

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. KEN-25-278

STATE OF MAINE,

Appellee

v.

DUSTIN FOSTER,

Appellant

ON APPEAL FROM THE SUPERIOR COURT
COUNTY OF KENNEBEC

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. As a question of law, the issue of statutory interpretation to determine what burden is initially applied to the defendant is reviewed *de novo*.

The State argues that the Court should review the motion court's decision deferentially. (Red Br. 9-10.) While this is normally correct for the motion court's factual findings, this Court does not show deference on issues of statutory interpretation, as they are questions of law which are reviewed *de novo*. *State v. Beaulieu*, 2025 ME 4, ¶ 14, 331 A.3d 280. Additionally, deference for the motion court's factual findings is based on their greater ability to judge credibility and reliability of evidence based on their opportunity to "hear witnesses and assess their credibility." *State v. Sylvain*, 2003 ME 5, ¶ 8, 814 A.2d 984. Under a prima facie standard, the motion court is not to weigh the credibility and reliability of evidence, *Cookson v. State*, 2011 ME 53, ¶ 8, 17 A.3d 1208, so the justification for deference to factual findings does not apply.

A defendant claiming immunity from prosecution has the initial burden to present "evidence to establish immunity." 17-A M.R.S. § 1111-B(4). The statute does not specify the legal standard for determining whether a defendant has met this burden. This Court has not yet ruled on what burden should be applied, which is an issue of statutory interpretation.

Additionally, interpretation of the term “drug-related overdose” is a question of statutory interpretation. *Beaulieu*, 2025 ME 4, ¶¶ 16-18, 331 A.3d 280. In this case, there is an important issue of the distinction between a stimulant overdose and an opioid overdose.

II. The prima facie standard advocated by the State does not allow for the weighing of the reliability or credibility of evidence.

In their brief, the State argues that the burden applied to determine whether a defendant has initially presented evidence to establish immunity should be a prima facie showing. (Red Br. 10.) The State further explains that prima facie evidence is a “low standard” that “does not depend on the reliability or credibility of the evidence.” (Red Br. 11 (quoting *Cookson v. State*, 2011 ME 53, ¶ 8, 17 A.3d 1208).)

a. Mr. Foster presented a prima facie case that the 911 call was for a suspected drug-related overdose.

On the 911 call, Ms. Green requested medical assistance for Mr. Foster. (Immunity Hearing Def. Ex. 1 at 00:10-00:15). She made clear that the need for medical assistance was based on drug use, saying she believed Mr. Foster was relapsing. (*Id.* 00:15-25.) She described Mr. Foster as very erratic and stated that he needed help (*Id.* 1:45-50, 3:15-3:20.). She also described past experiences of Mr. Foster dying three times and requiring heart surgery. (*Id.* 00:45-00:55.) Ms. Green testified that she called 911 because she was worried that Mr. Foster was

experiencing an overdose. (Tr. at 25.) This alone makes a prima facie case that the 911 call was for a suspected drug-related overdose.

b. Mr. Foster presented a prima facie case that there was a medical emergency.

While the motion court did not rule on whether there was a medical emergency, it is clear from the record that Mr. Foster made a prima facie case that there was a medical emergency. Ms. Green called 911 and requested medical, saying she was concerned Mr. Foster was “relapsing,” and needed help. (Immunity Hearing Def. Ex. 1 at 00:10-00:30). She further explained that Mr. Foster had “died about over three times, and they’d bring him back and did heart surgery.” (*Id.* 00:45-00:55.) Ms. Green repeatedly stated that Mr. Foster needed help and she couldn’t help him anymore. (*Id.* 00:25-00:30, 00:55-01:05, 01:35-01:50.) This makes more than a prima facie case of a medical emergency.

c. The motion court engaged in a weighing of the reliability and credibility of the evidence, which is not part of the prima facie standard.

The State cites case law holding that this Court will not overturn a lower court’s determination of a defendant’s failure to present prima facie evidence unless “the evidence compelled the court to find to the contrary.” (Red Br. 11 (quoting *Cookson v. State*, 2014 ME 24, ¶ 16, 86 A.3d 1186).) However, the

motion court in this case made no such finding. In fact, the motion court did not state what burden it was applying to the defendant.

While the motion court did not state what burden of proof the court was holding Mr. Foster to, the standard applied was not consistent with the prima facie evidence standard. This is made clear because the motion court engaged in a weighing of the credibility and reliability of the evidence. (A. at 20-21.) The State cites *State v. Harding* to argue that the “fact-finder is free to selectively accept or reject testimony presented.” (Red Br. 13 (quoting *State v. Harding*, 2024 ME 67, ¶ 13, 340 A.3d 1175).) However, *Harding* involved the review of a conviction after jury trial with the standard of beyond a reasonable doubt. *Harding*, 2024 ME 67, ¶ 13, 340 A.3d 1175. A fact-finder is *not* free to selectively accept or reject testimony under the prima facie standard.

III. An overdose on stimulants, including methamphetamine, is still a drug-related overdose, notwithstanding that a stimulant overdose may be less common than an overdose to opiates.

The State responds to Mr. Foster’s argument that it was error for the court to fail to consider a stimulant overdose by arguing that stimulant overdoses are uncommon and most overdoses involve opiates. (Red Br. 14 n.3.) Notably, the State does not argue the fact that the motion court did not consider the possibility of a stimulant overdose. *Id.* Instead, the State cites a deputy’s belief that the substance found in Mr. Foster’s backpack was fentanyl powder, and the testimony

of EMT Knowles that she had seen few stimulant overdoses in her career because most overdoses involve opiates. *Id.* However, the substance tested as presumptive positive for fentanyl compound *or* methamphetamine, which is a stimulant. (A. at 39.) EMT Knowles also testified that stimulant overdoses do happen, and Mr. Foster's symptoms were consistent with the symptoms of a stimulant overdose that EMT Knowles described. (Tr. 51-52.)

Elsewhere in its brief, the State argues that the fact that Ms. Green did not administer CPR or Narcan, and that medical personnel in the ambulance never had contact with Mr. Foster, shows that there was no medical emergency. (Red Br. 12-13.) However, EMT Knowles testified that Narcan would have no effect on a stimulant overdose. (Tr. 51-52.) Additionally, EMT Knowles testified that police securing the scene first is standard for stimulant overdoses. *Id.* Similarly, in this case, Delta ambulance personnel staged close by the scene waiting for police to authorize them to go on scene. (Tr. 45-46.) However, police canceled the Delta ambulance run, preventing medical personnel from going on scene and evaluating Mr. Foster. (Tr. 47, 54-55.)

Although stimulant overdoses may be less common than opiate overdoses, the plain language of the statute covers both. A "drug-related overdose" is not, by the plain language of the statute, limited in any way to a certain type of drug. 17-A M.R.S. § 1111-B. Elsewhere in the statute, in the definition of "rendering aid," the

legislature refers to the “administration of naloxone hydrochloride [Narcan] or another opioid overdose-reversing medication.” *Id.* § 1111-B(1)(C). This shows two things: (1) the legislature will specify opioid overdose where they intend not to cover other types of overdoses, and (2) the legislature acknowledges that Narcan is only effective for opioid overdoses.

IV. Because Mr. Foster filed a motion for further findings of facts and conclusions of law, the Court should not infer any findings beyond those stated on the record by the motion court.

Where the appellant has not made motion for further findings, the Court will “assume the court found the facts necessary to support its judgment as long as the record contains evidence that would support those assumed findings.” *State v. Ouellette*, 2024 ME 29, ¶ 11, 314 A.3d 253. However, where the appellant did move for further findings, the Court “will not assume that the trial court found facts beyond those that it stated.” *State v. Fitzgerald*, 2025 ME 65, ¶ 3, 340 A.3d 121. In this case, Mr. Foster made a motion for further findings, (A. at 33), which was denied by the motion court. (A. at 7).

a. The motion court did not make a finding on whether there was a medical emergency.

The State argues that Mr. Foster failed to establish that there was a medical emergency. (Red Br. 12.) In support of this argument, the State cites the fact that Ms. Green did not administer CPR or Narcan, and that medical personnel in the

ambulance never had contact with Mr. Foster. (Red Br. 12-13.) However, the motion court made no finding on that issue, and Mr. Foster did make a prima facie showing of a medical emergency, as previously discussed.

b. Because the motion court never shifted the burden to the State, the motion court did not make a determination on whether the State met the burden of proof by clear and convincing evidence.

The State argues that any error in the failure to shift the burden is harmless because the State had met the burden of proof by clear and convincing evidence. (Red Br. 15.) The motion court's ruling made clear that it never shifted the burden to the State. (A. at 18, 24-25). As such, there was no determination by the motion court as to whether the State met its burden of proof by clear and convincing evidence.

This also raises procedural questions. The State argues that the State is not obligated to introduce the testimony of witnesses to meet its burden, and that evidence was sufficient to meet the burden of clear and convincing evidence that immunity did not apply. (Red Br. 16.) The statute states, "Once the defendant has filed a motion and has presented 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). There is no guidance in statute or case law allowing for both determinations to be made simultaneously.

V. The issue of the motion court's failure to shift the burden to the State is preserved and the obvious error standard does not apply.

The State argues that review is limited to obvious error because, the State argues, Mr. Foster did not object below when the motion court did not shift the burden to the State. However, statute and rule both make clear that an objection is unnecessary if the party “makes known to the court the action which the party desires the court to take” and the grounds for that action. 15 M.R.S. § 2117; M.R.U. Crim. P. 51. Mr. Foster made his position known both through his Motion to Determine Immunity and his argument, through counsel, at the motion hearing. (A. at 30; A. at 8-12). Additionally, Mr. Foster raised this very issue in a Motion for Reconsideration filed only seven days after the hearing. (A. at 33).

a. Mr. Foster's Motion to Determine Immunity asked the motion court to find him immune from prosecution under 17-A M.R.S. § 1111-B, which necessarily involves shifting the burden to the State.

In his Motion to Determine Immunity, Mr. Foster asked the motion court to find him immune from prosecution. (A. at 32.) Mr. Foster, through his counsel, expanded on this argument at the motion hearing and asked for the court to find him immune from prosecution, based on Mr. Foster being a protected person under the statute. (A. at 8-12.) Finding Mr. Foster immune from prosecution would necessarily involve first finding that Mr. Foster had met his burden and shifting the burden to the State. A specific objection after the ruling was not necessary. If

defense counsel makes a hearsay objection and is overruled, counsel does not then need to object to the ruling to preserve the issue.

b. Mr. Foster's Motion for Reconsideration specifically raised the issue of failure to shift the burden to the State.

Mr. Foster filed a Motion for Reconsideration and Findings of fact on May 27, 2025, only seven days after the motion hearing on May 20, 2025. (A. at 38.) In that motion, Mr. Foster made several of the same arguments raised on appeal, including that the standard of proof for the defendant was unclear and that the burden never shifted to the State. (A. at 36.) The motion for reconsideration was denied. (A. at 26.)

CONCLUSION

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

Dated: December 5, 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 Reply Brief* to be served via electronic mail to:

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Dated: December 5, 2025

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