 72.) In denying the motion, the trial court noted that it didn’t “find that Mr. Foster’s made a showing at this point that he’s entitled to immunity under the statute.” *Id.*

Importantly, the defendant need not prove beyond a reasonable doubt, nor by clear and convincing evidence, that immunity has been established. The trial court appears to have held Mr. Foster to a higher burden of proof than required.

**b. The trial court did not shift the burden to the State.**

Mr. Foster, bringing ample evidence that he was the person suspected to have been experiencing a drug-related overdose, raised the issue and presented evidence that he was a protected person entitled to immunity. The trial court,

holding Mr. Foster to an unknown burden, erred when it failed to shift the burden to the State to prove that the grounds for immunity did not apply.

Per statute, once a defendant presents evidence to establish immunity, “the prosecution has the burden of proving by clear and convincing evidence that the grounds for immunity do not apply to the defendant.” 17-A M.R.S. § 1111-B(4)

As the hearing unfolded, all evidence was introduced *prior to* the trial court issuing findings. The burden of production being met by Mr. Foster, the trial court did not shift the burden of proving by clear and convincing evidence that the grounds of immunity did not apply to Mr. Foster; the hearing was done. The State was not required to attempt to disprove that Mr. Foster was a protected person, that the caller thought he was experiencing a suspected drug-related overdose, or that medical professionals had been dispatched to the scene. Rather, the State appears to have been held only to negating the defendant’s presentation at an unclear burden of proof.

**ii. The trial court erred when it placed a more burdensome “reporting” requirement on the caller than the required “call for assistance” burden.**

As noted above, statute defines a protected person as: “[A] person who in good faith calls for assistance for another person experiencing a suspected drug-related overdose, any person rendering aid at the location of the suspected drug-

related overdose and any person who is experiencing a suspected drug-related overdose.” 17-A M.R.S. § 1111-B(1)(B).

The call should be a “call for assistance.” There is no indication that the duty of the caller is to “report” a suspected overdose; indeed, the statute is intended to protect those making the calls. The difference between calling for assistance and reporting is subtle, but important. A caller who is close to the person experiencing the suspected overdose likely would not want to “report” the person. Two common definitions of “report,” as related to crimes, are “to make known to the proper authorities” and “to make a charge of misconduct against.”<sup>2</sup>

While delivering its findings, the trial court referred to the caller “reporting” a suspected overdose. In discussing *Beaulieu* and the call being made, the trial court outlined that it must consider “Was that a call that genuinely – genuinely was made for the purpose of *reporting* a drug-related overdose?” (A. at 20.) (emphasis added). In another instance, the trial court found that the caller’s intention “was not for the purpose of *reporting* an overdose.” (A. at 24.) (emphasis added).

If the trial court was holding the caller to “reporting” a suspected overdose, which it appears that it was, it was holding the caller to a different objective purpose than the statute notes. The call need only be a “call for assistance.” In this

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<sup>2</sup> *Report*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/report> (last visited September 4, 2025).

case, Ms. Green called 911 and requested medical help (not police or fire). *See* Hearing Def. Ex. 1 and Tr. at 11, 37-38. Based on his erratic behavior and physical symptoms, the caller wanted Mr. Foster to be seen by medical professionals, which must fit the required criteria of the call being a “call for assistance” as noted in the Good Samaritan statute.

**iii. The trial court erred when it improperly placed extra weight on the caller’s education and background yet disregarded important testimony.**

This Court, in *Beaulieu*, made clear that the caller “must suspect that a drug-related overdose has occurred.” *State v. Beaulieu*, 2025 ME 4, ¶ 19, 331 A.3d 280, 287. No “specific wording is necessary for the call to qualify” to reflect the caller’s suspicion. *Id.*

On the 911 call (*Hearing Def. Ex. 1*), Ms. Green, the caller, was asked if she needed police, fire, or medical. She responded that she needed medical help. She also reported that Mr. Foster had died three times previously, showing a concern she had for this drug use and his prior health issues. She noted her suspicions that his actions were drug-related. Whether her primary reason was that he was experiencing an overdose, or whether that reason was one of several reasons for making the call, Ms. Green suspected an overdose and made a call for help. The call, alone, was enough to be considered a “call for assistance.”

Ms. Green testified during the immunity hearing. The trial court made no findings that Ms. Green was not credible. She elaborated on why she called in the first place; she found a needle in the bathroom. Calling her mother, she was influenced that calling 911 for help was a good idea. Ms. Green said that she was worried about how Mr. Foster was presenting (Tr. at 15.), that he was “sweating profusely, pacing the room, mumbling to himself” and would “stand there and just stare out.” *Id.* She noted that she assumed “he took something, because what was left in the bathroom” but did not know what. (Tr. at 16.) Importantly, Ms. Green explicitly acknowledged that at the time that she made the 911 call, she was worried that Mr. Foster was experiencing an overdose. (Tr. at 25.) Ms. Green repeated the worry while being cross-examined: “Because I was trying to get him the help that he needs.” (Tr. at 33.)

During cross-examination, the State asked Ms. Green about her experience as a nurse. Ms. Green noted that while she had performed emergency CPR before, her experience was in “geriatrics and skilled rehab nursing.” (Tr. at 27.) She testified that she did not perform CPR in this situation, nor did she administer Narcan, because it would likely have made Mr. Foster angry and possibly broken his healing ribs. *See* Tr. at 28-29, 34. Finally, Ms. Green confirmed that she was worried that Mr. Foster was experiencing an overdose but used “relapsing” instead. (Tr. at 36.)

In delivering its findings, the trial court picked some of Ms. Green's testimony to support its findings while disregarding other testimony. Most notably, the trial court stated that even though "she testified today that she was concerned that Mr. Foster was having an overdose," that alone couldn't "be the end of the inquiry, because if it was, these hearings would be pretty short." (A. at 20.) Her plain testimony about her subjective suspicion that Mr. Foster was experiencing an overdose was put to the side.

If this Court's intent was to use the call as the *only* evidence to determine the caller's subjective belief for making the call for assistance, there would be no need for a testimonial hearing; the 911 call would be enough. However, since the caller was allowed to be a witness, the trial court erred when it disregarded Ms. Green's sworn testimony that she believed that Mr. Foster was experiencing a drug-related overdose when she made the call for assistance.

In addition to disregarding her testimony about why she made the call, the trial court erred when it put extra emphasis on Ms. Green's education and background. The court found that it was "relevant that she's a medical professional" yet did not attempt CPR nor attempt to administer Narcan. (*See* A. at 23.) This emphasis on Ms. Green's background goes well beyond the content of the call itself and downplays Ms. Green's explicit statements about how she did not find it safe or necessary to attempt either treatment.



The trial court erred when it muddled the caller’s own testified-to suspicion that a drug-related overdose had occurred with the court’s perception on how a person with her particular education and experience would react when making the call.

**iv. The trial court erred when it considered “drug-related overdose” in the context of depressants and not stimulants.**

**a. Standard of Review**

Maine’s Good Samaritan Law does not define “drug-related overdose.” The statute does not specify whether overdose needs to be in reaction to use of an opioid, depressant, stimulant, or any other specific type of drug.

“Statutory interpretation is a question of law that we review de novo.” *State v. Beaulieu*, 2025 ME 4, ¶ 14, 331 A.3d 280, 286, citing *State v. Santerre*, 2023 ME 63, ¶ 8, 301 A.3d 1244. Because the statute does not define “drug-related overdose,” the issue of how the phrase was interpreted by the trial court is an issue of statutory interpretation and should be reviewed de novo.

**b. The trial court erred when considered only overdoses to depressants and not stimulants.**

“Overdose” means “a lethal or toxic amount (as of a drug)”.<sup>3</sup> An overdose can occur when a drug, or combination of drugs, “overwhelms the body” and can

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<sup>3</sup> *Overdose*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/overdose> (last visited September 10, 2025).

be in reaction to a variety of substances.<sup>4</sup> Stimulant-related overdoses, sometimes referred to as “overamping,” can lead to various other medical issues like seizures, strokes, or heart attacks.<sup>5</sup>

During the hearing, Ms. Knowles, office manager/dispatch supervisor/EMT for Delta Ambulance, testified to her personal knowledge of types of overdoses to which she responded.

Notably, Ms. Knowles testified that patients overdosing on opioids present as usually “unresponsive or very lethargic, decreased respirations, usually require assistance with ventilations, pinpoint pupils, cool, clammy skin” and “sometimes vomiting, frothing at the mouth.” (Tr. at 50-51.) Alternatively, patients overdosing on stimulants, like cocaine or methamphetamines, typically present as “very agitated. Hard to control. They don’t listen, as much as we try to; they tend to escalate.” (Tr. at 51.) On cross-examination, Ms. Knowles confirmed that if an EMT is concerned that someone is overdosing on a stimulant, the EMT is “worried about them eventually becoming unresponsive.” (Tr. at 54.) Ms. Knowles testified that administering Narcan “won’t do anything unless it’s an opiate.” (Tr. at 52.)

Despite the distinction made by Ms. Knowles, the trial court noted as part of its findings “that the testimony was, and I find, he never lost consciousness during

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<sup>4</sup> Signs Of A Drug-Related Overdose, California Department of Public Health, <https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Signs-of-overdose.aspx> (last visited September 10, 2025).

<sup>5</sup> *Id.*

this event.” (A. at 23.) The court also factored in that Mr. Foster “was completely alert. There was no change in his color.” (A. at 24.) The court noted that Mr. Foster was sweating, but only regarded it as someone using drugs, not necessarily overdosing. Additionally, the court found Ms. Green did not perceive the situation as an overdose situation because she did not use Narcan, rather than consider the possibility that Narcan would not help someone overdosing on methamphetamine. (A. at 23.)

It should be noted that the responding deputy noted that a substance found in Mr. Foster’s possession tested presumptively positive for “Fentanyl Compound *or* Methamphetamine.” (A. at 39.)(emphasis added). It should also be noted that Ms. Green testified about being present while Mr. Foster’s heart stopped on three occasions in October 2024, preceding this incident. (Tr. at 24.) She testified that Mr. Foster “coded again. They put him not in a medically-induced coma, but they coded him and put him on a bunch of machines to keep him alive, essentially. He had a machine beating his heart for him, had a machine breathing for him.” (Tr. at 25.)

In essence, the trial court considered the symptoms shown by Mr. Foster as indicative of drug use, but did not consider the possibility that Ms. Green interpreted them as symptoms of an overdose to a stimulant or putting him at risk of complications because of his previous medical history. The symptoms and

observations made by Ms. Green were consistent with testimony about what a stimulant overdose may look like; despite that consistency, the trial court appears to have only considered an overdose to opioids and depressants as the only type of “drug-related overdose” that matters for immunity purposes.

## CONCLUSION

The trial court, in determining whether immunity should attach to Mr. Foster, placed an extra burden on the defendant. Mr. Foster, through his initial motion and exhibits, made a clear showing and presentation of evidence to establish immunity. First, a call for assistance was made for a suspected drug-related overdose. Ms. Green called 911, asked for medical help (not police or fire) for Mr. Foster because she thought he had relapsed and taken drugs, and described several symptoms consistent with an overdose to a stimulant.

Medical professionals and law enforcement were dispatched to the location of the medical emergency in response to the call for assistance. Police called off medical before medical professionals were able to evaluate Mr. Foster, and only after law enforcement learned of Mr. Foster's identity and the existing warrant for arrest. Grounds for prosecution only came to light as a result of the original call for assistance.

The trial court erred when: 1) it shifted a higher burden on Mr. Foster rather than shifting the burden to the prosecution; 2) it placed a higher burden on the caller when it considered "reporting" rather than simply a "call for assistance"; 3) it selectively factored in some of the caller's testimony but disregarded other important testimony; and 4) it considered "drug-related overdose" to only apply to opioids and depressants but not stimulants.

Based on the foregoing arguments, Appellant respectfully asks this honorable Court to Reverse the trial court's denial on the Defendant's Motion to Determine Immunity.

Dated: September 12, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Matthew J. Fortin, hereby certify that I have on this date caused a copy of the foregoing *Appellant's Brief* to be served via electronic mail to:

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Dated: September 12, 2025

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