MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2026 ME 108
Docket: Ken-25-278
Argued: February 5, 2026
Decided: November 12, 2026

Panel: STANFILL, C.J., and MEAD, CONNORS, LAWRENCE, DOUGLAS, and LIPEZ, JJ., and HJELM, A.R.J.
Majority: STANFILL, C.J., and CONNORS, LAWRENCE, and DOUGLAS, JJ.
Dissent: HJELM, A.R.J., and MEAD and LIPEZ, JJ.

STATE OF MAINE

v.

DUSTIN M. FOSTER

STANFILL, C.J.

[¶1] Dustin M. Foster appeals from an order of the trial court (Kennebec County, *Daniel Mitchell, J.*) denying his pretrial motion to determine that he is immune from prosecution under Maine's Good Samaritan statute. See 17-A M.R.S. § 1111-B (2026). Foster argues that the statute required him to present only prima facie evidence of immunity, he met that burden, and the trial court therefore erred by denying the motion without shifting the burden to the State. Because the court did not err in determining that Foster failed to present prima facie evidence of immunity under the Good Samaritan statute, we affirm.

I. BACKGROUND

A. Procedural Background

[¶2] The factual and procedural history are drawn from the record, Foster's motion, and the court's findings, which are supported by competent evidence. *See State v. Beaulieu*, 2025 ME 4, ¶ 2, 331 A.3d 280. On the evening of February 7, 2025, Foster's girlfriend called 9-1-1 to report that Foster was using drugs and acting violently in their home. Officers from the Kennebec County Sheriff's Office were sent to the residence, and an ambulance was dispatched to wait nearby. When the deputies arrived, Foster was sweating and appeared to be under the influence of narcotics. Foster did not require medical assistance and the ambulance was canceled.

[¶3] Police advised Foster that there was a warrant for his arrest and placed him in handcuffs. Police then searched Foster's backpack incident to arrest, finding drug paraphernalia and about fifteen grams of a white substance.

[¶4] Foster was charged by complaint and then by indictment with one count each of unlawful trafficking of scheduled drugs (Class B), 17-A M.R.S. § 1103(1-A)(A) (2026), and unlawful possession of scheduled drugs (Class C), 17-A M.R.S. § 1107-A(1)(B)(8) (2026). Before trial, Foster moved the court to determine that he was immune from prosecution under Maine's Good

Samaritan statute, *see* 17-A M.R.S. § 1111-B, arguing that when the alleged criminal activity took place on February 7, 2025, his girlfriend had called 9-1-1 to request medical assistance because she suspected that he was experiencing a drug overdose.

[¶5] Maine's Good Samaritan statute provides "immun[ity] from arrest or prosecution," *id.* § 1111-B(2), to "protected person[s]," including "any person who is experiencing a suspected drug-related overdose," *id.* § 1111-B(1)(B), when "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,"[1] *id.* § 1111-B. The statute specifies the procedure for a defendant who wishes to claim immunity:

> **4. Motion to determine immunity.** A criminal defendant may move that the court prior to trial determine whether the defendant is immune from prosecution or revocation or termination proceedings pursuant to subsection 2 or 3. 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. The court may hear testimony and shall make factual and legal findings as necessary to determine immunity.

Id. § 1111-B(4).

[1] The statute also provides immunity to other individuals and in situations not relevant here. *See* 17-A M.R.S. § 1111-B.

[¶6] On May 20, 2025, the court held an evidentiary hearing on Foster's motion to determine immunity, following which the court made oral findings on the record and denied the motion. Foster moved for reconsideration and for further findings of fact, which the court denied. Foster timely appealed. *See* M.R. App. P. 2B(b)(1).[2]

B. The court found that Foster did not make a prima facie showing that he was entitled to immunity.

[¶7] At the motion hearing the court admitted in evidence the recording of the 9-1-1 call made by Foster's girlfriend and the relevant ambulance records. The court also heard testimony from Foster's girlfriend and the ambulance dispatch supervisor, as well as oral argument from Foster and the State.

[¶8] In ruling on the motion, the court explained the analysis under section 1111-B(4): "If I find the defendant has established the entitlement to immunity, then the burden shifts to the State to present clear and convincing evidence as to why that—that immunity should not apply. But in the first instance, I need to make a finding that there's been enough evidence to show

[2] Foster has appealed from the interlocutory order denying him immunity under section 1111-B. As we explained in *Beaulieu*, the death knell exception to the final judgment rule applies to appeals from orders denying immunity under section 1111-B because the "substantial rights of a party will be irreparably lost if review is delayed until final judgment." 2025 ME 4, ¶¶ 10-13, 331 A.3d 280 (quotation marks and emphasis omitted).

that . . . the defendant is entitled to immunity under the statute." Further, the court stated that under *Beaulieu*, 2025 ME 4, ¶ 19, 331 A.3d 280, section 1111-B immunity is available when the call "for assistance for a suspected drug-related overdose" was "genuinely . . . made for the purpose of reporting a drug-related overdose," which must be evident from the content of "that particular call."

[¶9] The court found that the call "present[s] a different picture than . . . that this was an overdose" and that Foster's girlfriend called 9-1-1 to report her concern that Foster was relapsing and needed help. The court noted that Foster's girlfriend was genuinely concerned because he had past substance use issues and had not been misusing substances since a serious medical event in the fall. She reported that Foster was engaging in upsetting and dangerous behavior, and suggested that he was going to break his phone or her phone or other things, which she asked him not to do, and that he was out of control and freaking out.

[¶10] Emphasizing "that a relapse is different than an overdose," the court concluded that the girlfriend's intention when she made the call "was not for the purpose of reporting an overdose . . . [but] for the purpose of reporting that [Foster] was having a relapse, which is not something that's covered under the statute." The court found it relevant that the girlfriend observed that Foster

remained completely alert, there were no changes to his color, and had not lost consciousness. Moreover, the girlfriend did not attempt to administer any medical aid to Foster despite her medical training, indicating that when she made the 9-1-1 call, she did not believe that Foster was experiencing an overdose.

[¶11] The court recognized that Foster's girlfriend testified at the hearing that when she made the 9-1-1 call, she was worried that Foster was experiencing an overdose. The court did not base its conclusions on the testimony after the fact, however, but on the call itself.

[¶12] Because the court concluded that Foster did not make a showing that he is entitled to immunity under the statute, it did not shift the burden to the State:

> And so for those reasons, I don't think the statute's implicated. And I don't find that Mr. Foster's made a showing at this point that he's entitled to immunity under the statute, and therefore I'm going to deny his motion on that basis. I don't think that . . . the presentation made by the defense has implicated the State's burden to present countervailing—countervailing evidence.

II. DISCUSSION

A. Defendant's Prima Facie Burden

[¶13] We first take this opportunity to clarify the burden the defendant must carry to establish immunity under section 1111-B. Section 1111-B(4) sets

out a burden-shifting scheme: "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." We agree with the parties that the statute places a prima facie burden of proof on the defendant. If the defendant "present[s] evidence to establish immunity," the burden then shifts to the State; in other words, the defendant must present prima facie evidence establishing entitlement to immunity under the statute. *See* 17-A M.R.S. § 1111-B(4).

[¶14] We have defined prima facie evidence as "the preliminary burden of production of evidence; it requires proof only of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor. Prima facie evidence requires only some evidence on every element of proof necessary to obtain the desired remedy. Thus, prima facie proof is a low standard that does not depend on the reliability or credibility of the evidence, all of which may be considered at some later time in the process." *Cookson v. State*, 2014 ME 24, ¶ 16, 86 A.3d 1186 (quotation marks omitted).

[¶15] Here, the court accurately explained Foster's burden, using the language of the statute, as requiring him to "establish" that he is entitled to immunity under the statute before the burden shifts to the State. In other

words, Foster must make out a prima facie case for immunity by putting in evidence on every element of proof of immunity before the burden shifts to the State. We conclude, therefore, that the court correctly interpreted the defendant's initial burden under section 1111-B.

[¶16] We therefore turn to Foster's argument that the court erred by finding that he failed to establish a prima facie case.

B. Standard of Review

[¶17] When a party bears the burden of establishing a prima facie case, "we will disturb the court's determination that [the party] failed to carry his burden only if the evidence compelled the court to find to the contrary." *Id.* ¶ 16 (quotation marks omitted).[3]

C. Foster's Burden to Establish Immunity

[¶18] Foster argues that the court was compelled to find that the 9-1-1 caller suspected that Foster was experiencing a drug-related overdose and that as a result, he met his initial burden to present prima facie evidence. *See* 17-A M.R.S. § 1111-B(1)(B), (2). The court found, however, that Foster's girlfriend called 9-1-1 because Foster was relapsing and not because he was experiencing

[3] The dissent does not appear to contest that *Cookson* states the standard of review we apply to determine whether a party has established a prima facie case. *See* Dissenting Opinion ¶ 38.

a suspected drug-related overdose. In making this finding, the court focused its analysis—in accordance with *Beaulieu*—on the girlfriend's state of mind at the time she placed the 9-1-1 call. *See* 2025 ME 4, ¶ 19, 331 A.3d 280.

[¶19] Section 1111-B confers immunity only "[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. In *Beaulieu*, we explained that section 1111-B's "clause 'in response to a call for assistance for a suspected drug-related overdose' is susceptible to only one reasonable interpretation: the caller must suspect that a drug-related overdose has occurred." 2025 ME 4, ¶ 19, 331 A.3d 280. Further, because "it is the call that is for a suspected drug-related overdose, it is the content of the call that must reflect the caller's suspicion, although no specific wording is necessary for the call to qualify." *Id.*

[¶20] The court's determination that the girlfriend made the 9-1-1 call to report that Foster was relapsing and engaging in concerning and dangerous behavior—not because he was experiencing an overdose—is supported by the evidence.[4] *See Cookson*, 2014 ME 24, ¶ 17, 86 A.3d 1186. In the 9-1-1 call, the

[4] The dissent posits that a report of a relapse is sufficient to constitute a report of a suspected overdose. *See* Dissenting Opinion ¶ 50. In common parlance, however, "relapse" indicates the use of drugs after a period of abstention. *See, e.g.*, *Relapse*, New Oxford American Dictionary (3d ed. 2010) ("suffer deterioration after a period of improvement"); *see also In re Child of Danielle H.*, 2026 ME 19,

girlfriend expressed concern about Foster's behavior, reporting that he was relapsing and "freaking out," and she can be overheard asking Foster to stop breaking things. Moreover, the girlfriend reported that Foster was alert and that there had been no change in his color—evidence that supports the court's finding that the girlfriend did not make the 9-1-1 call because she believed that Foster was experiencing a drug-related overdose.[5]

[¶21] Nor did Foster present evidence sufficient to compel the court to find that the girlfriend suspected that Foster was experiencing a drug-related overdose. Although the girlfriend testified that when she made the 9-1-1 call, she was worried that Foster was overdosing, her testimony is not enough for the court to be compelled to "infer the fact at issue and rule in [Foster]'s favor." *See id.* ¶ 16 (quotation marks omitted). Because it is the content of the call that must reflect the caller's suspicion, *Beaulieu*, 2025 ME 4, ¶ 19, 331 A.3d 280, the

¶ 8, 354 A.3d 349 (explaining that relapse, also called symptom recurrence, is a common part of recovery from substance use). If the Legislature intended to immunize calls for assistance in cases of all drug use, or all such use if coupled with dangerous or criminal behavior, it could have done so. It did not.

[5] Foster additionally contends that because the court found it relevant that the girlfriend did not attempt to administer Narcan, the court interpreted the term overdose as applying only to opiate overdoses, and therefore erred. Contrary to Foster's assertion, the court's analysis indicates that it did consider the possibility that Foster was experiencing a non-opiate-related overdose because it considered it relevant that Foster did not lose consciousness—a symptom that, according to the testimony of the ambulance dispatch supervisor, could indicate an overdose to either opiates or stimulants.

call itself is the lens through which the court must consider additional evidence. We note that, "although no specific wording is necessary," *id.*, the girlfriend never asserted in the call that Foster was overdosing. With ample record support, the court found that the clear import of the call, which went on for over ten minutes, was to report Foster's concerning behavior and not to report a drug overdose.

[¶22] The dissent likens the standard of review to that applied to the review of summary judgments, stating that we should "examine the record solely to determine whether it contains evidence that—on its face and without regard to questions of credibility, reliability, or weight—covers each of the components of the Good Samaritan statute." Dissenting Opinion ¶ 40. The dissent argues that the girlfriend's explanatory testimony "that, when she placed the 9-1-1 call, she was worried that Foster was experiencing an overdose" satisfies the burden of production and cannot be judged for its credibility. Dissenting Opinion ¶¶ 42-45.

[¶23] But, as with the analysis of a motion for summary judgment, any dispute of fact must be both material and genuine. "A material fact is one that has the potential to affect the outcome of the suit. A genuine issue exists when sufficient evidence requires a fact-finder to choose between competing

versions of the truth at trial." *Parrish v. Wright*, 2003 ME 90, ¶ 8, 828 A.2d 778 (quotation marks omitted). Because it is the call that triggers the response by law enforcement or emergency personnel, "it is *the content of the call* that must reflect the caller's suspicion" of an overdose. *Beaulieu*, 2025 ME 4, ¶ 19, 331 A.3d 280 (emphasis added). The girlfriend's reframing of the issue afterward does not create a material or genuine dispute concerning whether the call was for assistance for a suspected drug overdose.[6] In other words, Foster cannot rely on the girlfriend's testimony to meet his burden of presenting prima facie evidence on this element.

[¶24] Because the content of the 9-1-1 call clearly reflects the girlfriend's intention to report that Foster was relapsing and engaging in frightening behavior rather than overdosing, Foster failed to carry his burden to present prima facie evidence on this element. The court was not compelled to find otherwise, and it therefore did not err when it denied Foster's motion to determine immunity.[7] *See Cookson*, 2014 ME 24, ¶ 16, 86 A.3d 1186.

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[6] As the dissent notes, 17-A M.R.S. § 1111-B(4) authorizes the court to take testimony. Dissenting Opinion ¶ 49. While the girlfriend's testimony may be relevant to other issues, it cannot be relied upon here to interpret the content of the call. This is not a matter of the *weight* to be given to the testimony, but of its relevance to the burden of production. The issue before the court is whether law enforcement or medical assistance were dispatched "*in response to a call* for assistance for a suspected drug-related overdose." 17-A M.R.S. § 1111-B (emphasis added).

[7] We therefore do not reach whether the court was compelled to find that Foster established a prima facie case on the other elements required to confer immunity. We note, however, that no

The entry is:

Order affirmed.

HJELM, A.R.J., with whom MEAD and LIPEZ, JJ., join, dissenting.

[¶25] The task before us in this case is narrow and straightforward. It calls for us only to review the record and see if there is evidence—any evidence at all—that corresponds to each element of the Good Samaritan immunity statute, 17-A M.R.S. § 1111-B (2026). If that evidence appears in the record, Dustin Foster has satisfied the burden of production imposed on him by the statute, and the burden of persuasion then shifts to the State to affirmatively disprove the availability of statutory immunity. Determining whether a defendant has satisfied that initial burden is a question of law and allows no deference to factual findings of the trial court because, at this first step of the statutory process, the court may not properly make *any* finding of fact. Instead, the issue is solely whether, on the face of the record, the defendant has met the burden of production.

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medical assistance was rendered or needed, which certainly raises a question whether there was a medical emergency. *See Beaulieu*, 2025 ME 4, ¶ 21, 331 A.3d 280 (explaining that section 1111-B "requires that the response to a call for assistance for a suspected drug-related overdose be to the location of a 'medical emergency,' not to the location of a suspected mere 'medical event'") (citation omitted).

[¶26] In the proceedings below, the court erred by making factual findings and then, based on those findings, concluding that Foster had not satisfied the burden of production. Now, on Foster's appeal, the Court errs by invoking a deferential standard of review to affirm the court's denial of Foster's motion. In my view, when proper legal principles are applied, the evidence presented to the court was sufficient as a matter of law to fulfill Foster's burden of production, thereby shifting the burden to the State to establish, by clear and convincing evidence, that Foster was not entitled to the protections of the Good Samaritan statute. For those reasons, I respectfully dissent.

[¶27] I will discuss, in turn, the Good Samaritan statute; the standard of review we should apply to a trial court's determination that the defendant has not met the initial burden prescribed by the statute; and, finally, the application of those principles to the record before us.

A. The Good Samaritan Statute

[¶28] Title 17-A M.R.S. § 1111-B establishes immunity from specified criminal-justice consequences for designated categories of people when the investigation and legal proceeding originate with an official response to a suspected drug-related overdose. The statute begins:

> When 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, the following provisions apply to any protected person at the location when the medical professional or the law enforcement officer arrives.

[¶29] The statute then goes on to exclude particular crimes from which the protected person would otherwise be immune from criminal action, and it defines who qualifies as a "protected person." *Id.* § 1111-B(1)(A)-(B). In applicable cases, which includes the one at bar, immunity arises if the grounds for an arrest or prosecution are obtained as a result of the official response to a call for assistance as defined in the statute or if the responder learns the identity of a protected person as a result of that official response. *Id.* § 1111-B(2).

[¶30] Framed differently, the statute creates immunity against arrest and prosecution for qualifying offenses when the following conditions are present:

- The person who responds to a call is a medical professional or a law enforcement officer;
- The responder is dispatched to the location of a "medical emergency";
- The response to the dispatch results from a call for assistance;
- The call for assistance is for a "suspected drug-related overdose";
- The ground for an arrest or prosecution or the identity of a protected person is obtained as a result of the response; and

- The person who seeks immunity is a "protected person" within the statutory definition.

The terms "medical emergency" and "drug-related overdose" are not defined in the statute.

[¶31] In addition to its substantive provisions, the statute prescribes the procedure to be followed when a defendant moves for the court to determine immunity, a matter that is adjudicated pretrial. *See id.* § 1111-B(4). The statute explicitly authorizes the court to hold a hearing—as the court did here—for the parties to present testimony. *Id.* The statute then creates a burden-shifting framework governing the court's examination of the evidence. First, the defendant bears the initial burden to "present[] evidence to establish immunity." *Id.* Then, if the evidence satisfies that standard, the burden shifts to the State to "prov[e] by clear and convincing evidence that the grounds for immunity do not apply to the defendant." *Id.* Finally, the court is called upon to "make factual and legal findings as necessary to determine immunity." *Id.*

B. The Standard of Review

[¶32] In the case before us, the court determined that Foster did not meet the burden imposed on him at the first step in the analytical process because, it concluded, the evidence did not generate a contention that the call for assistance leading to law enforcement's response was for a suspected

drug-related overdose. The court therefore did not reach the next phase of the analysis, which would have required the court to determine if the State clearly and convincingly established that the defendant is not entitled to immunity under section 1111-B. Because Foster asserts here that the court's conclusion was erroneous, the first step in our analysis must be to identify the standard of review on appeal—a matter that is sometimes dry but always critical to appellate analysis—that will govern our review of the trial court's reasoning.

[¶33] The Court addresses that issue by examining and construing the language in section 1111-B that imposes on the defendant the burden to "present[] evidence to establish immunity." Court's Opinion ¶ 13 (quoting 17-A M.R.S. § 1111-B(4)). The Court equates this with the burden of producing evidence of each of the elements of the matter at hand, which constitutes a prima facie case. *Id.* ¶ 14. I fully agree. The Court also confirms that the burden of production "does not depend on the reliability or credibility of the evidence, all of which may be considered at some time later in the process." *Id.* ¶ 14 (quotation marks omitted). Again, I agree. The Court derives these principles verbatim from *Cookson v. State*, 2014 ME 24, ¶ 16, 86 A.3d 1186. As described, the test on appeal therefore is merely whether *any evidence* was presented, irrespective of its credibility or weight, on a particular point. It becomes a

matter of simply checking a box for each element defining the statutory case for immunity.

[¶34] The Court goes on, however, to draw further from our opinion in *Cookson* by describing a very different standard of review that is entirely inconsistent and incompatible with the standard, endorsed by the Court, that I just described. Under this second formulation, the Court commits to upholding the trial court's findings unless "the evidence compelled the court to find to the contrary." Court's Opinion ¶ 17 (quoting *Cookson*, 2014 ME 24, ¶ 16, 86 A.3d 1186).

[¶35] The problem is that both of these approaches cannot be applied simultaneously. Under the second of the standards of review set out by the Court, the court is permitted to make findings, which we would review to see if they were within the range of findings that *could* be supported by the record. This requires us to defer to the court's discretionary assessments and determinations of credibility, reliability, and weight—factors that are often not apparent from the record on appeal and that we therefore entrust to finders of fact. *See State v. Hall*, 2008 ME 174, ¶ 8, 960 A.2d 327 (applying the clear-error standard in reviewing the court's factual findings because the role of the appellate court "is not to review a cold transcript and draw its own factual

inferences" (quotation marks omitted)). The Court implements that deferential standard here, ultimately concluding that the evidence did not "compel the court to find that the girlfriend," who placed the 9-1-1 call, suspected an overdose. Court's Opinion ¶ 21.

[¶36] In contrast, the first description of the standard of review functions with an explicit *disregard* of those very factors—credibility, reliability, and weight—that are central to a clear-error review and that are the reasons why we defer to a court's findings of fact. In other words, when we invoke a de novo standard of review, it is precisely because we do *not* attribute any "findings" to the court that would justify deference to the way the court assessed the evidence. Instead, it is a straight, facial review of the contents of the record.

[¶37] This case happens to demonstrate the irreconcilability of these standards. I will develop this point more extensively below. But for illustrative purposes here, suffice it to say that the court, instead of looking at the record favorably to Foster, engaged in a process of weighing the statements made during the emergency call and, on that basis, found that the caller (Foster's girlfriend) did not suspect an overdose. Additionally, the court analyzed the record evidence extrinsic to the call. In doing so, the court acknowledged the girlfriend's explicit testimony that she had made the call out of concern that

Foster had overdosed from drugs. Nonetheless, the court rejected that testimony and found that she had *not* in fact harbored a concern about an overdose as she stated but rather had a different kind of concern, namely, that Foster had merely relapsed. If the extrinsic evidence is to be considered, the direct testimony that she called 9-1-1 because of a suspected drug-related overdose also meets the burden of production on that point, separate from the burden of production having been met based on the 9-1-1 call alone. The court's credibility-based finding to the contrary may be proper, but only if we were to give deference to such a finding. The two cannot stand together.

[¶38] I appreciate that the Court has faithfully followed *Cookson*, which sets out the two standards of review. But *Cookson*'s articulation of the two tests constitutes an internal discrepancy, and by reiterating it here, the Court perpetuates the problem. So, the remaining question is which of the two standards of review is the correct one: a de novo review of the record to simply see whether evidence was presented on each element, or one that allows for a fact finder's assessment of how much weight—if any—should be attached to the evidence.

[¶39] It is evident that the correct standard of review is the former, which is a matter of law where we look only to whether the record contains

evidence corresponding to each element of the claim, irrespective of the weight that might be assigned to that evidence during a true fact-finding process, which invokes the discretionary powers of the fact finder. The State acknowledges as much, stating that the defendant's burden is to make out only a prima facie case, which, as I note above, means evidence that meets the burden of production. And this nondeferential standard of review is the well-established test used in a number of contexts when the burden of production is at issue. Most notably, summary judgment motion practice is built around the doctrine of the burden of production, where the party opposing the motion has the burden of presenting a "prima facie case," namely, evidence sufficient to create a material factual dispute that would require fact finding. *See, e.g.*, *Cap. City Renewables, Inc. v. Piel*, 2025 ME 42, ¶ 24, 335 A.3d 588; *Adeyanju v. Foot & Ankle Assocs. of Me., P.A.*, 2024 ME 64, ¶ 21, 322 A.3d 1201; *Lougee Conservancy v. CitiMortgage, Inc.*, 2012 ME 103, ¶ 21, 48 A.3d 774; *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶¶ 8-9, 742 A.2d 933.[8]

[8] The same principle applies to specific types of cases that equate prima facie evidence with evidence that satisfies the burden of production. These case types include, among others, anti-SLAPP actions, *see, e.g.*, 14 M.R.S. § 738(1)(C) (2026); *Thurlow v. Nelson*, 2021 ME 58, ¶¶ 13, 19, 263 A.3d 494; *Camden Nat'l Bank v. Weintraub*, 2016 ME 101, ¶ 11, 143 A.3d 788, employment discrimination cases, *see, e.g.*, *Cookson v. Brewer Sch. Dep't*, 2009 ME 57, ¶¶ 14, 17, 974 A.2d 276, municipal taxation proceedings, *see, e.g.*, *Town of Blue Hill v. Leighton*, 2011 ME 103, ¶¶ 10, 12 n.5, 30 A.3d 848, and enforcement of money judgments, *see, e.g.*, *Steelstone Indus., Inc. v. McCrum*, 2001 ME 171, ¶¶ 9-10, 785 A.2d 1256.

[¶40] Therefore, just as we do in appeals from the entry of a summary judgment or in any other case where a party is held only to a burden of production, the proper standard of review here is to examine the record solely to determine whether it contains evidence that—on its face and without regard to questions of credibility, reliability, or weight—covers each of the elements of the Good Samaritan statute. The Court errs by applying a deferential standard, looking to whether the evidence should have compelled the trial court to conclude that Foster met his burden of production. Court's Opinion ¶¶ 17, 21. Instead, our review must be nondeferential, de novo, and limited to that question, which is one of law.[9]

C. Foster's Prima Facie Case

[¶41] I now turn to the question of whether, on the face of the record in this case, evidence was merely presented, sufficient to satisfy Foster's burden of production.

[9] By endorsing this nondeferential standard of review, I would not overrule *Cookson*, which would require consideration of the factors germane to stare decisis. Indeed, the analysis I offer here relies on an important part of our opinion in *Cookson*—that a prima facie case implicates merely the burden of production, which "requires only some evidence on every element of proof necessary to obtain the desired remedy," 2014 ME 24, ¶ 16, 86 A.3d 1186 (quotation marks omitted)—and therefore constitutes a ratification of it. Beyond that, a rejection of a deferential standard of review in this context, although also articulated in that opinion, is but a clarification that eliminates a contradiction found in *Cookson*.

[¶42] Here, the court held an evidentiary hearing, where it admitted evidence, including a recording of the 9-1-1 call placed by Foster's girlfriend, and—just as the statute explicitly allows—took testimony, including that of Foster's girlfriend. Following the full presentation of evidence, the court ultimately concluded that Foster had not satisfied the burden of production.[10] The court made that determination by rejecting the girlfriend's explicit courtroom testimony that, when she placed the 9-1-1 call, she was worried that Foster was experiencing an overdose. Although the court acknowledged that testimony, it reasoned that such a direct statement "can't be the end of the inquiry, because if it was, these hearings would be pretty short." Instead, the

[10] I take issue with the Court's assertion that the trial court, when it announced its ruling, correctly described the burdens established in section 1111-B that it intended to implement. *See* Court's Opinion ¶ 15. As I have discussed and as the Court correctly states, the defendant's burden is merely to produce evidence corresponding to the statutory elements. As framed within the statute itself, the defendant must "present[] evidence to establish immunity." 17-A M.R.S. § 1111-B(4). In announcing its ruling, however, the court omitted a critical piece of this phrase, namely, the reference to the *presentation* of evidence. Instead, the court stated, "If I find the defendant *has established* the entitlement to immunity, then the burden shifts to the State . . . ." (Emphasis added.) Immediately after that, the court essentially reiterated it, saying, "But in the first instance, I need *to make a finding* that there's been enough evidence to show that *there's been an establishment*, that the defendant is entitled to immunity under the statute." (Emphases added.) The court's phraseology, with its references to *establishing* a point, is more consistent with imposing a burden of persuasion than the burden of production. I recognize that the difference between the statutory language and the way the court described the statutory framework is nuanced, but it is material. Nonetheless, irrespective of the way the court described the analytical path it believed it was required to take, the substance of the way the court treated the evidence and made findings of contested facts eliminates any question that the court imposed on Foster a burden greater than one of mere production. Even the heading the Court uses to introduce its discussion of Foster's burden—"Foster's Burden to Establish Immunity"—Court's Opinion ¶ 18, is misleading because the statute does not impose on Foster a burden to "establish" *anything*. He needs merely to present evidence to trigger the *State's* burden of persuasion.

court weighed that testimony against other evidence presented during the hearing, including the girlfriend's recorded statement to the dispatcher that Foster was relapsing, which the court stated was "different" from an overdose; evidence about the girlfriend's response at the scene, such as not trying to administer Narcan even though it was available;[11] and evidence about Foster's conduct and appearance at the time.

[¶43] When the court stated, in effect, that it was obligated to look behind an express statement that the person calling for aid did so because of concerns of a drug-related overdose because, otherwise, the hearing would be "pretty short," the court was wrong for two reasons.

[¶44] First, rather than acceding to some obligation to weigh the caller's testimony against competing evidence, the court was actually under an obligation *not* to do so because a proper determination of whether Foster met the burden of production precludes that kind of fact-finding scrutiny.

[¶45] And second, meeting that low burden does not mean that the hearing will be "short." It simply means that, when it comes time for the court to evaluate the evidence, if the court concludes that the defendant met that

[11] Foster's girlfriend testified that she decided not to try to administer Narcan to Foster because she feared that effort would make him even more agitated and make a bad situation even worse.

burden, then the court would go on to consider whether, on the same record, the State had disproved the availability of statutory immunity by clear and convincing evidence, meaning, to a high probability, *see Baillargeon v. Est. of Daigle*, 2010 ME 127, ¶ 16, 8 A.3d 709. It is simply a matter of how far the court gets analytically. If there were *no* evidence, direct or indirect, that the person making the call for assistance suspected a drug-related overdose, the initial part of the court's *analysis* might be abbreviated, but the hearing itself would not be, because the parties will have presented their evidence in full anyway before the court renders its determinations.[12] But if the court were to conclude that the defendant *did* produce evidence covering all elements of the statute, then—and only then—would the court proceed to render findings about credibility and weight (which the court did here prematurely and therefore improperly) to determine whether the State had met its ultimate burden.

[¶46] The record before us contains evidence that fulfills Foster's burden to produce evidence that the girlfriend's emergency call was prompted by a concern that Foster was suffering a drug-related overdose. This is true whether

[12] When the court articulated its conclusion that Foster had not met his burden, the court went on to say that the defense had not "implicated the State's burden to present countervailing . . . evidence." This statement adds to the appearance of a misimpression by the court about the statutory process because the parties had already presented their evidence. Once the parties had finally rested their cases, the only remaining matter was for the court to adjudicate Foster's motion based on the record the parties had just created.

the determination is made based only on the 9-1-1 call or whether that determination was based on the call in conjunction with testimony presented during the hearing. I will discuss the record in those two ways.

[¶47] First, as we have observed, the content of the emergency call "must reflect the caller's suspicion" of a drug-related overdose. *State v. Beaulieu*, 2025 ME 4, ¶ 19, 331 A.3d 280. Taken by itself, the recording of the call admitted in evidence suffices. True, Foster's girlfriend did not mention the word "overdose" during the call, but we have made clear that the use of that particular statutory language is not required. *Id.* During the 9-1-1 call, the girlfriend told the dispatcher that Foster had relapsed and was engaging in aggressive and erratic behavior such as "freaking out," screaming, threatening to burn down the house, threatening to stab himself, and destroying property. The girlfriend's tone of voice and demeanor on the call illuminate the level of her concern about Foster's condition. As I discuss below, the report of a relapse of that magnitude, with the behavioral manifestations the girlfriend described during the emergency call, is at least arguably also the implicit report of a drug overdose. This evidence, based on the recording of the 9-1-1 call in isolation, fulfills Foster's burden of production on this element of section 1111-B.

[¶48] While the recording alone is sufficient to satisfy Foster's burden, the girlfriend's in-court testimony augments the record on this point.[13] At the hearing, she stated that she had confronted Foster about a needle she found in the bathroom. She stated that she called 9-1-1 because Foster's stepmother told her to make that report if she believed that Foster had overdosed. The girlfriend provided additional details about Foster's condition—he was sweating, pacing, mumbling, and at times staring blankly. And she testified outright that she thought he had overdosed—a concern that is certainly in line with statements she made during the 9-1-1 call and with her testimonial description of the situation.

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[13] The record belies the Court's assertion that the trial court relied only on the content of the 9-1-1 call in determining that Foster had not met his burden. Court's Opinion ¶ 11. In fact, the court explicitly stated that it considered the girlfriend's testimony en route to concluding that Foster had not met the burden of production (which, again, the court mischaracterized as a burden to "establish" entitlement to immunity, *see supra* n.10). The court's recitation of the evidentiary points underlying its ruling includes information contained in the girlfriend's testimony but not in the emergency call. Of those points, perhaps the most significant is the court's reference to the girlfriend's testimony that, as of the hearing date, she had been a licensed practical nurse for thirteen years and had administered CPR" numerous times." The court referred to this testimony, which is not contained in the 9-1-1 recording but which the court nonetheless characterized as "relevant," when discussing the nature of the girlfriend's response to Foster's condition. Essentially, the court found that despite the girlfriend's medical training, including her experience in administering CPR, and the availability of Narcan, her decision not to administer Narcan was indicative that the girlfriend suspected that Foster had not overdosed but had merely relapsed. Even the Court refers to the girlfriend's medical training in upholding the court's factual determinations. Court's Opinion ¶ 10. If the Court is now holding that *only* the emergency call may be considered when the trial court determines whether the call was to communicate a concern about a suspected overdose, *see id.* ¶¶ 21, 23 & n.6, then consideration of evidence extrinsic to the girlfriend's call—and its treatment of that evidence as "relevant"—is erroneous. Despite this, the determination on appeal of whether Foster met the initial burden of production is de novo and free of any deference to the court's determinations. For the reasons I set out in the text, the content of the call satisfies that burden.

[¶49] Although our opinion in *Beaulieu* calls for the court to focus on the content of the emergency call, 2025 ME 4, ¶ 19, 331 A.3d 280, section 1111-B(4) explicitly authorizes the court to take testimony. Here, the parties chose to present such evidence, and the court considered that evidence, in conjunction with the recording of the emergency call itself, *see supra* n.13. That evidence certainly meets the low burden imposed on Foster to simply present evidence sufficient to generate a factual contention that the girlfriend suspected he was experiencing a drug-related overdose.

[¶50] The State also asserts that because the girlfriend's concern was merely about a relapse, she could not have harbored a concern for an overdose. The trial court drew the same distinction, as does the Court today. Court's Opinion ¶ 20 n.4. In this case, we need not determine whether, in all cases, a relapse is also an overdose. For present purposes, it is sufficient to acknowledge that the two are not mutually exclusive. In other words, on a Venn diagram, there is at least some overlap between the "overdose" and "relapse" circles. Here, the girlfriend described Foster's condition to the emergency dispatcher as a relapse, but how can the girlfriend's description of a drug relapse, accompanied by her account to the dispatcher of Foster's behavior, at least arguably not *also* be the report of a suspected drug overdose? The

girlfriend's emergency call reveals a concern that Foster had consumed a toxic or excessive amount of a drug, with significant and frightening physical manifestations. That certainly is evidence of an overdose. *See Overdose*, Merriam-Webster's Collegiate Dictionary (12th ed. 2026) (defining "overdose" in part as "too great a dose," "a lethal or toxic amount (as of a drug)," or "an excessive quantity or amount"). Indeed, we have characterized excessive use of *acetaminophen* as an overdose. *See State v. Kierstead*, 2015 ME 45, ¶ 16, 114 A.3d 984. A review of the record, on its face, demonstrates that Foster presented evidence that, if accepted, would satisfy this statutory element.

[¶51] Finally, the State contends that there was no evidence of a "medical emergency" within the meaning of section 1111-B, which would create a different gap in Foster's burden of production. The Court does not formally reach this issue but expresses some skepticism about whether the record could support this statutory element. Court's Opinion ¶ 24 n.7. The State's contention suffers from two problems.

[¶52] First, the State did not raise this argument below, so it is waived. *See Lovell v. Lovell*, 2020 ME 139, ¶ 7, 243 A.3d 887.

[¶53] Second, the State's contention fails on its merits. As the girlfriend told the 9-1-1 dispatcher and also testified in court, Foster had been on

methadone and also had a history of cardiac problems to the extent that he "coded" several times and was placed on a ventilator and a device to maintain heart function. Indeed, this is one of the first things the girlfriend told the dispatcher. As a result of the girlfriend's 9-1-1 call, the dispatcher directed an ambulance as well as law enforcement officers to Foster's residence. Given these circumstances, to the extent that a defendant is required to produce evidence of a "medical emergency," *see* 17-A M.R.S. § 1111-B, and that the call had been a "request for medical assistance," *see id.* § 1111-B(2)(A), the evidence generates a contention that these circumstances were present.

[¶54] Most of the statutory elements necessary for Good Samaritan immunity were not disputed. For the reasons I have offered, of those elements that were, Foster met his burden of production.[14]

[14] In the event we were to determine that the trial court erred in its conclusion that Foster had not satisfied his burden of production, the State boldly invites us to stand in the court's shoes and rule that the State had met its burden of persuasion by clear and convincing evidence that Foster is not entitled to statutory immunity. That invitation must be summarily rejected for the manifest reason that it would call for us to make the findings that are exclusively the trial court's to issue. Given the reallocation of the burden to the State and the level of persuasiveness it must achieve for Foster's motion to be denied, the court's ruling adverse to Foster does not presage how the court would adjudicate the motion if the court—as I contend it must—reaches the second phase of the statutory process. I express no view, however, on that issue.

D. Conclusion

[¶55] The trial court erred by requiring too much from Foster during the first step of its statutory analysis. Rather than accepting evidence on its face, the court made findings—something antithetical to determining whether a party has met a burden of production. Then, on appeal, the Court deferred to the findings that the trial court should not have made in the first place.

[¶56] The record of the motion hearing met the statutory standard imposed on Foster, sufficient to require the State to persuade the court by clear and convincing evidence that Good Samaritan immunity was not available. The court erred by not proceeding to that part of the analytical process. The order denying Foster's motion should be vacated and the case remanded for the court to examine the evidence and determine, after a full and appropriate assessment of the weight of the evidence, whether the State has established by clear and convincing evidence that the grounds for immunity do not apply to Foster.

[¶57] I respectfully dissent from the Court's conclusion to the contrary.

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