

State of Maine v. Randall Weddle

Appeal from Unified Criminal Docket in  
Knox County

Supreme Judicial Court sitting as the Law Court  
Law Court Docket number KNO-18-138

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## Procedural History

Randall Weddle, the appellant, was charged by criminal complaint on April 29, 2016 with two counts of Manslaughter (Class A), under Title 17-A M.R.S.A. § 203(1)(A)<sup>1</sup>, and two counts of Aggravated Criminal Operating Under the Influence (Class B), under Title 29-A M.R.S.A. § 2411(1-A)(D)(1-A)<sup>2</sup>. He was indicted on June 10, 2016 on the aforementioned charges and eleven additional charges, including an additional charge of Aggravated Criminal Operating Under the Influence (Class C), under Title 29-A M.R.S.A. § 2411(1-A)(D)(1)<sup>3</sup>, one count of Driving to Endanger (Class C), under Title 29-A M.R.S.A. § 2413(1-A)<sup>4</sup>, one count of Driving to Endanger (Class E) under Title 29-A M.R.S.A. § 2413(1)<sup>5</sup>, and eight

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<sup>1</sup> Title 17-A M.R.S.A. § 203(1)(A) provides that “[a] person is guilty of manslaughter if that person. . . [r]ecklessly, or with criminal negligence, causes the death of another human being.”

<sup>2</sup> Title 29-A M.R.S.A. § 2411(1-A)(D)(1-A) states that: “A person commits OUI if that person. . . Violates paragraph A, B or C and. . . [i]n fact causes the death of another person. . .” Title 29-A M.R.S.A. § 2411(1-A)(A) provides that “A person commits OUI if that person. . . [o]perates a motor vehicle: (1) While under the influence of intoxicants; or (2) While having an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.”

<sup>3</sup> Title 29-A M.R.S.A. § 2411(1-A)(D)(1) provides that “A person commits OUI if that person. . . Violates paragraph A, B or C and . . . [i]n fact causes serious bodily injury as defined in Title 17-A, section 2, subsection 23 to another person.”

<sup>4</sup> Title 29-A M.R.S.A. § 2413(1-A) states that “a person commits a Class C crime if, with criminal negligence as defined in Title 17-A, section 35, that person drives a motor vehicle in any place in a manner that endangers the property of another or a person, including the operator or passenger in the motor vehicle being driven, and causes serious bodily injury, as defined in Title 17-A, section 2, subsection 23, to another person.”

<sup>5</sup> Title 29-A M.R.S.A. § 2413(1) states that “A person commits a Class E crime if, with criminal negligence as defined in Title 17-A, that person drives a motor vehicle in any place in a manner that endangers the property of another or a person, including the operator or passenger in the motor vehicle being driven.”

Rule Violations (Class E), under Title 29-A M.R.S.A. § 558-A(1)(A)<sup>6</sup> that included: five counts of False Record of Duty Status, one count of Ill or Fatigued Operator, one count of Use of Alcohol While on Duty, and one count of Possession of Alcohol While on Duty.

Mr. Weddle entered not guilty pleas to all charges at his arraignment on June 22, 2016.

Among other filings, motions to suppress were filed by Mr. Weddle on September 29, 2016 and May 24, 2017. A hearing occurred on the motions to suppress on July 24th and 25th of 2017, which were all denied in a written order dated September 11, 2017. A series of motions in limine was filed by Mr. Weddle on May 24, 2017 and December 27, 2017, which were also denied by the trial court after hearing on January 22, 2018. Mr. Weddle also filed a motion to reconsider the trial court's order on the motion to suppress his warrantless blood test on January 22, 2018, which was again denied by the trial court.

On January 19th and 22nd of 2018 Mr. Weddle selected a jury. A jury trial was held over five days, on January 23rd, 24th, 25th, 26th, and 29th of 2018. A motion for a judgment of acquittal was requested on Counts 11, 12, 13, and 14 of the indictment on January 29, 2018, which was denied by the trial court. At the

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<sup>6</sup> Title 29-A M.R.S.A. § 558-A(1)(A) provides that “. . . a person commits a crime if that person. . . In fact violates this subchapter or a rule adopted pursuant to this subchapter.”

conclusion of the trial, after deliberating on January 29th and 30th of 2018, the jury found Mr. Weddle guilty of all fifteen charges against him.

Mr. Weddle was sentenced on March 23, 2018 to the Department of Corrections for a concurrent term of thirty years, with all but twenty-five years of the sentence suspended, a four year period of probation, and a victims compensation fund fee of \$35.00 on each of the charges of Manslaughter (Class A; Counts 1 and 2). Mr. Weddle was further sentenced on each of the Aggravated Criminal Operating Under the Influence charges (Class B; Counts 3 and 4) to the Department of Corrections to serve a concurrent term of ten years, pay a \$2,585 fine on Count 3, and a \$35 victims compensation fund on Count 4, and a ten year loss of the right to operate and obtain a license to operate a motor vehicle.<sup>7</sup> On the Aggravated Criminal Operating Under the Influence charge (Class C; Count 5) Mr. Weddle received a concurrent sentence of five years to the Department of Corrections, a \$35 victim compensation fund fee, and a six year loss of the right to operate and obtain a license to operate a motor vehicle. On the Driving to Endanger charge (Class C; Count 6) a concurrent five year period of incarceration was imposed to the Department of Corrections, a victims compensation fund fee of \$35, and a 180 day loss of the right to operate and obtain a license to operate a motor vehicle. On the Driving to Endanger charge (Class C; Count 7) a concurrent

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<sup>7</sup> All fines were ordered by the trial court to be non-cumulative after the imposition of the fine on Count 3 (Aggravated Criminal Operating Under the Influence ) was imposed.

sentence of six months of incarceration to the Department of Corrections, a \$20 victim compensation fund fee, and a thirty day loss of the right to operate and obtain a license to operate a motor vehicle was imposed. On each of the eight charges of Rule violations (Class E; Counts 8 through 15), Mr. Weddle received concurrent 6 month sentences to the Department of Corrections and \$20 victim compensation fund fees on each charge. A motion to amend the non-cumulative fine amount on Counts 6 and 7 was granted by the trial court on March 27, 2018.

Mr. Weddle filed a notice of appeal on April 11, 2018.

### **Statement of Facts**

On March 18, 2016, shortly before 5:00 p.m., on a stretch of Route 17 in Washington, Maine, that is known as a common place for accidents, Randall Weddle was operating a tractor trailer pulling a full load of lumber when his load and tractor trailer shifted into the east bound lane of the road going around a curve.<sup>8</sup> (Tr. T. Jan. 23, 2018 at 41, 47-48, 56, 58-59, 65, 66-67, 73-74, 104-105, 142-144; Tr. T. Jan. 24, 2018 at 37, 50, 71). This lane shift resulted in an impact

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<sup>8</sup> This stretch of road was known prior to the accident as a problem area that was in rough shape, and as a common place for accidents. (Tr. T. Jan. 23, 2018 at 207; Tr. T. Jan. 24, 2018 at 61, 117; Tr. T. Jan. 26, 2018 at 114). A law enforcement video taken on March 18, 2016 shows that there were divots in the road in the east bound lane, and law enforcement agreed at trial that drivers commonly move left to avoid such road conditions. (Tr. T. Jan. 24, 2018 at 99-100, 117-118). After the accident a number of improvement were made to the road, including: rebuilding the corner, cutting of wood on the inside corner so there is better visibility, putting up huge black and yellow reflective safety arrow signs on both sides of the road, and doing some paving work. (Tr. T. Jan. 23, 2018 at 115, 122, 148-149, 158, 203; Tr. T. Jan. 24, 2018 at 61).

with four cars traveling in the east bound lane of Route 17.<sup>9</sup> (Tr. T. Jan. 23, 2018 at 47-49, 66-67, 70, 108-110, 143, 147; Tr. T. Jan. 26, 2018 at 90, 110-111). The load of wood boards Mr. Weddle was carrying came off the trailer during the collision and the tractor trailer came to a rest upside down on the side of the road. (Tr. T. Jan. 23, 2018 at 49, 58-59, 111, 143-146, 153, 157, 164, 180; Tr. T. Jan. 24, 2018 at 127; 223-224, 230, 259; Tr. T. Jan. 25, 2018 at 224-225). Mr. Weddle was trapped in the driver side of the tractor trailer cab and after his extraction, he was taken by Life Flight to Central Maine Medical Center in Lewiston. (Tr. T. Jan. 23, 2018 at 165-171, 191-197, 231-232, 237, 252-253; Tr. T. Jan. 24, 2018 at 79-80, 92, 107-108). The accident resulted in about a quarter of a mile crash scene. (Tr. T. Jan. 23, 2018 at 227).

Earlier that day, some time shortly after 2:00 p. m., Mr. Weddle arrived at Robbins Lumber in Washington, Maine to pick up a load of pine boards for

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<sup>9</sup> The State's accident re-constructionist testified that the four cars were traveling in the order of a Chevy pickup truck, Nissan Rogue SUV, Kia sedan, and Chrysler minivan. (Tr. T. Jan 23, 2018 at 51, 61, 54-55; 66, 68, 229-230; Tr. T. Jan. 26, 2018 at 78-84, 90). The occupant of the Chevy pickup truck and the Chrysler van were both deceased by the time emergency help reached them. (Tr. T. Jan. 23, 2018 at 51, 53, 108-110, 162-163, 230). The occupant of the SUV suffered injuries that took six or seven months for full recovery. (Tr. T. Jan. 23, 2018 at 70). And, the occupant of the sedan did not have significant injuries and was able to leave the scene with a family member. (Tr. T. Jan. 23, 2018 at 53-54, 56, 232-233). "The parties stipulate[d] to the following facts: Number one, State Medical Examiner Kristen Sweeney determined that the cause of Christina Torres-York's death was a ruptured proximal aorta and heart due to blunt force chest trauma due to the motor vehicle crash at issue in this case. Number two, state Deputy Chief Medical Examiner Claire Bryce and State Medical Examiner Investigator Julia Gillespie determined that the cause of Paul L. Fowles' death was blunt force trauma of the head and that his injured [sic] occurred because he was the driver of a pickup truck in a collision with a tractor trailer in the motor vehicle crash at issue in this case." (Tr. T. Jan 25, 2018 at 243-44).

transportation to Tennessee. (Tr. T. Jan. 23, 2018 at 262, 269, 270-271). The trailer was loaded to the max with lumber. (Tr. T. Jan. 24, 2018 at 37). The load was “a fairly high load,” between twelve and a half to thirteen feet tall from the ground up, with the load most likely hanging over the end of the trailer a few inches.<sup>10</sup> (Tr. T. Jan. 23, 2018 at 273; Jan. 24, 2018 at 35-36). Mr. Weddle had little interaction with the lumberyard employees, but seemed fine while there, exhibiting no abnormal driving or behavior. (Tr. T. Jan. 23, 2018 at 271-272; Tr. T. Jan. 24, 2018 at 31-33, 42). Mr. Weddle had a passenger with him that strapped down and tarped the lumber load, and who interacted with the lumberyard employees to obtain the necessary paperwork for transportation of the lumber. (Tr. T. Jan. 23, 2018 at 274-276; Tr. T. Jan. 24, 2018 at 38-39).

After the accident, at the scene and at the hospital, Mr. Weddle stated that his load shifted after he tried to avoid an oncoming vehicle that was near to or on the

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<sup>10</sup> The lumber load was made up of a mixture of lengths. (Tr. T. Jan. 23, 2018 at 273-274). A Robbins Lumber employee stated that “[w]hen we load -- if we have a mixture like that, we always load the -- pull the length units, all the one length unit on the bottom of the trailer. They're typically more stable and more solid. And then we will stake the random length on top of them to square it up, basically.” (Tr. T. Jan. 23, 2018 at 274). The lumberyard employee also noted that “typically our loads weigh between 45 to 48,000 pounds. . . We load them to max. They're allowed to haul 80,000 and we try to get as close to that number as we can.” (Jan. 24, 2018 at 34). More stable bundles of wood were placed on the bottom and less stable bundles were placed on top of that, according to the lumberyard. (Jan. 24, 2018 at 34-35). “The solid stuff being on bottom usually helps to prevent anything, you know, from shifting or moving or anything like that.” (Tr. T. Jan 24, 2018 at 45).

center line and that he was not able to correct the load shift.<sup>11</sup> (Tr. T. Jan. 23, 2018 at 167; Tr. T. Jan. 24, 2018 at 94-96; 119).

Just prior to being Life Flighted, Mr. Weddle was subjected to a blood draw at the direction of law enforcement.<sup>12</sup> (Tr. T. Jan. 23, 2018 at 233-235; Tr. T. Jan.

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<sup>11</sup> The occupants of the two vehicles that survived the crash, the only two direct eye witnesses who were not in the tractor trailer, stated that the cab of the tractor trailer was on its own side of the road, but that the trailer bed had shifted into the eastbound lane, that lumber was flying off the truck, and one of the witnesses noted that it looked like the load had shifted. (Tr. T. Jan. 23, 2018 at 49, 58-59, 66-67). The occupant of a third car traveling in the east bound lane of Route 17 was further back and avoided the crash, noting that the tractor trailer was in the process of tipping over when he saw it. (Tr. T. Jan. 23, 2018 at 143-144, 148).

<sup>12</sup> A suppression hearing was held on July 24th and 25th of 2017, which included a motion to suppress that challenged the warrantless roadside blood draw of Mr. Weddle. (M. Sup. T. vol. I at 1, 5; M. Sup. T. vol. II at 1, 6). After the crash, at the time of Mr. Weddle's hospital interview, law enforcement felt that no probable cause existed for his arrest. (M. Sup. T. vol. I at 91). The EMT that drew Mr. Weddle's blood at the scene, shortly before six p.m., stated that he drew the blood a few minutes before Mr. Weddle was Life Flighted to the hospital, after what he estimated took one hour and five minutes to extract Mr. Weddle from the tractor trailer. (M. Sup. T. vol. I at 154-155, 158). The EMT testified that Mr. Weddle seemed alert and responsive, but noted that he did not speak to him prior to the blood draw and said that law enforcement stated that Mr. Weddle had given verbal consent for the blood draw and that he would not have done the blood draw without consent. (M. Sup. T. vol. I at 163-167). Sergeant Matthew Elwell oversaw the blood draw and had no conversation with Mr. Weddle prior to the blood draw and based the decision to draw his blood on the fact that the accident involved a death and that Mr. Weddle was going to be Life Flighted and out of his control. (M. Sup. T. vol. I at 195-196). Sergeant Elwell stated Mr. Weddle was not very coherent in the back of the ambulance at the time of the blood draw and no permission for the draw was obtained because Mr. Weddle was in no condition to be asked and not in a state of mind to give consent. (M. Sup. T. vol. I at 200, 217). Deputy Paul Spear also noted that he did not obtain Mr. Weddle's consent for the blood draw. (M. Sup. T. vol. II at 19). Sergeant Elwell further noted that he decided early on that he wanted Mr. Weddle's blood, from the moment he got to the scene, and acknowledged that he could have gotten a warrant while Mr. Weddle was trapped in the tractor trailer, but that no one tried. (M. Sup. T. vol. I at 207, 213-214). Sergeant Elwell also stated that he did not feel probable cause existed for a blood test or breath test and based the draw solely on statutory allowances. (M. Sup. T. vol. I at 219-220). Deputy Spear likewise stated that there was no conversation among law enforcement about getting a search warrant prior to the blood draw and that he felt probable cause existed because the accident involved a fatality. (M. Sup. T. vol. II at 58-59).

24, 2018 at 51, 61-63, 71-76). An additional blood draw occurred at the hospital. (Tr. T. Jan. 24, 2018 at 54-55). Analysis of Mr. Weddle's blood showed a blood alcohol level from the scene of .090 and from the hospital of .073. (Tr. T. Jan 25, 2018 at 33-34, 39-42). Additional analysis of the blood samples showed that Mr. Weddle's blood was positive for hydrocodone.<sup>13</sup> (Tr. T. Jan. 25, 2018 at 77-78, 82-83, 100).

A bottle of Crown Royal liquor was located in the cab of the tractor trailer during a the vehicle autopsy that was performed days later.<sup>14</sup> (Tr. T. Jan. 24, 2018 at 56-58, 65).

Maine State Police officers from the Commercial Vehicle Enforcement Unit responded to the scene on March 18, 2016 and retrieved Mr. Weddle's log book,

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<sup>13</sup> Testimony from Mr. Weddle's expert noted that alcohol and hydrocodone are two separately acting drugs and that there is no actual interaction between hydrocodone and alcohol in the body and that when hydrocodone is taken for a long time a body can build up tolerance to the drug. (Tr. T. Jan. 29, 2018 at 32, 35-36, 59).

<sup>14</sup> At trial, a number of first responders noted some sort of alcohol smell at the scene. (Tr. T. Jan. 23, 2018 at 171-172, 196-197, 254; Tr. T. Jan. 24, 2018 at 76-77, 115). Mr. Weddle told law enforcement that he had drank Crown Royal liquor the day of the crash and taken his prescription medications. (Tr. T. Jan. 24, 2018 at 28).

bills of landing, and vehicular related receipts from the tractor trailer.<sup>15</sup> (Tr. T. Jan. 24, 2018 at 125-127, 130-131, 135; Tr. T. Jan. 25, 2018 at 208-209, 212, 222-226, 239). Additional items were obtained from the tractor trailer during a multi-day vehicle autopsy that occurred at the end of March 2016.<sup>16</sup> (Tr. T. Jan. 24, 2018 at 55, 130; Tr. T. Jan. 25, 2018 at 177; Tr. T. Jan. 26, 2018 at 33-34, 37). A certified copy of the federal rules adopted under Title 29-A M.R.S.A. § 555 was also admitted into evidence. (Tr. T. Jan. 25, 2018 at 216-219).

Mr. Weddle moved for a judgment of acquittal on Counts 11, 12, 13, and 14, which was denied by the trial court. (Tr. T. Jan. 29, 2018 at 4-13). After deliberations, the jury reached guilty verdicts on all counts against Mr. Weddle. (Tr. T. Jan. 30, 2018 at 13-16).

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<sup>15</sup> The paperwork comprising Exhibits 22, 24, 26, 26-A, 27, and 29 were located in the truck on March 18, 2016 on the roof of the cab, scattered around because the tractor trailer was still upside down. (Tr. T. Jan 24, 2018 at 135; Tr. T. Jan. 25, 2018 at 226-2230, 239). Exhibit 22 was a T.A. Truck Service repair order for an oil change done on March 14, 2016. (Tr. T. Jan. 24, 2018 at 135). The admission of the document was objected to by Mr. Weddle. (Tr. T. Jan. 24, 2018 at 136). Exhibit 24 was a fuel receipt, which was admitted over objection. (Tr. T. Jan. 25, 2018 at 226-227). Exhibit 26 is bill of landing showing a load picked up in Bull Gaps, Tennessee and admitted over objection. (Tr. T. Jan. 25, 2018 at 227-228). Exhibit 26-A is another bill of landing from Bull Gaps and it was also admitted over objection. (Tr. T. Jan. 25, 2018 at 228-229). Exhibit 27 was a fuel receipt that was admitted over objection. (Tr. T. Jan. 25, 2018 at 229). Exhibit 29 was a Massachusetts turnpike toll receipt that was admitted over objection. (Tr. T. Jan. 25, 2018 at 229-230).

<sup>16</sup> After the vehicle autopsy it was opined that the condition of the tractor trailer was not a contributing factor in the collision. (Tr. T. Jan. 26, 2018 at 59-60). A crash reconstruction was also undertaken, which noted the tractor trailer's speed was a factor in the crash. (Tr. T. Jan. 26, 2018 at 75, 107-108).

Sentencing was continued until March 23, 2018, at which time the Knox County Court imposed concurrent thirty year sentences, with all but twenty-five years suspended, and four years of probation on Counts 1 and 2. (Sent. T. at 1, 69). The Court also imposed lesser concurrent sentences on Counts 3 through 15, with imposed fines to run noncumulative. (Sent. T. at 69-75).

Mr. Weddle then timely brought this appeal.

### **Issues Presented for Review**

- I. Whether the Knox County Court erred in denying Mr. Weddle’s motion to suppress a warrantless blood test.**
  - A. Whether Title 29-A M.R.S.A. § 2522 is constitutional since the U. S. Supreme Court decided Missouri v. McNeely and Birchfield v. North Dakota.**
  - B. Whether the “exigent circumstances” exception to the warrant requirement validates Mr. Weddle’s blood test.**
  - C. Whether the “special needs” exception to the warrant requirement validates Mr. Weddle’s blood test.**
- II. Whether the Knox County Court erred in admitting exhibits and testimony about receipts located in Mr. Weddle’s tractor trailer by Maine State Police.**
- III. Whether the Knox County Court erred in denying Mr. Weddle’s motion for a judgment of acquittal on Count 13.**

### **Summary of the Argument**

Mr. Weddle asserts that the Suppression Court committed error when it denied his motion to suppress. Mr. Weddle’s blood was obtained without a

warrant, consent, or applicable exception to the warrant requirement. The sole basis for the blood draw was the statutory authority found in Title 29-A M.R.S.A. § 2522. Section 2522 provides for the mandatory testing of motorists' blood when a vehicle crash involves a fatality or serious injuries. Given recent U. S. Supreme Court guidance found in Missouri v. McNeely and Birchfield v. North Dakota, the “per se rule” for mandatory testing of blood found in Section 2522 cannot be deemed constitutional. Mr. Weddle is therefore calling on this Court to readdress the constitutionality of Section 2522 since it was last examined by the Court in State v. Cormier.

The cornerstone of the analysis in Mr. Weddle's case is based on the guidance provided in Missouri v. McNeely and its disapproval of per se rules that create exigency that allow for law enforcement to dispense with the warrant requirement. Title 29-A M.R.S.A. § 2522 grants blanket authority based on an emergency situations involving serious motor vehicle crashes to obtain blood samples without a warrant, as it has created a method to obtain a blood sample that is not embedded in the Fourth Amendment or its recognized exceptions. As noted, McNeely and Birchfield reaffirm the invasiveness of blood testing and the need for a warrant to obtain such material.

Furthermore, post McNeely the exceptions to the warrant requirement that were used in Cormier to validate Section 2522 can no longer be deemed as means

to validate the statute. The two main exceptions to the warrant requirement used to uphold the statute were exigent circumstances and special needs.

The exigent circumstances and special needs exceptions to the warrant requirement do not provide support for Title 29-A M.R.S.A. § 2522. Nor do the exceptions independently support the drawing of Mr. Weddle's blood. Exigency needs to be determined on a case by case basis, based on the totality of the circumstances, and Section 2522 does not provide for that flexibility. In McNeely the U. S. Supreme Court refused to depart from a careful case-by-case assessment of exigency and allow for the adoption of the categorical rule proposed by a state. Section 2522 is such a rule and under this new guidance exigency cannot be seen as a means to validate the statute. Additionally, the government's interests, or "special needs" in enacting Section 2522 do not outweigh Mr. Weddle's privacy interest in his blood. The U. S. Supreme Court has found that the privacy interest that exists in blood samples trumps a state's interest in passing laws to obtain those samples without a warrant. As such, a new analysis of Section 2522 by this Honorable Court should lead to the conclusion that the statute is unconstitutional.

Secondly, Mr. Weddle asserts that the Knox County Court erred in admitting into evidence documents located in the cab of Mr. Weddle's tractor trailer. At trial Maine State Police officers from the Commercial Vehicle Enforcement Unit testified that they responded to the scene of the March 18, 2016 crash and retrieved documents strewn about the cab of Mr. Weddle's tractor trailer. A T.A. Truck

Service repair order form, fuel receipts, bills of landing from Bull Gaps, Tennessee, and a turnpike toll receipt were entered into evidence by the trial court. The trial court ruled that these documents were admissible, not as “regularly kept records,” because the State did not have a custodian of the documents to testify, but as “statements of a party opponent” under Maine Rule of Evidence 801(d)(2) and therefore not hearsay. Mr. Weddle asserts that these documents are hearsay and should have been excluded from trial. Without an action indicating that Mr. Weddle intended the documents at issue in this case to be handed over to law enforcement, there is no manifestation of an admission by him. There needs to be more than the mere presence and random scattering of the documents in the tractor trailer cab to qualify the documents as not hearsay, and out of the reach of the hearsay rule under Maine Rule of Evidence 801(d)(2).

Lastly, Mr. Weddle asserts that the Knox County Court erred in denying his motion for acquittal on Count 13 of the indictment, alleging a duty status violation for filling up his tractor trailer while in off duty status. The evidence presented by the State failed to establish that Mr. Weddle was not able to put gas in his tractor trailer while off duty. As such, given the lack of testimony connecting a duty status violation to the March 15, 2016 gas receipt, viewing the evidence in the light most favorable to the State, a jury could not have found each element of the crime proven beyond a reasonable doubt by the State.

Wherefore, for the reasons enumerated above, Mr. Weddle requests that this Court vacate his convictions.

## **Argument**

### **I. The Knox County Court erred in denying Mr. Weddle’s motion to suppress a warrantless blood test.**

Review of a suppression ruling presents a mixed question of law and fact, where factual findings are reviewed for clear error and legal conclusions are a matter of law and reviewed de novo. State v. Sylvain, 2003 ME 5, ¶ 8-11, 814 A.2d 984, 986-7 (Me. 2003); see also State v. Nadeau, 2010 ME 71, ¶ 15, 1 A.3d 445, 453 (Me. 2010); State v. Donatelli, 2010 ME 43, ¶ 10, 995 A.2d 238, 241 (Me. 2010); State v. DiPietro, 2009 ME 12, ¶ 13, 964 A.2d 636, 640; (Me. 2009); State v. Sargent, 2009 ME 125, ¶ 9, 984 A.2d 831, 833 (Me. 2009); State v. Sampson, 669 A.2d 1326, 1328 (Me. 1996). The suppression court’s “ultimate determination regarding suppression [is reviewed] de novo.” State v. Arndt, 2016 ME 31, ¶ 7, 133 A.3d 589 (Me. 2016). In the event that a question of statutory interpretation is presented, de novo review also takes place. State v. Pinkham, 2016 ME 59, ¶ 14, 137 A.3d 203, 208 (Me. 2016); State v. Legassie, 2017 ME 202, ¶ 13 (Me. 2017); State v. Tozier, 2015 ME 57, ¶ 6, 115 A.3d 1240, 1244 (Me. 2015); State v. Shepley, 2003 ME 70 ¶ 9, 822 A.2d 1147, 1151 (Me. 2003).

Prior to trial, Mr. Weddle filed a motion to suppress the warrantless blood test that was obtained at the scene of the March 18, 2016 crash on the grounds that

the blood draw ran afoul of the Fourth Amendment to the United States Constitution, the Maine Constitution, and due process protections contained therein. (App. at 82-84).

Under Maine’s Implied Consent Statutes<sup>17</sup>, Title 29-A M.R.S.A. § 2522 provides for mandatory testing, in the following provision:

§2522. Accidents

**1. Mandatory submission to test.** If there is probable cause to believe that death has occurred or will occur as a result of an accident, an operator of a motor vehicle involved in the motor vehicle accident shall submit to a chemical test, as defined in section 2401, subsection 3, to determine an alcohol level or the presence of a drug or drug metabolite in the same manner as for OUI.

...

**3. Admissibility of test results.** The result of a test is admissible at trial if the court, after reviewing all the evidence, whether gathered prior to, during or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicants at the time of the accident.

Title 29-A M.R.S.A. § 2522.

In ruling on Mr. Weddle’s motion to suppress, the Suppression Court thoroughly examined this Court’s past interpretation of this mandatory testing section of Maine’s implied consent laws and it ultimately found that the U. S. Supreme Court’s recent decision in McNeely and Birchfield, clarifying Fourth

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<sup>17</sup> The subchapter of Title 29-A containing §§ 2521-2528 is titled “Implied Consent” and for ease of reference Mr. Weddle is referring to these sections of the law collectively as Maine’s implied consent laws. Mr. Weddle is also aware of this Court’s recent designation of Title 29-A M.R.S.A. § 2521, titled “implied consent to chemical tests,” as being more accurately referenced as Maine’s “duty-to-submit” statute. See State v. Lemeunier-Fitzgerald, 2018 ME 85, ¶ 18 (Me. 2018).

Amendment protections, provided no grounds for changing the analysis of the issue in Maine since it was last addressed in State v. Cormier, 2007 ME 112, 928 A.2d 753 (Me. 2007).<sup>18</sup> (App. at 54-63). The Suppression Court also noted that law enforcement in this case had no probable cause to believe that Mr. Weddle was under the influence at the time of the accident, making the blood draw entirely statutorily based.<sup>19</sup> (App. at 55).

**A. Title 29-A M.R.S.A. § 2522 can no longer be deemed constitutional since the U. S. Supreme Court decided Missouri v. McNeely and Birchfield v. North Dakota.**

Mr. Weddle’s Fourth Amendment rights have been violated. This case is not factually complex. Blood was taken from Mr. Weddle without a warrant or his consent. (App. at 55; M. Sup. T. vol. I at 195-196, 200, 217; M. Sup. T. vol. II at 19). There are no facts that support the existence of an exception to the warrant

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<sup>18</sup> The Suppression Court expressed some concerns about the impact that McNeely and Birchfield had on Title 29-A M.R.S.A. § 2522, stating “. . . this court has noted that Missouri v. McNeely ‘may have significantly undermined the Law Court’s decision in Cormier.’ See State v. Dennison, Wash. Cty. Sup. Ct. Docket No. CR-2015-25 (January 19, 2016).” (App. at 59). The Suppression Court also pondered: “It is possible that, in light of Missouri v. McNeely and/or Birchfield v. North Dakota, the Court would view section 2522 as invalid because it reflects a *per se* legislative declaration of an exigency whenever a fatal or likely fatal accident occurs, whereas McNeely requires a case-by-case assessment of the facts surrounding the alleged exigent circumstances. This court, however, is not yet convinced that the narrowly tailored circumstances addressed in 29-A M.R.S. §2522 would be ruled unreasonable and therefore unconstitutional under the Fourth Amendment.” (App. at 62).

<sup>19</sup> Prior to the trial testimony of the EMT that drew Mr. Weddle’s blood at the accident scene, counsel renewed the suppression objection to the blood draw testimony and results. (Tr. T. Jan 24, 2018 at 223-224). Additionally, at the motion in limine hearing on January 22, 2018, the trial court verbally denied Mr. Weddle’s motion to reconsider the denial of his motion to suppress on this issue. (M. Limine H. T. at 1, 244-245).

requirement. Law enforcement had no probable cause for the blood test at the time it was taken. (M. Sup. T. at vol. I at 91, 219-220; M. Sup. T. vol. II at 58-59). The sole basis for the test is Title 29-A M.R.S.A. § 2522. (M. Sup. T. at vol. I at 219-220; M. Sup. T. vol. II at 58-59). While the State may wish to institute protections against drunk driving, Title 29-A M.R.S.A. § 2522 is not a constitutional way to do it. Vehicular fatalities from drunk driving are serious,<sup>20</sup> but failure to be true to our founding constitutional principles is much greater and far more severe, as the U. S. Supreme Court has recognized in its recent case law.

As such, Mr. Weddle is calling upon this Court to reconsider its 2007 ruling in State v. Cormier, 2007 ME 112, 928 A.2d 753 (Me. 2007).<sup>21</sup> Given recent U. S. Supreme Court jurisprudence, it has become clear that Title 29-A M.R.S.A. § 2522 is unconstitutional and leaves the Maine Statute in conflict with current U. S. Supreme Court jurisprudence and, as such, the statute cannot be used as justification for drawing Mr. Weddle's blood. The tension between the statute and the recent jurisprudence invalidates the statutory provision. The U. S. Supreme

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<sup>20</sup> In its Order, the Suppression Court found great significance in the severity of fatal vehicular accidents and sympathized with our Legislature's determination "that such a situation represents an emergency and that in such a limited and exigent situation a blood sample from all involved operators must be taken as soon as practicable is, in this court's opinion, unquestionably reasonable." (App. at 62).

<sup>21</sup> Like the case at hand, Cormier presented a case where a blood draw occurred without consent or probable cause to believe operation while under the influence had occurred, making the sole authority for the blood draw Title 29-A M.R.S.A. § 2522(1), leading this Court to address the constitutionality of Title 29-A M.R.S.A. § 2522. See State v. Cormier, 2007 ME 112, ¶ 5-6, 928 A.2d 753, 756 (Me. 2007).

Court has unequivocally embraced the protections provided by the Fourth Amendment when law enforcement seeks out blood samples.

Moreover, post McNeely a large number of courts began to address their state's implied consent and mandatory testing laws in light of the Supreme Court's guidance.<sup>22</sup> In a factually similar case from Kansas, which involved a fatal vehicular crash where the driver refused to consent to a blood test and no signs of impairment or probable cause existed, the court found its corollary statutes unconstitutional, including a portion mandating blood draws when a serious fatal accident has occurred. See State v. Declerck, 317 P.3d 794, 798-799, 802-803

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<sup>22</sup> See State v. Pettijohn, 899 N.W.2d 1, 28 (Iowa 2017) for an expanded list of some of the opinions generated in other states, noting: "Following McNeely, a number of state courts concluded the mere existence of statutorily implied consent does not permit the administration of a warrantless test of an individual's blood, breath, or urine consistent with the Fourth Amendment. See, e.g., State v. Butler, 232 Ariz. 84, 302 P.3d 609, 613 (Ariz. 2013) (en banc); People v. Harris, 234 Cal.App.4th 671, 184 Cal.Rptr.3d 198, 207, 213 (Ct.App. 2015); Williams v. State, 296 Ga. 817, 771 S.E.2d 373, 376-77 (Ga. 2015); State v. Halseth, 157 Idaho 643, 339 P.3d 368, 371 (Idaho 2014); State v. Declerck, 49 Kan.App.2d 908, 317 P.3d 794, 804 (Kan. Ct.App. 2014); State v. Brooks, 838 N.W.2d 563, 573 (Minn. 2013), cert. denied, \_\_\_ U.S. \_\_\_, 134 S.Ct. 1799, 188 L.Ed.2d 759 (2014); State v. Modlin, 291 Neb. 660, 867 N.W.2d 609, 619 (Neb. 2015); Byars v. State, 336 P.3d 939, 945-46 (Nev. 2014); State v. Smith, 2014 ND 152, 849 N.W.2d 599, 605 (N.D. 2014), abrogated by Birchfield, 579 U.S. at \_\_\_, 136 S.Ct. at 2186; State v. Fierro, 2014 SD 62, 853 N.W.2d 235, 243 (S.D. 2014); State v. Wells, No. M2013-01145-CCA-R9-CD, 2014 WL 4977356, at \*13 (Tenn.Crim.App. Oct. 6, 2014); Weems v. State, 434 S.W.3d 655, 665 (Tex.Ct.App. 2014), aff'd, 493 S.W.3d 574 (Tex.Crim.App. 2016); State v. Padley, 2014 WI App 65, 354 Wis.2d 545, 849 N.W.2d 867, 879-80 (Wis.Ct.App. 2014)."

(Kan. Ct. App. 2014).<sup>23</sup> Also in 2014, an appellate court in Texas found error when viewing its implied consent statutes as providing blanket consent to testing of motorists, finding that there must be a basis for the testing under the “totality of circumstances” approach of the exigent circumstances exception the the warrant requirement addressed in McNeely.<sup>24</sup> See State v. Weems, 434 S.W.3d 655, 665 (Tex.App. 2014). That State’s statute also has a portion allowing for mandatory

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<sup>23</sup> The Court stated: “In light of this overwhelming and persuasive authority, we must conclude K.S.A. 2011 Supp. 8-1001(b)(2) is unconstitutional to the extent it requires a search and seizure absent probable cause the person was operating or attempting to operate a vehicle under the influence of drugs or alcohol. We are acutely aware the statute in question attempts to address the terrible toll impaired drivers inflict on our state's highways, but we are reminded of the " truism that constitutional protections have costs." Coy v. Iowa, 487 U.S. 1012, 1020, 108 S.Ct. 2798, 101 L.Ed.2d 857 (1988). While the State does have a significant interest in preventing accidents involving drugs and alcohol on the road, K.S.A. 2011 Supp. 8-1001(b)(2) does not further that interest. See Hannoy, 789 N.E.2d at 984 (special needs exception inapplicable where search performed by law enforcement or for law enforcement purposes); McDuff, 763 So.2d at 855 (statute with public safety and law enforcement purpose does not fall within special needs exception); see also State v. Childs, 275 Kan. 338, 347, 64 P.3d 389 (2003) (exclusive sanction for highly regulated business refusing entry to law enforcement is license revocation). A traffic infraction plus an injury or fatality, without more, does not constitute probable cause that drugs or alcohol were involved in the accident. State v. Declerck, 317 P.3d 794, 802-803 (Kan. Ct. App. 2014). “K.S.A. 2011 Supp. 8-1001(b)(2), which provides an officer shall request a test in the event of a vehicle accident that results in serious injury or death and the driver could be cited for any traffic infraction.” State v. Declerck, 317 P.3d 794, 799 (Kan. Ct. App. 2014).

<sup>24</sup> The Texas Court found “that the implied consent and mandatory blood draw statutes are not exceptions to the Fourth Amendment's warrant requirement. . . Texas's implied consent and mandatory blood draw statutes clearly create such categories or per se rules that the Supreme Court proscribed in McNeely. See Tex. Transp. Code Ann. § § 724.011(a), 724.012(b). These statutes do not take into account the totality of the circumstances present in each case, but only consider certain facts. See id . Thus, we hold that the implied consent and mandatory blood draw statutory scheme found in the Transportation Code are not exceptions to the warrant requirement under the Fourth Amendment. To be authorized, the State's warrantless blood draw of Weems must be based on a well-recognized exception to the Fourth Amendment.” State v. Weems, 434 S.W.3d 655, 665 (Tex.App. 2014).

blood tests when a fatality or serious injury had occurred in an accident. Weems v. State, 434 S.W.3d 655 (Tex.App. 2014).

Under the Fourth Amendment to the United States Constitution and Article 1, section 5 of the Maine Constitution “a warrantless search is generally unreasonable unless it was conducted pursuant to a recognized exception to the warrant requirement. See State v. Rabon, 2007 ME 113, ¶ 11, 930 A.2d 268, 274.”<sup>25</sup> State v. Melvin, 2008 ME 118, ¶ 6, 955 A.2d 245, 247 (Me. 2008); see also State v. Arndt, 2016 ME 31, ¶ 8, 133 A.3d 589 (Me. 2016); State v. Libby, 453 A.2d 481, 484 (Me. 1982); State v. Philbrick, 436 A.2d 844, 854 (Me. 1981).

“Evidence obtained in violation of a defendant's right to be free from unreasonable searches and seizures must be excluded at trial.” State v. Drewry, 2008 ME 76, ¶ 20, 946 A.2d 981, 988 (Me. 2008)(citation omitted). The U. S. Supreme Court has noted more restrictively that “a warrantless search of the person is reasonable only if it falls within a recognized exception.” Missouri v. McNeely, 569 U.S. 141, 148, 133 S.Ct. 1552, 1563, 185 L.Ed.2d 696, 709 (2013).

The U. S. Supreme Court has further articulated that compulsory blood draws are “intrusions into the human body” subject to the Fourth Amendment’s

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<sup>25</sup> Among those exceptions are exigent circumstances and special needs. See State v. Cormier, 2007 ME 112, ¶ 15, ¶ 9, 928 A.2d 753, 758, (Me. 2007). “The “exigent circumstances exception is ordinarily applicable to a search conducted after determining the existence of probable cause but before a warrant can be obtained.” Id. at ¶ 18, 759. Stated differently, “[t]he exigent circumstances justification for warrantless searches applies when there is a compelling need to conduct a search and insufficient time in which to secure a warrant.” State v. Arndt, 2016 ME 31, ¶ 9, 133 A.3d 589-90 (Me. 2016).

prohibition against unreasonable searches and seizures.<sup>26</sup> Schmerber v. California, 384 U.S. 757, 769-70, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966); see also Birchfield v. North Dakota, 579 U.S. \_\_\_, 136 S.Ct. 2160, 2173 (2016); State v. Chase, 2001 ME 168, ¶ 14, 785 A.2d 702, 706 (Me. 2001)(“a blood test does constitute a search that normally requires a warrant based on probable cause”); State v. Libby, 453 A. 2d 481, 484 (Me. 1982). In Schmerber, the U. S. Supreme Court has articulated that:

[t]he interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions on the mere chance that desired evidence might be obtained. In the absence of a clear indication that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may disappear unless there is an immediate search. Schmerber v. California, 384 U.S. 757, 769-70 (1966).

This notion was reaffirmed by the U. S. Supreme Court in Birchfield v. North Dakota, 579 U.S. \_\_\_, 136 S. Ct. 2160, 2184, 195 L.Ed. 2d 560 (2016). In

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<sup>26</sup> This Court has addressed the Schmerber decision and found that it “held that bodily substance specimens were not subject to the exclusionary rule under the Fourth Amendment in a context where the samples were taken as an incident to a lawful arrest, by a reliable and accepted method, in a reasonable and medically approved manner, *and where the enforcement officer had probable cause to believe that evidence of driving under the influence of intoxicating liquor did exist*, the Court further viewing the progressive elimination of alcohol by natural bodily functions as presenting exigent circumstances which obviate the necessity of procuring a search warrant.” State v. Bellino, 390 A.2d 1014, 1020 (1978)(emphasis added). Even if law enforcement has no warrant, Schmerber and this Court note that probable cause must still be present in order for a blood draw not to run amuck of the U. S. and Maine Constitutions. State v. Adams, 457 A.2d 416, 421-22 (Me. 1983)(“In any event, Schmerber v. State of California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966), held that a blood test performed under sanitary and humane conditions may be used in evidence against a defendant where. . . the law enforcement officer requesting the ‘search’ had no warrant but did have probable cause to believe that the defendant's blood contained relevant evidence of his crime . . .”).

Birchfield, the U. S. Supreme Court noted that “[b]lood tests are significantly more intrusive [in comparison to breath tests], and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. . . [there is] no satisfactory justification for demanding the more intrusive alternative without a warrant.”<sup>27</sup> Birchfield v. North Dakota, 579 U.S. \_\_\_, 136 S. Ct. 2160, 2184, 195 L.Ed.2d 560, 587 (2016); see also State v. Lemeunier-Fitzgerald, 2018 ME 85, ¶ 18 (Me. 2018). The Supreme Court has also recently concluded that “the natural dissipation of alcohol in the bloodstream” does not create per se exigency that allows law enforcement to dispense with the warrant requirement. Missouri v. McNeely, 569 U.S. 141, 156, 133 S.Ct. 1552, 1563, 185 L.Ed.2d 696, 709 (2013).

Additionally, the U. S. Supreme Court has concluded that “[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the

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<sup>27</sup> This Court has previously analyzed the Supreme Court’s blood testing jurisprudence and stated that “A blood test for alcohol or drugs is different from a breath test in that it is more intrusive and therefore constitutes a search that more seriously infringes on the protections of the Fourth Amendment. *See Birchfield v. North Dakota*, 579 U.S. \_\_\_, 136 S.Ct. 2160, 2173-2185, 195 L.Ed. 2d 560 (2016). For the results of a blood test to be admissible in the State's case-in-chief, the search effectuated through that blood test must meet the Fourth Amendment's requirement that a search be reasonable. *See id.* at, 136 S.Ct. at 2173. A search is reasonable if it is conducted pursuant to a legally obtained warrant or if an exception to the warrant requirement applies. *See* U.S. Const. amend. IV; Birchfield, 579 U.S. at \_\_\_, 136 S.Ct. at 2173. For instance, a warrant is not required if a person voluntarily consents to the blood draw or if exigent circumstances exist. *See Birchfield*, 579 U.S. at \_\_\_, 136 S.Ct. at 2173-74, 2185; Missouri v. McNeely, 569 U.S. \_\_\_, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013); Georgia v. Randolph, 547 U.S. 103, 109, 126 S.Ct. 1515, 164 L.Ed.2d 208 (2006).” State v. Boyd, 2017 ME 36, ¶ 8, 156 A.3d 748, 750-51 (Me. 2017).

search, the Fourth Amendment mandates that they do so.”<sup>28</sup> Id. at 152, 1561, 707 (citation omitted).

The cornerstone of the ensuing analysis in Mr. Weddle’s case is based on the guidance provided in Missouri v. McNeely, 569 U.S. 141, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013) and its prohibition against per se rules that are not based on a case by case analysis of the facts surrounding a blood draw.

Title 29-A M.R.S.A. § 2522 grants blanket authority in emergency situations where vehicular fatalities or serious injuries occur to obtain blood samples without a warrant. As such, Section 2522 has created authorization not embedded in the Fourth Amendment or its recognized exceptions for the drawing of a motorist’s blood in all fatal or potentially fatal car accidents. As noted, McNeely and Birchfield reaffirm the invasiveness of blood testing and the need for a warrant to obtain such material. Section 2522 subjects all motorists covered by the provision to blood tests without requiring any probable cause to suspect that a motorist may be operating under the influence. While vehicular accidents resulting in serious

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<sup>28</sup> The Court also noted in McNeely that law enforcement’s ability to obtain a warrant has become easier with modern times, which was highlighted at Mr. Weddle’s motion to suppress hearing. Missouri v. McNeely, 569 U.S. 141, 154-55, 133 S.Ct. 1552, 1562, 185 L.Ed.2d 696, 708 (2013); (M. Sup. T. vol. 1 at 219-222). The McNeely Court noted that “[w]ell over a majority of States allow police officers or prosecutors to apply for search warrants remotely through various means, including telephonic or radio communication, electronic communication such as e-mail, and video conferencing. And in addition to technology-based developments, jurisdictions have found other ways to streamline the warrant process, such as by using standard-form warrant applications for drunk-driving investigations.” Missouri v. McNeely, 569 U.S. 141, 154-55, 133 S.Ct. 1552, 1562, 185 L.Ed.2d 696, 708 (2013)

injuries and fatalities are tragic that factor alone cannot be seen as justification for the blanket administration of blood tests to drivers under Section 2522. Section 2522 has created a per se rule that holds all motorists accountable to testing and fails to provide case specific facts upon which the testing is based. As such, it creates the type of per se rule that the McNeely Court found unacceptable.

Furthermore, the exceptions to the warrant requirement that were used in Cormier to validate Section 2522 can no longer be deemed as a means to validate the statute post McNeely. The two main exceptions to the warrant requirement used to uphold the statute will be discussed in turn.<sup>29</sup>

**B. The “exigent circumstances” exception to the warrant requirement does not validate Mr. Weddle’s blood test.**

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<sup>29</sup> The Cormier Court briefly discussed the inevitable discovery exception to the warrant requirement, noting that the statute “codifies this narrow application of the inevitable discovery doctrine by requiring officers to collect drug and blood-alcohol content evidence at the scene, but prohibiting the admission of that evidence absent a factual demonstration that, had the exigencies of the fatal collision scene not existed, probable cause to administer the test would have been determined to exist.” State v. Cormier, 2007 ME 112, ¶ 19, 928 A.2d 753, 759 (Me. 2007). Mr. Weddle pointed out to the suppression court in his memorandum of law that: “Furthermore, Birchfield specifically rejected the application of the search incident to arrest exception to a warrantless blood search in light of its categorical rather than fact-driven nature. Id. 1559.” (App. at 99). Moreover, in Cormier the application of the inevitable discovery rule focused on the constitutionality of Section 2522(3), dealing with the use of blood evidence at trial and not dealing with the emergency rule created under Section 2522(1). The focus of this Court’s analysis was on the concept of exigent circumstances, as such, that is what Mr. Weddle focuses on here. See State v. Cormier, 2007 ME 112, ¶ 20-24, 928 A.2d 753, 759-760 (Me. 2007).

The exigent circumstances exception to the warrant requirement does not provide support for Title 29-A M.R.S.A. § 2522. Nor does the exception independently support the drawing of Mr. Weddle’s blood.

The McNeely Court eroded the logic used in State v. Cormier for justifying the State’s enactment of Title 29-A M.R.S.A § 2522. The McNeely Court was “aware of no evidence indicating that restrictions on nonconsensual blood testing have compromised drunk-driving enforcement efforts in the States that have them.” Missouri v. McNeely, 569 U.S. 141, 162, 133 S.Ct. 1561, 1567, 185 L.Ed. 2d 696, 713 (2013). McNeely also noted that “wide-spread state restrictions on nonconsensual blood testing provide further support for our recognition that compelled blood draws implicate a significant privacy interest. . . [t]hey also strongly suggest that our ruling today will not ‘severely hamper effective law enforcement.’” Id. at 162-163, 1567, 713 (citation omitted).

Title 29-A M.R.S.A § 2522 is rigid and will always permit the testing of blood when a fatality or possible fatality occurs in a vehicular accident. It has created a “per se rule” that will always permit the testing of blood without regard for the protections provided by the Fourth Amendment and its Maine counterpart to ensure that a search is reasonable. This is the type of pronouncement that the U.S. Supreme Court sought to invalidate in McNeely, where the natural dissipation of alcohol in the bloodstream by itself was deemed not to create exigent circumstances sufficient to justify blood testing without a warrant. Missouri v.

McNeely, 569 U.S. 141, 165, 133 S.Ct. 1552, 1568, 185 L.Ed.2d 696, 715 (2013).

As such, the McNeely Court has specifically eroded the basis of this Court's ruling in Cormier.

Moreover, in blood testing cases, the U. S. Supreme Court has stated that there is "no plausible justification for an exception to the warrant requirement" when the warrant process would not "significantly increase the delay before the blood test is conducted. . ." <sup>30</sup> Missouri v. McNeely, 569 U.S. 141, 153-54, 133 S.Ct. 1552, 1561, 185 L.Ed.2d 696, 708 (2013). Exigency "must be determined case by case based on the totality of the circumstances." Id. at 145, 1556, 702; see also Birchfield v. North Dakota, 579 U.S. \_\_\_, 136 S. Ct. 2160, 2174, 195 L.Ed.2d 560, 576 (2016)(in Missouri v. McNeely the U. S. Supreme Court "refused to 'depart from careful case-by-case assessment of exigency and adopt the categorical rule proposed by the State.'"). The McNeely Court also found that the "context of blood testing is different in critical respects from other destruction-of-evidence

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<sup>30</sup> This Court has noted that "[a] claim of exigent circumstances. . . must be evaluated in terms of the time when the law enforcement authorities first had an opportunity to obtain a search warrant, not merely from the time the emergency arose, and the authorities must come forward with a satisfactory explanation of their failure to obtain a warrant." State v. Dunlap, 395 A.2d 821, 824 (Me. 1978)(citations omitted). Moreover, in cases that support the use of the exigent circumstances exception, "police have neither the time to obtain a warrant nor the opportunity to avoid the ensuing emergency." Id. (citations omitted). This Court has noted that "[i]f. . . the law enforcement officers have knowledge of facts supporting a proper determination of probable cause, the warrant requirement may be eliminated when exigent circumstances requiring a prompt search exist. State v. Barclay, 398 A.2d 794 (Me.1979)." State v. Libby, 453 A.2d 481, 484 (Me. 1982). "Thus, probable cause and exigent circumstances justify the warrantless taking of a blood test. Schmerber, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908." Id.

cases in which the police are truly confronted with a ‘now or never’ situation.” Id. at 153, 1561, 707. And McNeely specifically dictates that “[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.” Id. at 152, 1561, 707.

Furthermore, the facts of Mr. Weddle’s case do not support use of the exigent circumstances exception to the warrant requirement.<sup>31</sup> The facts here established that there was time to seek out a warrant. (M. Sup. T. vol. I at 207, 213-214). An officer could have taken steps to secure a warrant while Mr. Weddle was being extracted from the cab of the tractor trailer. Cf. Missouri v. McNeely, 569 U.S. 141, 153-54, 133 S.Ct. 1552, 1561, 185 L.Ed.2d 696, 708 (2013).

Moreover, there was a large number of law enforcement officers on the scene.<sup>32</sup> (M. Sup. T. vol. I at 192, 204). Law enforcement testify that they knew they wanted a blood sample from Mr. Weddle from the moment they arrived at the scene. (M. Sup. T. vol. I at 207, 213-214). He was trapped in his vehicle for over an hour. (M. Sup. T. vol. I at 158, 163, 205-206; M. Sup. T. vol. II at 56-57).

Aside from Mr. Weddle, there was only one other person that required treatment at

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<sup>31</sup> The Suppression Court’s finding of exigent circumstances are entirely based on the fact that there was an emergency situation created by the car crash. (App. at 63-64, 65). Mr. Weddle points out that all serious accidents are going to involve an emergency situation, and that factor alone does not provide a sufficient basis to support use of the exception.

<sup>32</sup> Sergeant Elwell estimated that there were between twelve to fifteen officers at the scene. (M. Sup. T. vol. I at 192).

a medical facility because of the accident. (M. Sup. T. vol. I at 153-154, 162, 190-192, 75-76; M. Sup. T. vol. II at 12). The Commercial Vehicle Unit of the Maine State Police were also on hand to assist in the investigation. (M. Sup. T. vol. I at 193, 204). As such, law enforcement was actually more equipped to handle the warrant process than in a non-commercial vehicle crash where fewer officers respond to the scene.

In sum, Section 2522 contravenes McNeely, as it creates a per se rule of emergency, which is not a recognized exception to the constitutional warrant requirements or supported by the exigent circumstances exception to the warrant requirement. As such, the statute cannot be sued to validate the warrantless draw of Mr. Weddle's blood. Moreover, there is no evidence on the record that justifies the use of the exigent circumstances exception to the Fourth Amendment's warrant requirement.

**C. The “special needs” exception to the warrant requirement does not validate Mr. Weddle’s blood test.**

The special needs exception to the warrant requirement does not provide a legitimate foundation for Title 29-A M.R.S.A. § 2522 nor does it independently justify the extraction of Mr. Weddle's blood in the case at hand. The Suppression Court found that the “special needs” exception to the warrant requirement provided justification for Title 29-A M.R.S.A. § 2522. (App. at 63, 65). Under the recent U.

S. Supreme Court case law already discussed, the special needs exception is not a valid basis for constitutionalizing Section 2522.

“A special needs analysis requires. . . [the] balanc[ing of] the privacy interests of the individual against the governmental interests at stake to assess the practicality of the warrant and probable cause requirements.”<sup>33</sup> State v. Cormier, 2007 ME 112, ¶ 29, 928 A.2d 753, 761 (Me. 2007)(citation omitted). This Court noted in Cormier that the “privacy interests of individuals in the chemical content of their bodies has been addressed frequently, and there is little question that those interests are recognized by the courts and are important liberty interests.” Id. (citations omitted). However, despite this acknowledgement, the Cormier Court found “the State's interest in gathering information to assist in addressing the problem of intoxicated driving outweighs the privacy interest of drivers in the content of their blood [and t]he State's special needs, separate from the general purpose of law enforcement, justify an exception to the warrant requirement in these circumstances.” Id. at ¶ 36, 764.

This foundation for using the special needs exception to constitutionalize Title 29-A M.R.S.A § 2522 no longer has footing post McNeely and Birchfield. As noted above, the McNeely Court has eroded the logic used in Cormier for

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<sup>33</sup> Exception to the warrant requirement may exist “when ‘special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.’” Skinner v. Railway Labor Executives' Association, 109 S.Ct. 1402, 1414, 489 U.S. 602, 619, 103 L.Ed.2d 639 (1989)(citation omitted).

justifying the State's enactment of Title 29-A M.R.S.A § 2522. First, Cormier relied on the State's interest in "obtain[ing] information about the intoxication of drivers involved in fatal, or likely fatal collisions." Id. at ¶ 36, 763. The McNeely Court discarded with the argument that the privacy interest implicated in blood draws from drunk driving was minimal. Id. at 159-161, 1565-68, 711-713. The McNeely Court, like this Court in Cormier acknowledged the "terrible toll drunk driving takes on society and found it could not "seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it." Id. at 160, 1565, 712 (citation omitted). However, the McNeely Court concluded that "widespread state restrictions on nonconsensual blood testing provide further support for our recognition that compelled blood draws implicate a significant privacy interest. . . [t]hey also strongly suggest that our ruling today will not 'severely hamper effective law enforcement.'" Id. at 162-63, 1567, 713 (citation omitted). While McNeely deals primarily with the exigent circumstances exception to the warrant requirement, these conclusions from the Court provide guidance in weighing privacy interests to one's blood against states' interests in protecting from drunk driving. Id. at 157-163, 1564-67, 710-714.

In using the special needs exception to provide exception for drawing Mr. Weddle's blood, the government's interests should not be viewed to outweigh his privacy interest in his blood. As noted, the U. S. Supreme Court has reaffirmed the privacy interest that exists in blood samples taken under exceptions to the warrant

requirement. Moreover, the samples taken from Mr. Weddle were not intended for use in administrative or disciplinary hearings, but with full intention to be use in any developing criminal case against him.<sup>34</sup> Cf. Ferguson v. Charleston, 121 S.Ct. 1281, 532 U.S. 67, 86, 149 L.Ed.2d 205, 69 U.S.L.W. 4184 (2001)(the “unique fact that characterizes this case is that Policy M-7 was designed to obtain evidence of criminal conduct by the tested patients that would be turned over to the police and that could be admissible in subsequent criminal prosecutions”). This fact has support under the recent Fourth Amendment case law provided by the U. S. Supreme Court that has highlighted the privacy interest in one’s blood. See Birchfield v. North Dakota, 579 U.S. \_\_\_, 136 S. Ct. 2160, 2178, 2184, 195 L.Ed.2d 560, 580, 587 (2016); Missouri v. McNeely, 569 U.S. 141, 148, 133 S.Ct. 1561, 1558, 185 L.Ed.2d 696, 704 (2013). Moreover, while Mr. Weddle was operating a commercial vehicle, he was not charged by the State in any manner where that fact was relevant to the reason for which his blood was drawn. As such, the special needs exception to the warrant requirement does not overcome the State’s need for a warrant to obtain a blood sample.

## **II. The Knox County Court erred in admitting exhibits and testimony about receipts located in Mr. Weddle’s tractor trailer by Maine State Police.**

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<sup>34</sup> See United States v. Christopher Hutchinson, Order on M. Sup. (Jan. 17, 2018) at p. 13 (“conclud[ing] that the ‘special needs’ exception, by itself, does not justify a compulsory blood draw”). (App. at 137-162).

“When admission of evidence is challenged, [this Court] review[s] a trial court's foundational findings to support admissibility for clear error and its ultimate determination of admissibility for an abuse of discretion.” State v. Abdi, 2015 ME 23, ¶ 16, 112 A.3d 360, 365 (Me. 2015); See also State v. Vaughan, 2009 ME 63, ¶ 5, 974 A.2d 930, 932 (Me. 2009); State v. Cornhuskers Motor Lines, Inc., 2004 ME 101, ¶ 10, 854 A.2d 189, 191 (Me. 2004).

The Knox County Court erred in admitting documents located in the cab of Mr. Weddle’s tractor trailer into evidence at trial. At trial Maine State Police officers from the Commercial Vehicle Enforcement Unit testified that they responded to the March 18, 2016 crash and retrieved Mr. Weddle’s log book, bills of landing, and other receipts pertaining to the operation of Mr. Weddle’s tractor trailer from the cab of the tractor trailer.<sup>35</sup> (Tr. T. Jan. 24, 2018 at 125-127, 130-131; Tr. T. Jan. 25, 2018 at 208-209, 212, 222-226, 239). The items removed from the truck at that time included: a T.A. Truck Service repair order form, fuel

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<sup>35</sup> The paperwork comprising Exhibits 22, 24, 26, 26-A, 27, and 29 were located in the truck on March 18, 2016 on the roof of the cab, scattered around because the tractor trailer was still upside down. (Tr. T. Jan 24, 2018 at 135; Tr. T. Jan. 25, 2018 at 226-230, 239). State’s Exhibit 22 was a T.A. Truck Service repair order for an oil change on March 14, 2016. (Tr. T. Jan. 24, 2018 at 135). The admission of the document was objected to by Mr. Weddle. (Tr. T. Jan. 24, 2018 at 136). State’s Exhibit 24 was a fuel receipt, which was admitted over objection. (Tr. T. Jan. 25, 2018 at 226-227). State’s Exhibit 26 is bill of landing showing a load picked up in Bull Gaps, Tennessee and was admitted over objection. (Tr. T. Jan. 25, 2018 at 227-228). State’s Exhibit 26-A is another bill of landing from Bull Gaps and it was also admitted over objection. (Tr. T. Jan. 25, 2018 at 228-229). State’s Exhibit 27 was a fuel receipt that was admitted over objection. (Tr. T. Jan. 25, 2018 at 229). State’s Exhibit 29 was a Massachusetts turnpike toll receipt that was admitted over objection. (Tr. T. Jan. 25, 2018 at 229-230).

receipts, bills of landing from Bull Gaps, Tennessee, and a turnpike toll receipt (State Exhibits 22, 24, 26, 26-A, 27, and 29). (Tr. T. Jan 24, 2018 at 135-136; Tr. T. Jan 25, 2018 at 226-230, 239).

The trial court ruled that these documents were admissible, not as “regularly kept records,” because the State did not have a custodian of the documents to testify, but as “statements of a party opponent” and therefore not hearsay. (App. at 67; Tr. T. Jan. 25, 2018 at 150). The trial court ruled that the documents are

statements that are not hearsay, it's -- the statement is offered against a party opponent, which in this case it is, and is one the party manifested that it adopted or believed to be true. Basically what we call those is adoptive admissions.

Now, the Law Court in the case that was supplied to me, State versus Cornhuskers Motor Lines, Inc. . . . dealt with a similar issue. Now in that particular case the driver actually handed the documents -- fuel receipts, toll booth receipts, to the trooper. And the Court found that those were -- that that was a non verbal statement. Now, the fact that he handed them certainly was a relevant fact, but I don't think it was a requirement. The Court made clear, and Field and Murray make it clear, that an adoptive admission -- an adoption may be manifested by silence or by other action. And I find that these exhibits having been found in Mr. Weddle's car -- not car, commercial vehicle that he was driving, there's no dispute, the evidence is pretty much overwhelming that he was the driver, the receipt pertains to the time period when he's operating that commercial vehicle, it -- he is required by -- by federal regulation to maintain a duty log and supporting documentation to support that duty status. These documents all are in the same time period when he is leaving Virginia and heading north and ultimately ends up in Maine. They all pertain to -- in some instances his name is on the document, in some instances he signed the document. In other instances the document is a receipt pertaining to the vehicle as it moved north into New England.

And so by the act of maintaining those, acquiring those and keeping those, in my view he has manifested his adoption of the truth of those statements. It just -- it makes no sense that you would maintain records that pertain

to a vehicle and not believe -- and not believe they were -- and believe they were untrue. You keep them because they are supporting document that you're required to keep.

So I find that those documents are in fact admissible as non hearsay under Rule 801. I believe it's (d)(2). So -- just so that's -- those are my rulings on that.

(App. at 67; Tr. T. Jan 25, 2018 at 150-152).

Hearsay is a statement that “(1) [t]he declarant does not make while testifying at the current trial or hearing; and (2) [a] party offers in evidence to prove the truth of the matter asserted in the statement.” M.R. Evid. 801(c). A statement is not hearsay if the statement is offered against an opposing party and

- (A) Was made by the party in an individual or representative capacity;
- (B) Is one the party manifested that it adopted or believed to be true;
- (C) Was made by a person whom the party authorized to make a statement on the subject, but was not made to the principal or employer;
- (D) Was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed, but was not made to the principal or employer; or . . .

M.R. Evid. 801(d)(2).

The trial court relied on State v. Cornhuskers Motor Lines, Inc., 2004 ME 101, 854 A.2d 189 (Me. 2004), to support its decision to admit the documents in question. (App. at 67; Tr. T. Jan 25, 2018 at 150). The trial court noted itself that in Cornhuskers the documents in question were handed to law enforcement upon request from the driver of a commercial vehicle. (App. at 67; Tr. T. Jan 25, 2018 at 150); State v. Cornhuskers Motor Lines, Inc., 2004 ME 101, ¶ 2, 12, 854 A.2d 189, 190, 192 (Me. 2004). Cornhuskers states that “[w]hen the driver *handed over* the toll receipts to the motor carrier inspector, the toll receipts became non-verbal

statements offered by the driver.” State v. Cornhuskers Motor Lines, Inc., 2004 ME 101, ¶ 11, 854 A.2d 189, 190, 192 (Me. 2004)(emphasis added). The trial court stated that this factor does not matter because the action of having the documents in the cab of Mr. Weddle’s tractor trailer is sufficient to make them an adoptive admission. (App. at 67; Tr. T. Jan. 25, 2018 at 150-151). But the wording of Cornhuskers links the admission in that case to the actual handing over of the documents. Without an action by Mr. Weddle that indicates that he was actually intending the documents at issue in this case be handed over to law enforcement, there is no manifestation of an admission by him.

To that point, there is no evidence on the record that indicates that Mr. Weddle intended to submit these documents as records in support of the information contained in his log book. The receipts were not handed to law enforcement. (Tr. T. Jan. 25, 2018 at 224-225). They sought them out.<sup>36</sup> (Tr. T. Jan. 25, 2018 at 224-225). The receipts were strewn all over the cab due to the accident.<sup>37</sup> (Tr. T. Jan. 25, 2018 at 225). Without Mr. Weddle actually handing the documents over, or making some indication that the receipts were being offered by him as records that he was keeping for the purpose of inspection pursuant to

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<sup>36</sup> The recovering officer stated that he sought the documents out for his report, noting he went into the cab to “retrieve registration, insurance, things I need for my report, any kind of bill of lading, toll receipts, any of that stuff that I have to have to -- to look through and the logbook. And just different things like that.” (Tr. T. Jan. 25, 2018 at 224-225).

<sup>37</sup> The officer that recovered the documents stated: “Yes, I retrieved several documents that was scattered all over the truck. As you know, when a truck like this -- or a cab flips over like this, everything is just everywhere, so that there's no order to it.” (Tr. T. Jan. 25, 2018 at 225).

governing regulations, there is no guarantee that they were retained for that purpose. Without some gesture or action by Mr. Weddle, there is also no guarantee as to accuracy of the documents recovered. They could have pertained to a different vehicle operated by Mr. Weddle or relate to a vehicle that was not his and had been mistakenly given to him. Without his stamp of approval or some indication that the documents were intended as official documentation pertaining to his operation of the tractor trailer, the documents cannot be considered as an admission by a party opponent. Contrary to the trial court's finding, there needs to be more than the mere presence and random scattering of the documents in the tractor trailer's cab to qualify the documents as not hearsay and out of the reach of the hearsay rule under Maine Rule of Evidence 801(d)(2). And, since no custodian was available to testify at trial as to the authenticity of the documents they cannot be admitted as business records,<sup>38</sup> and, as such, the documents are hearsay and not admissible evidence.

### **III. The Knox County Court erred in denying Mr. Weddle's motion for a judgment of acquittal on Count 13.**

The denial of a motion for judgment of acquittal is reviewed "by viewing the evidence in the light most favorable to the State to determine whether a jury could rationally have found each element of the crime proven beyond a reasonable

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<sup>38</sup> See the business records exception to the hearsay rule under Maine Rule of Evidence 803(6) (D).

doubt.” State v. Adams, 2015 ME 30, ¶ 19, 113 A.3d 583, 588 (Me. 2015); State v. Barnard, 2001 ME 80, ¶ 10, 772 A.2d 852, 857 (Me. 2001).

The Knox County Court erred when it denied Mr. Weddle’s motion for a judgment of acquittal on Count 13 of the Indictment.<sup>39</sup> The evidence presented by the State failed to establish that Mr. Weddle was not able to put gas in his tractor trailer while off duty.

In making the argument for a judgment of acquittal to the trial court Mr. Weddle state that

the testimony was so convoluted that it's not clear what was Mr. Weddle's duty and what wasn't his duty. I believe [sic], at least on Count 13, the basis for it is a receipt from Virginia that was entered into evidence of getting gas on March 15, 2016. What makes that particularly I think ripe for judgment of acquittal, Count 13, is the witness who testified that -- I think that the state's arguments based on the convoluted testimony is that he was off duty and couldn't get gas. But the officer who testified said, well, they don't usually do that. And then when pressed on cross-examination, he said it wasn't against the rules to get gas off duty. So if that's the testimony, even in the light most favorable to the state, Count 13 should be dismissed. That's for the specific relating to that receipt.  
(App. at 75; Tr. Jan. 29, 2018 at 6-7).

The State even acknowledge confusion over the evidence it presented, stating:

And Count 13, that was the one where he wrote he was off duty but the receipt showed a fuel purchase in a different down of Virginia. That was the one where there was a little bit confusing evidence on exactly what

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<sup>39</sup> Count 13 of the indictment states that “on or about March 18, 2016, in Washington, Knox County, Maine **RANDALL JUNIOR WEDDLE** did make a false report in connection with a duty status, regarding an entry dated March 15, 2016.” (App. at 81).

you could and couldn't do when you were off duty as far as getting fuel is concerned, but I believe that the officer did say that there are situations when you couldn't get fuel when you were off duty. And I think when the Court looks at it in the light most favorable to the state, the evidence, and draws a reasonable inference therein, that he was a long haul trucker doing work when he got that fuel. (App. at 75; Tr. Jan. 29, 2018 at 9).

The court denied the motion by stating that

As to the false record of duty, the obligation, as I understand it, under the regulations, the federal regulations that have been adopted by the state, is that you can't make a false record of duty status, you have to accurately put in what duty status you're on. I found the testimony a little bit confusing, I do acknowledge, as to, you know, what the driver is supposed to do with respect to filling out the duty status log.

There are four options, as I read the regulations, and they are on duty, driving, sleeper berth, off duty and then on duty but not driving. Those are the four options, as I understand it. And you're apparently required to put in the correct duty status for any time that you change duty status. While I thought the testimony was somewhat convoluted and confusing, I think it's ultimately a jury question. Given the exhibits that have been offered into evidence, there is sufficient evidence from which the jury could find that the duty status was false. (App. at 75; Tr. Jan. 29, 2018 at 12-13).

The direct trial testimony that supported the court's ruling was provided by Maine State Police Officer Shawn Porter and is as follows:

Q. I'm showing you State's Exhibit No. 24. And what is that again?

A. It's a fuel receipt.

Q. And is there a date and timestamp on that fuel receipt?

A. On 3/15 and 1754 hours.

Q. And if a driver is off duty can they be fueling their truck?

A. No, usually they don't do that on their off duty time.  
(Tr. T. Jan. 25, 2018 at 221-222, 233-234).

The testimony provided on cross examination on this topic is as follows:

Q. Is there any federal regulation that prohibits fueling a truck during off duty hours?

A. Not to my knowledge.  
(Tr. T. Jan. 25, 2018 at 239).

The testimony provided by Officer Porter on redirect on the topic is as follows:

Q. Is fueling an off duty thing or is it an on duty not driving category?

A. On duty not driving is at a place where you're not responsible for the vehicle. So if you go to pick up a load or something, you can go down to on duty not driving and you're not responsible for that period of block. When you're fueling you're responsible for the truck. A lot of times what they'll do is they'll pull over and take their 30-minute break or they'll take their break time of -- of -- might split their sleeper berth or something and they might do it there, but they have to log in as -- as number four as they're fueling up and where they're fueling.  
(Tr. T. Jan. 25, 2018 at 240).

After the conflicting testimony provided by Officer Porter at trial, the trial court even expressed confusion as to whether fueling up meant that you were on or off duty. (Tr. T. Jan. 25, 2018 at 241). There is no evidence presented by the State that there was a false duty status reported by Mr. Weddle as it pertained to fueling up his commercial vehicle. The testimony provided established only that usually truckers do not fill up while on duty, that there is no federal regulation that prohibits fueling up during off duty hours, and a confusing discussion about

driving statuses as they pertain to fueling up. (Tr. T. Jan. 25, 2018 at 233-234, 239, 240). There is nothing in the testimony submitted that establishes that the log entry made by Mr. Weddle on March 15, 2018 is false. Additionally, there was no evidence, other than the receipt being in the cab of the tractor trailer, that links this receipt to the fueling of the tractor trailer he was driving at the time of the accident. The circumstances surrounding the gas purchase are unknown.

As such, given the lack of testimony connecting a duty status violation to the March 15, 2015 gas receipt, viewing the evidence in the light most favorable to the State, a jury could not have found each element of the crime proven beyond a reasonable doubt by the State.

### **Conclusion**

For the above-reasons, the Appellant asks this Court to vacate the Mr. Weddle's convictions.

Dated: September 17, 2018

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### **Certificate of Service**

I, Jeremy Pratt, Esquire, hereby certify that on this date I mailed via the U.S. postal service, first class mail, two copies of the foregoing Brief of Appellant to the Office of the District Attorney, 62 Union Street, Rockland, ME 04843.

Dated: September 17, 2018

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Jeremy Pratt, Esquire