

IN THE MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

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Law Court Docket No. Cum-23-508

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State of Maine

v.

Billy Beaulieu

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On Appeal from the Cumberland Unified Criminal Docket

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Brief of Appellant Billy Beaulieu

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## **INTRODUCTION**

This appeal involves the application of statutorily granted immunity from prosecution under 17-A M.R.S. § 1111-B, the so-called Good Samaritan Law. This law is intended to save lives and it does so by encouraging Maine people to call for help for suspected drug-related medical emergencies. It represents a public policy that saving lives and stopping preventable overdose deaths outweighs the state interest in prosecuting certain types of relatively minor offenses.

## **STATEMENT OF FACTS**

Billy Beaulieu appeals from an order of the Cumberland Unified Criminal Docket (Hon. Thomas McKeon) denying his motion to dismiss due to immunity from prosecution under 17-A M.R.S. § 1111-B (The so-called Good Samaritan Statute). Mr. Beaulieu is charged with one count of criminal OUI, Class C (2 priors) in violation of 29-A M.R.S.A. §2411(1-A)(B)(2).

The following facts can be adduced from two exhibits that were presented at the hearing on Mr. Beaulieu's motion to dismiss which were admitted into evidence without objection.<sup>1</sup> On September 24, 2022 Jennifer Dunning was driving north on I-295 and noticed a vehicle parked "a little sideways" on the left hand shoulder, which she thought was odd (Exhibit 1). She reported that after dinner with her family on her way home she noticed the vehicle was still there almost 2 hours later (Exhibit 1). She wrote in her statement "I was very worried the driver was or had [sic] a medical event" (Exhibit 1). She went to the Brunswick police station where she spoke to Officer Patrick Scott and was told that he would promptly check on this person and vehicle (Exhibit 1).

Officer Patrick Scott wrote in his report that Jennifer Dunning had approached her in his cruiser in the parking lot of the police station and asked her to check on a broken-down motor vehicle that was by the jug handle on outer Pleasant St (Exhibit 2, narrative page 1). Officer Scott wrote that he approached the vehicle and saw a male slumped over with his head between his knees in what appeared to be an

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<sup>1</sup> Exhibit 1 was the statement of witness Jennifer Dunning and Exhibit 2 was a police report. The motion hearing transcript from December 5, 2023, will be referred to as M Tr.

extremely uncomfortable position (Exhibit 2, narrative page 1). Officer Scott had to reach in the open window of the vehicle and shake the male in order to rouse him. The male sat up and a “long glob of drool was hanging from his mouth” (Exhibit 2, narrative page 1). The male eventually verbally identified himself as Billy Beaulieu. His speech was heavily slurred and his pupils were very small and his eyelids were droopy. Officer Scott stated that from his training and experience Mr. Beaulieu’s behavior was consistent with drug use (Exhibit 2, narrative page 1). Mr. Beaulieu denied drinking or taking drugs since he parked the vehicle but admitted to taking suboxone and gabapentin as prescribed earlier in the day (Exhibit 2, narrative page 1).

Officer Scott went on to perform field sobriety tests and an intoxilizer breath test (Exhibit 2, narrative page 2). Because of observed clues and a breath test of .00 grams of alcohol per 210L of breath, Officer Scott called another officer who was a trained drug recognition expert to examine Mr. Beaulieu. That officer opined that Beaulieu was under the influence of drugs (Exhibit 2, narrative page 2). Mr. Beaulieu was eventually charged with operating under the influence.

On October 20, 2023, Beaulieu moved to dismiss the complaint due to immunity granted by 17-A M.R.S. § 1111-B. In the written motion, Beaulieu argued he was entitled to immunity because he was a “person who [was] experiencing a suspected drug overdose” and that a law enforcement officer had been dispatched to his location in response to a call for assistance for that suspected drug overdose. A hearing was held on December 5, 2023 at which Ms. Dunning’s statement and Officer Scott’s report were admitted as evidence.

The Court stated its ruling on the record as follows:

It’s an interesting statute and took me a little while to apply. I am looking at the two pieces of evidence I have, the . . . two documents. I’m making a factual finding that I do believe I’m taking her statement and what she was thinking at the time before she went to the police station and I am assuming, for the record, that there’s a factual determination. I think what she said she was worried about at the time is probably more accurate – even though she said it afterward [–] is probably more accurate than what the police officer recorded as thinking was the concern at the beginning. So I am going to find that she was worried that the driver had a medical event and that that’s why she went to the police officer.

And I will also find factually that the police officer went there to the scene because of her concern that he had a medical event. I don’t think, however, that the statute applies to that scenario. The statute specifically applies to when a law enforcement officer dispatches to the location of



the medical emergency in response to a call for assistance for suspected drug-related overdose.

The purpose of the statute is to make it so people aren't scared to call police and say, my friend is overdosing or I'm overdosing or somebody else is overdosing. The statute doesn't apply in this case because Ms. Dunning would not have been intimidated to call about a medical event. That's not one of the protected acts by the statute. It does turn out that Mr. Beaulieu was having an overdose. But then we get to every time a law enforcement officer finds someone overdosing, does that mean the overdosing person is immune?

I don't read the statute to say that. The statute's intended to protect people who otherwise would be scared to report an overdose. And I'm not persuaded, based on this evidence, that that would have provided protection to Ms. Dunning's report with respect to that. [M Tr 23-24].

Mr. Beaulieu timely appealed from this ruling.

## **STATEMENT OF ISSUES PRESENTED**

- 1. When a 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 provides immunity from prosecution to any protected person at the scene. Here, a concerned citizen reported a vehicle off the road and suspected the driver may have had "a medical event." Was Mr. Beaulieu a protected person entitled to immunity under 17-A M.R.S. § 1111-B?**

Appellant Answers: Yes

Appellee Answers: No

Trial Court Answered: No

## ARGUMENT

- 1. When a 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 provides immunity from prosecution to any protected person at the scene. Here, a concerned citizen reported a vehicle off the road and suspected the driver may have had “a medical event.” Mr. Beaulieu was a protected person entitled to immunity under 17-A M.R.S. § 1111-B.**

### *Preservation and Standard of Review*

Whether a criminal defendant is entitled to statutory immunity from prosecution is a legal question reviewed de novo. *State v. Tripp*, 2024 ME 12, ¶ 18. The issue of whether Mr. Beaulieu was entitled to immunity is preserved for appeal because it was raised below and decided by the unified criminal court.

### *Interlocutory Appeal*

As a threshold matter, appellant argues that this admittedly interlocutory appeal can and should be heard under the immunity exception to the final judgment rule. “Appeals based on a denial of a dispositive motion asserting immunity from suit are immediately reviewable.” *Rodriguez v. Town of Moose River*, 2007 ME 68, ¶ 16, 922 A.2d 484, 489. The immunity exception is rooted in the so-called death knell exception. The death knell exception allows review of interlocutory orders “where substantial rights of a party will be irreparably lost if review is delayed until final judgment.” *Webb v. Haas*, 1999 ME 74, ¶ 5, 728 A.2d 1261, 1264. An order denying immunity affects substantial rights that will be irreparably lost because, as this Court has explained, “[w]hen a statute grants a party immunity, it confers more than immunity from damages; it is intended to provide immunity from suit.” *Geary v. Stanley Med. Research Inst.*, 2008 ME 9, ¶ 11, 939 A.2d 86, 89. Although there do not appear to be any reported cases applying the immunity exception in the criminal law context, the principle is the same and can be applied to the statutory immunity granted under 17-A M.R.S. § 1111-B. The immunity granted is “from prosecution” which is analogous to civil immunity granted “from suit.” The substantial right

of a person to whom the immunity could potentially apply is to be free from the burden of prosecution – not merely conviction and sentence. Therefore, requiring Mr. Beaulieu to delay this appeal until final judgment would irreparably deprive him of the right to immunity from prosecution. Similar reasoning was applied by this Court to an interlocutory appeal in a double-jeopardy challenge in *State v. Hanson*, 483 A.2d 723, 724 (Me. 1984) (“The right to be free from exposure to double jeopardy requires that a challenged prosecution be subject to review before the exposure occurs.”) Like in *Hanson*, here the statutory right to immunity requires that the challenged prosecution be subject to review before the exposure occurs.

**A. Billy Beaulieu was a protected person entitled to immunity from prosecution because Officer Scott was dispatched to assist him by Jennifer Dunning who was concerned for his well-being under circumstances that could be considered a suspected drug-related overdose.**

17-A M.R.S. § 111-B states in relevant part:

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.

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2. Except with regard to an excluded crime<sup>[2]</sup>, a protected person is immune from arrest or prosecution for a violation of law if:

A. The grounds for the arrest or prosecution are obtained as a result of a medical professional's or law enforcement officer's responding to a request for medical assistance; or

B. The identity of the protected person is learned or the protected person is identified as a person subject to arrest or prosecution as a result of a medical professional's or law enforcement officer's responding to a request for medical assistance. [17-A M.R.S. § 1111-B].

“ ‘Protected person’ means a person who in good faith calls for assistance for another person experiencing a suspected drug-related overdose, any person rendering aid at the location of the suspected drug-related overdose and any person who is experiencing a suspected drug-related overdose.” *Id.*

The first requirement of the statute is that a medical professional or law enforcement officer be dispatched to the location of a medical emergency. There is no dispute that Officer

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<sup>2</sup> The offense for which Mr. Beaulieu faces prosecution is not on the list of enumerated excluded crimes.

Scott is a law enforcement officer. Here Jennifer Dunning's request for assistance from Officer Scott was a dispatch. "Dispatch" means "to send off or away with promptness or speed" with the special meaning "to send off on official business."<sup>3</sup> Ms. Dunning sought out an officer for the specific purpose of sending them off with promptness to protect the well-being of a person she was concerned about. Officer Scott was, accordingly, dispatched to the location of Mr. Beaulieu's vehicle.

The dispatch must be "to the location of a medical emergency." Here, as the trial court expressly found, Ms. Dunning explained to Officer Scott her concern about Mr. Beaulieu having or experiencing a medical event. The purpose of her contact with Officer Scott was concern for the well-being of the driver of the vehicle she observed parked on the side of the road. As it turned out, Mr. Beaulieu was in some amount of distress and may have needed acute medical care. Accordingly it is fair to say Officer Scott was dispatched to the location of a medical emergency.

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<sup>3</sup> <https://www.merriam-webster.com/dictionary/dispatch> (viewed 5/28/2024)

The dispatch to the location of a medical emergency must be “in response to a call for assistance” and the assistance must be “for a suspected drug-related overdose.” It is unclear whether the person calling for assistance must themselves suspect a drug-related overdose and if so whether that suspicion must be stated in the call for assistance. Other jurisdictions interpreting their versions of so-called Good Samaritan laws have rejected a requirement that there be any subjective belief regarding a drug overdose on the part of the person who calls for help. For example, in *State v. Mercier*, 349 Ga. App. 536, 539, 826 S.E.2d 422, 424, the Court of Appeals of Georgia stated, “[n]othing in the statute requires the caller to subjectively conclude that the subject of the call is experiencing a drug overdose in order for the statute's protections to apply.”<sup>4</sup>

Rather than requiring the person seeking assistance to have an expressed subjective concern about a possible overdose, a better rule is to consider objectively whether the facts constitute a

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<sup>4</sup> The text of the statute read: “Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of [a request for medical assistance] shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance.” OCGA § 16-13-5 (b)

suspected drug-related overdose. Sadly, drug overdoses have become far too common recently. Even though Jennifer Dunning stated her concern in terms of suspecting the driver had experienced a “medical event,” it would not be unreasonable to suspect that an oddly parked vehicle on the side of the highway was due to the driver experiencing an overdose-related condition. Although unstated, it may have crossed Ms. Dunning’s mind. A reasonable prudent person in her situation would suspect that a possible reason the car was off the road was that the driver had experienced an overdose.

The purpose of the statute at issue is to save lives. The trial court correctly states that “The purpose of the statute is to make it so people aren’t scared to call police and say, my friend is overdosing or I’m overdosing or somebody else is overdosing.” However, appellant argues that the trial court incorrectly concludes that “The statute doesn’t apply in this case because Ms. Dunning would not have been intimidated to call about a medical event.” Regardless of Ms. Dunning’s actual belief about Mr. Beaulieu’s condition, it is clear from the evidence that her primary



concern was for his well-being. She sought the assistance of the police because she believed they would quickly respond and assist him. She was not reporting a crime or asking for protection for herself. As the Supreme Court of Kentucky stated in analyzing its own analogous statute “The purpose of the statute is to alleviate the chilling effect that fear of prosecution has on an individual that might otherwise seek emergency medical assistance during what they perceive to be a possible overdose.” *Wilson v. Commonwealth*, 628 S.W.3d 132, 143 (Ky. 2021). Whenever the police are summoned to assist a person in perceived need and that person ends up being charged with crime, the danger of that chilling effect increases. Concerned citizens, like Ms. Dunning, will be less likely to rely on the police for “well-being checks” when those checks end up getting the very person they were concerned about in legal trouble for relatively minor offenses.

As the Georgia Court of Appeals observed in *Mercier*, “Law enforcement officers were present solely because the bystanders called for medical assistance.” *State v. Mercier*, 349 Ga. App. At 539. This fact led that court to conclude that Georgia’s “medical

amnesty” statute applied even though the callers expressed a belief that the defendant had been the victim of a hit and run and did not mention anything about a suspected overdose. A similar bright line rule can be adopted here and applied to this situation: if a law enforcement officer was present solely because a concerned bystander called their attention to the situation, and the circumstances objectively appear to be a suspected overdose, then the immunity under § 1111-B should apply.

As the Superior Court of Pennsylvania put it, “the Act is designed to save lives by sacrificing the enforcement of minor narcotics criminal penalties.” *Commonwealth v. Lewis*, 2018 PA Super 46, 180 A.3d 786, 790 (2018). Maine’s version of the Good Samaritan Statute has the same purpose. The legislature has expressed the willingness to forgo prosecution of otherwise punishable minor offenses in an effort to encourage more people to call for help and ultimately prevent more preventable overdose deaths. If § 1111-B is interpreted too narrowly, this goal will not be achieved because people may not trust the immunity or worry

that their circumstances will fall outside the scope of the statute. The statute only achieves its purpose if it is interpreted broadly.

## CONCLUSION

The trial court erred when it denied Mr. Beaulieu's motion to dismiss based on statutory immunity granted by 17-A M.R.S. § 1111-B. Because a determination that Mr. Beaulieu was not immune will irreparably affect his substantial rights, this matter should be heard on an interlocutory basis. The so-called Good Samaritan Law seeks to save lives by encouraging those experiencing overdose and concerned bystanders to call for help from first responders without fear of criminal prosecution. The statute excludes more serious offenses from its scope, and grants broad immunity from relatively minor offenses and probation revocations. It functioned exactly as it was intended in this case – a concerned citizen summoned the police to assist a person under circumstances that could objectively be viewed as a suspected drug-related overdose. Accordingly, appellant prays this Honorable Court REVERSE the decision of the trial court denying his motion to dismiss and remand the matter for entry of an order dismissing his case due to immunity granted by statute.

/s/ Maxwell Coolidge      
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IN THE MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

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Law Court Docket No. Cum-23-508

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Appendix

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**DOCKET RECORD**

DOB: [REDACTED]/1983

Attorney: DANIEL FELDMAN  
LAW OFFICE OF DANIEL FELDMAN LLC  
277 E. MAIN STREET

State's Attorney: JONATHAN SAHRBECK

Pro Se. YARMOUTH ME 04096  
APPOINTED 04/04/2023

**Charge(s)**

1 OUI (DRUGS OR COMBO), 2 PRIORS 08/22/2022 BRUNSWICK  
Seq 12947 29-A 2411(1-A)(B)(2) Class C  
SCOTT / BRU

**Docket Events:**

08/30/2022 FILING DOCUMENT - NON CASH BAIL BOND FILED ON 05/25/2022

08/30/2022 Charge(s): 1  
HEARING - INITIAL APPEARANCE SCHEDULE OTHER COURT ON 11/15/2022 at 08:30 a.m. in Room No. 1

PORSC

08/30/2022 BAIL BOND - PR BAIL BOND FILED ON 08/25/2022

Date Bailed: 08/23/2022

10/28/2022 Charge(s): 1  
SUPPLEMENTAL FILING - COMPLAINT FILED ON 10/27/2022

11/16/2022 Charge(s): 1  
HEARING - INITIAL APPEARANCE FTA ON 11/15/2022

11/16/2022 BAIL BOND - \$500.00 CASH BAIL BOND SET BY COURT ON 11/15/2022  
JOHN H ONEIL JR, JUSTICE  
NO USE OR POSSESS ILLEGAL DRUGS. SEARCH UPON ARTICULABLE SUSPICION. NOT TO OPERATE ANY MOTOR  
VEHICLE UNLESS LAWFULLY LICENSED. BAIL TO ANY  
TUESDAY AT 8:30AM.

11/16/2022 BAIL BOND - CASH BAIL BOND COND RELEASE ISSUED ON 11/15/2022

JOHN H ONEIL JR, JUSTICE

11/16/2022 WARRANT - \$500.00 FOR FAILURE TO APPEAR ORDERED ON 11/15/2022

JOHN H ONEIL JR, JUSTICE

NO USE OR POSSESS ILLEGAL DRUGS. SEARCH UPON ARTICULABLE SUSPICION. NOT TO OPERATE ANY MOTOR  
VEHICLE UNLESS LAWFULLY LICENSED. BAIL TO ANY  
TUESDAY AT 8:30AM.

11/16/2022 WARRANT - \$500.00 FOR FAILURE TO APPEAR ISSUED ON 11/16/2022

NO USE OR POSSESS ILLEGAL DRUGS. SEARCH UPON ARTICULABLE SUSPICION. NOT TO OPERATE ANY MOTOR  
VEHICLE UNLESS LAWFULLY LICENSED. BAIL TO ANY  
TUESDAY AT 8:30AM.

12/15/2022 Charge(s): 1  
SUPPLEMENTAL FILING - INDICTMENT FILED ON 12/09/2022

03/01/2023 WARRANT - FOR FAILURE TO APPEAR EXECUTED BY AGENCY ON 03/01/2023 at 05:38 p.m.

03/06/2023 BAIL BOND - PR BAIL BOND BAIL RELEASED ON 03/06/2023

Date Bailed: 08/23/2022

03/06/2023 BAIL BOND - PR BAIL BOND RELEASE ACKNOWLEDGED ON 03/06/2023

Date Bailed: 08/23/2022

03/06/2023 BAIL BOND - \$500.00 CASH BAIL BOND FILED ON 03/06/2023

Bail Receipt Type: CR

Bail Amt: \$500

Receipt Type: CK

Date Bailed: 03/01/2023

Prvdr Name: BILLY BEAULIEU

Rtrn Name: BILLY BEAULIEU

03/06/2023 Charge(s): 1

HEARING - INITIAL APPEARANCE SCHEDULE OTHER COURT ON 04/11/2023 at 08:30 a.m. in Room No. 1

PORSC

03/21/2023 Charge(s): 1

HEARING - INITIAL APPEARANCE NOTICE SENT ON 03/21/2023

ALSO LEFT VOICEMAIL AT 207-814-0331 FOR CHANGE IN DATE

04/04/2023 MOTION - OTHER MOTION FILED BY DEFENDANT ON 03/31/2023

MOTION TO APPEAR BY ZOOM

04/04/2023 MOTION - OTHER MOTION GRANTED ON 04/04/2023

THOMAS MCKEON , JUSTICE

MOTION TO APPEAR BY ZOOM

COURT APPOINTS DANIEL FELDMAN. CLERK TO SET

FOR DISPOSITIONAL CONFERENCE. DEFENDANT MAY BE ARRAIGNED AT THAT TIME.

04/04/2023 Charge(s): 1

HEARING - INITIAL APPEARANCE CONTINUED ON 04/04/2023

THOMAS MCKEON , JUSTICE

04/04/2023 ORDER - ORDER APPOINTING COUNSEL ENTERED ON 04/04/2023

THOMAS MCKEON , JUSTICE

04/04/2023 Party(s): BILLY LEE BEAULIEU

ATTORNEY - APPOINTED ORDERED ON 04/04/2023

Attorney: DANIEL FELDMAN

04/04/2023 Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULE OTHER COURT ON 08/10/2023 at 10:00 a.m. in Room No. 7

PORSC

04/04/2023 Charge(s): 1

HEARING - DISPOSITIONAL CONFERENCE SCHEDULE OTHER COURT ON 08/10/2023 at 10:00 a.m. in Room No. 7

PORSC

04/04/2023 Charge(s): 1

HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 04/04/2023

04/04/2023 Charge(s): 1

HEARING - ARRAIGNMENT NOTICE SENT ELECTRONICALLY ON 04/04/2023

08/10/2023 Charge(s): 1

HEARING - ARRAIGNMENT CONTINUED ON 08/10/2023



08/10/2023 Charge(s): 1  
HEARING - ARRAIGNMENT SCHEDULE OTHER COURT ON 09/11/2023 at 08:30 a.m. in Room No. 7

PORSC

08/10/2023 Charge(s): 1  
HEARING - DISPOSITIONAL CONFERENCE HELD ON 08/10/2023

THOMAS D WARREN , JUSTICE

Attorney: DANIEL FELDMAN

DA: WILLIAM BARRY

PLEA AGREEMENT

08/10/2023 Charge(s): 1  
HEARING - RULE 11 HEARING SCHEDULE OTHER COURT ON 09/11/2023 at 08:30 a.m. in Room No. 7

PORSC

08/10/2023 Charge(s): 1  
HEARING - RULE 11 HEARING NOTICE SENT ELECTRONICALLY ON 08/10/2023

09/12/2023 Charge(s): 1  
HEARING - RULE 11 HEARING NOT HELD ON 09/11/2023

TRIAL LIST

09/12/2023 Charge(s): 1  
HEARING - ARRAIGNMENT CONTINUED ON 09/11/2023

09/12/2023 Charge(s): 1  
HEARING - ARRAIGNMENT SCHEDULE OTHER COURT ON 10/17/2023 at 08:30 a.m. in Room No. 1

PORSC

09/12/2023 Charge(s): 1  
HEARING - ARRAIGNMENT NOTICE SENT ELECTRONICALLY ON 09/12/2023

10/19/2023 Charge(s): 1  
HEARING - ARRAIGNMENT HELD ON 10/17/2023

MARIA WOODMAN , JUDGE

DA: GLENN BARNES

Defendant Present in Court

DEFENDANT INFORMED OF CHARGES.

10/19/2023 Charge(s): 1  
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 10/17/2023

10/23/2023 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 10/23/2023

Attorney: DANIEL FELDMAN

11/27/2023 HEARING - MOTION TO DISMISS SCHEDULE OTHER COURT ON 12/05/2023 at 01:00 p.m. in Room No. 1

PORSC

11/27/2023 HEARING - MOTION TO DISMISS NOTICE SENT ELECTRONICALLY ON 11/27/2023

11/30/2023 MOTION - OTHER MOTION FILED BY DEFENDANT ON 11/30/2023

Attorney: DANIEL FELDMAN

TO APPEAR REMOTELY  
12/01/2023 MOTION - OTHER MOTION GRANTED ON 11/30/2023  
THOMAS MCKEON , JUSTICE  
TO APPEAR REMOTELY  
12/05/2023 OTHER FILING - OTHER DOCUMENT FILED ON 11/28/2023

DA: WILLIAM BARRY  
STATE'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS  
12/12/2023 HEARING - MOTION TO DISMISS HELD ON 12/05/2023  
THOMAS MCKEON , JUSTICE  
Attorney: DANIEL FELDMAN

DA: WILLIAM BARRY  
Defendant Present in Court  
DEF EXHIBITS 1 & 2 ACCEPTED  
12/12/2023 MOTION - MOTION TO DISMISS DENIED ON 12/05/2023  
THOMAS MCKEON , JUSTICE  
COPY TO PARTIES/COUNSEL

12/13/2023 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 12/07/2023  
  
Attorney: DANIEL FELDMAN  
12/13/2023 ORDER - TRANSCRIPT ORDER FILED ON 12/07/2023

Attorney: DANIEL FELDMAN  
12/13/2023 APPEAL - NOTICE OF APPEAL FILED ON 12/07/2023

Attorney: DANIEL FELDMAN  
12/28/2023 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 12/14/2023  
THOMAS MCKEON , JUSTICE  
COPY TO PARTIES/COUNSEL

01/23/2024 Charge(s): 1  
APPEAL - RECORD ON APPEAL DUE IN LAW COURT ON 01/11/2024

01/23/2024 Charge(s): 1  
APPEAL - RECORD ON APPEAL SENT TO LAW COURT ON 01/23/2024

03/04/2024 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY DEFENDANT ON 03/04/2024

Attorney: DANIEL FELDMAN

A TRUE COPY

ATTEST: \_\_\_\_\_  
Clerk

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STATE OF MAINE

CUMBERLAND COUNTY, ss. UNIFIED CRIMINAL DOCKET COURT

CRIMINAL ACTION REGION NO. 2

DOCKET NO. CUMCD-CR-22-3439

APPEAL NO. CUM-24-508

STATE OF MAINE,

Plaintiff

MOTION HEARING

VS.

BILLY BEAULIEU,

Defendant

DECEMBER 5, 2023  
PORTLAND, MAINE

BEFORE:

THE HONORABLE THOMAS MCKEON

APPEARANCES:

ON BEHALF OF THE STATE:  
WILLIAM BARRY, ESQ.

ON BEHALF OF THE DEFENDANT:  
DANIEL FELDMAN, ESQ.

RECORDED BY:

N.D., Clerk

TRANSCRIBED BY:

eScribers, LLC  
7227 North 16th Street, Suite #207  
Phoenix, AZ 85020

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I N D E X

EXHIBIT	MARKED	OFFERED	ADMITTED
Defendant's 1 (Witness statement)	4		
Defendant's 2 (Police report)	4		

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1 (This matter came for hearing before The Honorable Thomas  
2 McKeon of the Cumberland County Unified Criminal Docket Court,  
3 Portland, Maine, on December 5, 2023 at 1:07 p.m.)  
4 THE COURT: All right. So we'll start off with State v.  
5 Beaulieu.  
6 MR. FELDMAN: Your Honor, that's going to be, I think, a  
7 contested motion on the relatively new good Samaritan law.  
8 THE COURT: I've -- I've read the statute, and I've read  
9 the -- I've read the briefing.  
10 MR. FELDMAN: And I'm ready to go whenever you want. I  
11 have a few people in custody if you want to just deal with  
12 them. They're much --  
13 THE COURT: No, we can --  
14 MR. FELDMAN: -- briefer, but I --  
15 THE COURT: We can do --  
16 MR. FELDMAN: -- do it however you want.  
17 THE COURT: We can work with the folks in custody first.  
18 MR. FELDMAN: Okay.  
19 (Recess at 1:07 p.m., until 2:05 p.m.)  
20 THE COURT: Okay. Beaulieu.  
21 MR. FELDMAN: We don't have a stand for this, Your Honor,  
22 so I'm just going to find a place to prop this up because we  
23 may have to put some stuff down. And we'll just put it there.  
24 THE COURT: Well, let me just ask you a couple of  
25 critical questions --

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1 MR. FELDMAN: Yes.  
2 THE COURT: -- first. I don't have the statement of --  
3 MR. FELDMAN: And Your Honor, I brought those as  
4 exhibits. So I'm going to enter, for identification purposes,  
5 if Madam Clerk would give me a little defendant's sticker,  
6 please. Or I can just handwrite it.  
7 THE CLERK: No, have a sticker.  
8 MR. FELDMAN: Thank you very much. The -- this will be  
9 Defense Number 1. This is the witness' statement. And  
10 Defense Number 2 would be the police report.  
11 (Defendant's Exhibits 1, 2 Marked)  
12 MR. BARRY: Can I ask counsel to show those to the State?  
13 MR. FELDMAN: Of course.  
14 THE COURT: Yeah.  
15 MR. FELDMAN: But they came from discovery.  
16 THE CLERK: What was number 1, sir?  
17 MR. FELDMAN: That is the Brunswick victim -- Brunswick  
18 Police Department victim witness statement of Jennifer Dunning  
19 (phonetic). I -- allow me just to show them to counsel first,  
20 and then I will --  
21 THE CLERK: Thank you.  
22 MR. FELDMAN: Your Honor, don't denying me using the  
23 whiteboard. I -- I brought it all the way over here.  
24 THE COURT: I'm -- I'm not --  
25 MR. FELDMAN: I had to go --

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1 THE COURT: I'm not going to --  
2 MR. FELDMAN: -- buy --  
3 THE COURT: -- but I just want to frame it, just so we  
4 don't --  
5 MR. FELDMAN: Yes.  
6 THE COURT: -- spin our wheels. The -- so we're here on  
7 22-03439.  
8 You okay with those?  
9 MR. BARRY: Yes. Yes.  
10 THE COURT: Thank you.  
11 22-3439 which is the defendant's motion to dismiss. I  
12 understand procedurally the way this statute's supposed to  
13 work is he has the burden -- he has to provide some evidence  
14 to establish immunity. Then you have the burden -- the -- the  
15 burden shifts to the State approving by clear and convincing  
16 evidence that the grounds for immunity do not apply. And then  
17 I can hear testimony and make factual legal findings as  
18 necessary to determine immunity.  
19 So my first question for you, Attorney Feldman, is -- is  
20 what you're doing now with your whiteboard is you're -- you're  
21 meeting your initial burden --  
22 MR. FELDMAN: That's correct.  
23 THE COURT: -- to present the evidence?  
24 MR. FELDMAN: The statute says that the defendant must  
25 file a motion, which I've done --

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1 THE COURT: Yes.  
2 MR. FELDMAN: -- and then establish with evidence, it  
3 doesn't say what kind of evidence, but we can ignore that for  
4 the moment, that there is application of the statute. And so  
5 I'm prepared to do that, Your Honor, with these two exhibits.  
6 And I can explain literally where there I think you'll find  
7 it, the information that I think establishes the elements of  
8 the statute which I'm -- that's why I've got the whiteboard  
9 out just because I think there's a few moving parts, and we  
10 may just want to keep track of.  
11 MR. BARRY: And Judge, both of these are hearsay  
12 statements. I'm not going to object for purposes of this  
13 hearing because I just don't think there's any legs with it,  
14 so we might as well just resolve it today.  
15 THE COURT: Okay. And then thank you for doing that.  
16 MR. BARRY: Sure.  
17 THE COURT: It sort of cuts to the chase.  
18 MR. FELDMAN: I -- I was kind of hoping he would, so we  
19 might get a -- a ruling on that right off the bat. But I  
20 appreciate that.  
21 THE COURT: And then the burden would shift to you. Why  
22 don't we hear and then we'll decide what you want or need  
23 to -- to then meet your burden if we need witnesses or not.  
24 We'll just start with the threshold question.  
25 MR. FELDMAN: Sure.

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1 MR. BARRY: Me too.  
2 THE COURT: Where -- where's -- where do we see that he's  
3 dispatched because of a medical emergency?  
4 MR. FELDMAN: Great. So the statute is kind of poorly  
5 written. And if Your Honor has done some civil work, as I  
6 understand you have, you may be familiar with 14 M.R.S.A. 556,  
7 the anti-SLAPP statute. It's written sort of the same way.  
8 It just starts out with the information up front and then  
9 provides the rest of the detail. The operator part of the  
10 statute is right up front, Your Honor, where it explains what  
11 we're doing here. It says, when a medical professional or a  
12 law enforcement officer, and I think we all admit that we have  
13 a law enforcement officer in this case, is -- has been  
14 dispatched to the location of a medical emergency, right, and  
15 there are a couple of other things, the following provisions  
16 apply. Okay?  
17 THE COURT: But -- but our missing link right now is we  
18 don't know what -- at this point, all we know about the police  
19 officer is that he went to -- we don't even know how he -- why  
20 he's there, do we, from his --  
21 MR. BARRY: We do, Judge. It's in his report. But what  
22 document is he referring to? I'm confused. Is he referring  
23 to the witness statement or the police report?  
24 MR. FELDMAN: Which part?  
25 THE COURT: I --

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1 THE COURT: Okay?  
2 MR. FELDMAN: Okay.  
3 THE COURT: So go ahead, Attorney Feldman.  
4 MR. FELDMAN: Thank you, Your Honor. You'll see from  
5 Defendant's Exhibit 1, which was written as it can be seen  
6 after the fact of what happened, that the complaining party  
7 reached out to the police. So she essentially is the -- oh,  
8 now my pen's not going to work after all that. I just bought  
9 these pens. Let's try a different pen.  
10 She is the dispatch, and she alleges a medical emergency.  
11 I think it might be the board. Now, the problem we have is  
12 that she, in and of herself, does not -- isn't that great?  
13 Let's try this. She does not dispatch, but she's not -- we  
14 don't know what dispatch means in the statute. We haven't  
15 been told what dispatch means.  
16 But for the sake of argument, we're going to assume, I --  
17 I think, Attorney Barry can argue otherwise, it does not  
18 require the officer to be dispatched from a regional command  
19 center. But he's dispatched. He's given information, and he  
20 goes to see about a medical emergency. That establishes two  
21 out of the three elements we need.  
22 MR. BARRY: Judge, can I --  
23 THE COURT: So wait --  
24 Hold on just a second.  
25 I -- you've lost me, attorney.

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1 MR. FELDMAN: I just read you from the statute itself.  
2 THE COURT: I -- I know. I understand that. But -- but  
3 I'm -- but I'm trying to get the evidence here. We -- we --  
4 we have her indicating that she was worried that the driver  
5 was having a medical event. I understand that. But do we --  
6 MR. FELDMAN: Right.  
7 THE COURT: But -- but what we don't know -- so she went  
8 and found an officer at the Brunswick Police Station, had  
9 notified, sent, who was properly check on this person.  
10 MR. FELDMAN: Well, why don't I actually give you my  
11 narrative the way I think the evidence unfolds. So --  
12 MR. BARRY: Can I just -- just ask a question? He keeps  
13 referring to the dispatcher. I don't think that witness is a  
14 dispatcher.  
15 MR. FELDMAN: Well, it doesn't use the word, dispatcher.  
16 It uses the word, dispatched which means --  
17 THE COURT: Okay.  
18 MR. FELDMAN: -- sent to. So --  
19 THE COURT: So -- so I understand -- I -- now, I  
20 understand.  
21 So why don't -- Attorney Feldman, why don't you just sort  
22 of -- why don't you take --  
23 MR. FELDMAN: Let me do the --  
24 THE COURT: -- us through your --  
25 MR. FELDMAN: -- roadmap?

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1 THE COURT: -- your -- your view of it?  
2 MR. FELDMAN: We have a -- a motorist who's driving on  
3 the highway. She sees a car on the side of the road which she  
4 remarks on. Goes and has dinner. Comes back, sees that car  
5 still there. So now she's worried that something's happened  
6 to the person who's on the side of the road. So she goes and  
7 finds a police officer, explains her concerns, and as you see  
8 from her letter, is trying to, or did express, that she's  
9 worried about a medical emergency. That -- those are her  
10 words, not mine.  
11 THE COURT: We're -- we're referring to her statement  
12 here?  
13 MR. FELDMAN: Correct.  
14 THE COURT: The information we have on her statement?  
15 MR. FELDMAN: Yes.  
16 THE COURT: Okay.  
17 MR. FELDMAN: And so from there, we get the fact that a  
18 law enforcement officer has been communicated to and that is,  
19 in terms of how the statute works, the dispatch, right? We  
20 don't need the regional communications center to be the  
21 dispatch. We just need someone to alert the officer of a  
22 medical emergency.  
23 He then shows up and his report, Your Honor, it says that  
24 he suspects it's a drug overdose. Now, the -- all the  
25 elements right there. The only thing we do not have, and I

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1 station? Do we know what she said to the police officers?  
2 And do we know what the police officer was going to do at the  
3 time, Ofc. Scott?  
4 MR. FELDMAN: We have the police officer's report which  
5 again I submitted as Exhibit 2 which indicates what the police  
6 officer did. He takes the report and goes to the location.  
7 When he arrives, he finds things that lead him to believe that  
8 he is looking at a suspected drug-related overdose. He then  
9 proceeds on the scene -- all of this is on the scene, he has  
10 not retreated which the statute essentially would require him  
11 to do if he's going to charge an exhibited -- or a charge that  
12 is not exempted.  
13 He then collects all that information that he's now going  
14 to be using against Mr. -- Mr. Beaulieu in this matter on the  
15 scene or as a direct result of that. And therefore, that's  
16 why the statute applies. So I found a pen that does write,  
17 and I'm prepared to sort of go through each individual step if  
18 you -- if and when you think you'd like me to do that.  
19 THE COURT: Okay. So before you do that, let's turn  
20 to -- so just to make sure I understand, what you're asking me  
21 to do, the full sum of evidence I have are Exhibits 1 and 2,  
22 right?  
23 MR. FELDMAN: That is the evidence. It is --  
24 THE COURT: That's the evidence I'm making my decision  
25 based on. And then --

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1 suppose that, you know, again I -- I think there's literally  
2 no case law on this, so we're setting the bar here. The  
3 dispatch, the medical emergency is not contemporaneously --  
4 contemporaneous necessarily with the suspected drug-related  
5 overdose. But the officer immediately forms the opinion that  
6 he's looking at a substance-related overdose. How do I know  
7 that? It's in his own report.  
8 THE COURT: So your argument is, I'm looking at the  
9 statute now --  
10 MR. FELDMAN: Right.  
11 THE COURT: -- first of all, your client is a protected  
12 person --  
13 MR. FELDMAN: Well, we --  
14 THE COURT: -- as defined by the statute. This --  
15 MR. FELDMAN: We haven't got to that part yet, but yes.  
16 THE COURT: I'm -- I'm assuming that's because he's the  
17 one having the overdose. And the statute says, the following  
18 provisions apply to any protected person at the location when  
19 the medical professional or law enforcement arrives. The  
20 preface is when I -- when the law enforcement officer has been  
21 dispatched to the location of a medical emergency to -- in  
22 response to a call for assistance for a suspected drug-related  
23 overdose.  
24 So the question is, do we have any information as to what  
25 happened between the time Ms. Dunning went to the police

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1 MR. FELDMAN: For the initial prima facie showing that  
2 the defendant is required to be.  
3 THE COURT: Right.  
4 MR. FELDMAN: Correct.  
5 THE COURT: So the evidence you're seeking to exclude  
6 from this is the -- anything that was the grounds for arrest  
7 or prosecution that was collected at the scene, right?  
8 MR. FELDMAN: Well, and to be very clear, Your Honor,  
9 this is not a motion to suppress. This is a motion to  
10 determine immunity from --  
11 THE COURT: Right.  
12 MR. FELDMAN: -- the entire -- so everything that was  
13 collected is going to be used against Mr. Beaulieu is  
14 anticipated by the statute to just make him immune. It  
15 doesn't matter whether there's evidence. We don't have to  
16 submit to -- I mean, I guess at some point, we might argue  
17 about that.  
18 But really, what we're arguing about is whether he meets  
19 the statute and the State can prove that he -- by clear and  
20 convincing evidence, somehow that doesn't apply. What happens  
21 next is, in fact, that the case just gets dismissed by Your  
22 Honor presumably or the State directs the -- the -- the -- the  
23 Court directs the State. I'm not exactly sure how we're going  
24 to do that, but we can deal with that when we get there.  
25 THE COURT: Okay. Do --

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1 MR. FELDMAN: So I'll read into the record if Your Honor  
 2 would like me to the part I think establishes what I'm trying  
 3 to --  
 4 THE COURT: Sure. Go ahead.  
 5 MR. FELDMAN: So if I might the -- fortunately, it's  
 6 easier for me to use the exhibits. I can use my notes.  
 7 THE COURT: You can use the exhibits if you want.  
 8 MR. FELDMAN: Okay. In Defense Exhibit -- Defendant's  
 9 Exhibit 1, which is the statement of Jennifer Dunning who is  
 10 undisputedly the person who reports her concerns, she said  
 11 that she was driving north on 295 and noticed a vehicle parked  
 12 a little sideways on the left-hand shoulder which I thought  
 13 was a little odd. After dinner with my family, on our way  
 14 home, I noticed the vehicle was still there almost two hours  
 15 later.  
 16 I was very worried the driver was or had a medical event  
 17 and so that's a -- a sic, was -- had a medical event, but  
 18 anyway. I went to find an officer at the Brunswick Police  
 19 Station and notified Ofc. Scott who was -- was to promptly  
 20 check on this person and vehicle. So right there, Your Honor,  
 21 you have a dispatch that she went and found an officer and  
 22 told him what was going on and a medical emergency.  
 23 She uses the term, medical event, but she said she's very  
 24 worried the driver had a medical event. So right there, we  
 25 have our dispatch, we have our medical emergency. What we

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1 shut, and then here comes the important part. From my  
 2 training, education, and experience, this behavior is  
 3 consistent with drug use. So what we have is a medical event  
 4 and suspected drug-related problems. We don't have to have an  
 5 actual overdose. We have to have a medical event -- a -- a  
 6 suspected drug overdose, and that's what we have here. Is it  
 7 the most wonderful example of evidence showing that? No. But  
 8 that's what we're here for is by a preponderance of the  
 9 evidence which is the standard that we must apply in the  
 10 circumstance, we have the elements of that right here. The  
 11 only thing we don't have, Your Honor --  
 12 THE COURT: So why -- that's an important question,  
 13 Attorney Feldman.  
 14 MR. FELDMAN: Yes.  
 15 THE COURT: It's -- when -- it says, has presented  
 16 evidence to establish immunity.  
 17 MR. FELDMAN: Right.  
 18 THE COURT: I -- I -- I -- from your perspective, that's  
 19 a more likely than not standard?  
 20 MR. FELDMAN: So we go to Rule -- Rule -- Maine Civil  
 21 Procedure -- I'm sorry, Unified Criminal Procedure 1(3) that  
 22 tells us what to do when we don't have procedure outlined in  
 23 our -- in our statute. That's where we are. It says, follow  
 24 whatever procedure you think makes sense that's not  
 25 inconsistent with constitutional principles and does not

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1 don't have from her notes, from her evidence, is how do we  
 2 know it's a suspected drug-related overdose? Great. Let's  
 3 move on to Defense Exhibit Number 2 which is the report of  
 4 Ofc. -- Patrol Ofc. Patrick Scott who said when he arrived,  
 5 this is on page 1, I approached the vehicle and saw a male  
 6 slumped over, which I think is supposed to be slumped, with  
 7 his head between his knees.  
 8 He was slumped over so far, it looked like it would be  
 9 extremely uncomfortable for a person. The window was down.  
 10 It was raining, and his clothes looked wet. I reached into  
 11 shake the male in order to arouse him. He sat up with a long  
 12 blob of drool hanging from his mouth. Well, so then it says,  
 13 I'm sorry.  
 14 Let me start at the very beginning which is a female  
 15 later identified as Jennifer Dunning said that she would like  
 16 me to check on a broken down motor vehicle that was on the jug  
 17 handle of Outer Pleasant Street which had been there for about  
 18 an hour and she was unsure. So then he arrives on the scene.  
 19 I left that part out. I apologize. He -- he says, I began to  
 20 speak with the male and asked if he was all set. The male's  
 21 speech was heavily slurred and he mumbled so much, I could  
 22 only hear him now and then. I told him multiple times to  
 23 speak up.  
 24 His pupils were very small. His eyelids were droopy.  
 25 While he was speaking to me, his eyes constantly opened and

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1 violate -- otherwise violate the rules. Not very helpful  
 2 there.  
 3 What we essentially have here is, because of the way the  
 4 statute is written, we know that the defendant's burden has to  
 5 be less than the State's burden because we know the State's  
 6 burden is clear and convincing evidence. The legislature  
 7 would have told us that the State bears -- the -- the  
 8 defendant would bear that burden if that's what they were  
 9 anticipating. So the only thing that leaves us is a baseline  
 10 level of more likely than not.  
 11 THE COURT: And -- and essentially --  
 12 MR. FELDMAN: And that --  
 13 THE COURT: -- essentially --  
 14 MR. FELDMAN: -- for --  
 15 THE COURT: -- the prima facie case?  
 16 MR. FELDMAN: That's right. And that confer -- confer,  
 17 sorry, that conforms with similar procedures the State has  
 18 done or the law court has approved of in State v. James  
 19 (phonetic) when they're talking about a probation revocation  
 20 motion. I'll give you the citation on that. And then -- one  
 21 second, Your Honor.  
 22 THE COURT: I'm familiar with State v. James.  
 23 MR. FELDMAN: Okay. And then there's a case, sort of  
 24 follows up on State v. James which is the companion case on a  
 25 motion to revoke -- or sorry, not motion to revoke, a hearing

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1 on deferred disposition -- deferred disposition agreement  
 2 which is State v. Palmer 2016 ME 120. State v. Palmer which  
 3 essentially is the companion case to James. Both of which  
 4 indicate essentially this is going to be the procedure  
 5 where -- where due process has to be -- so State v. James says  
 6 there's got to be a minimum due process. But it doesn't have  
 7 to be nonhearsay evidence. It doesn't have to be all that.  
 8 And obviously due process does not apply to the State the same  
 9 way it would with defendant. So what we have here by sort of  
 10 circumnavigation is that we have to have a more likely than  
 11 not prima facie standard here.  
 12 THE COURT: Okay.  
 13 MR. FELDMAN: We're left with nothing else frankly.  
 14 THE COURT: Right.  
 15 MR. FELDMAN: So the -- the -- the sort of missing link  
 16 of our causal connection to apply the statute, however, is the  
 17 way the statute is written is that these things are supposed  
 18 to sort of happen contemporaneously. A dispatch, a medical  
 19 emergency, and a suspected drug-related overdose have to  
 20 happen at the same time. But we don't know what that time  
 21 frame is. So we don't know that Ms. -- that the reporting  
 22 witness suspected a drug-related overdose. In fact, we don't  
 23 know that she has any reason to believe that. But as soon as  
 24 the police officer shows up, and you can see from his report,  
 25 he's suspecting that --

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1 where somebody called to say, here we are. I know there's  
 2 been a drug overdose. I wouldn't call but for the fact that I  
 3 know I'm not going to get arrested, right? And that's what we  
 4 think the statute is literally designed to do.  
 5 THE COURT: Right. But she --  
 6 MR. FELDMAN: But --  
 7 THE COURT: -- wasn't in that position. She was --  
 8 MR. FELDMAN: That's right.  
 9 THE COURT: -- just a good Samaritan.  
 10 MR. FELDMAN: That's right. But we know for a fact that  
 11 the legislature recently expanded that to include more people.  
 12 And that's exactly who Mr. Beaulieu is. He's the person who  
 13 it's been expanded to protect. How do I know that? Because  
 14 the Senate actually called their bill an act to strengthen  
 15 Maine's Good Samaritan laws concerning a drug-related  
 16 medical -- concerning drug-related medical assistance is the  
 17 title of the act. That's the regular session legislative  
 18 docket 1862 (SP 661).  
 19 Okay. Now, that in and of itself, that's not part of the  
 20 statute. I understand that. But what we're trying to do is  
 21 get to the -- to what it is we're talking about here. And  
 22 that act, according to the bill summary, states that the bill  
 23 is -- extends the good -- the State's good Samaritan laws by  
 24 exempting from arrest or prosecution for a nonviolent offense  
 25 or for a violation of probation or condition of release a

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1 THE COURT: So -- so --  
 2 MR. FELDMAN: -- the person had a --  
 3 THE COURT: -- you're saying that --  
 4 MR. FELDMAN: -- drug overdose.  
 5 THE COURT: -- enough. Even if the law enforcement  
 6 officer was summoned for some garden variety medical event,  
 7 the fact that once he got there, he observed an overdose,  
 8 that's what -- that you're -- you're suggesting that's enough?  
 9 MR. FELDMAN: Yes. And I'd rather have a stronger case  
 10 to test it with. But this is where we are. And one of the  
 11 ways we know that, Your Honor, is because we know what the  
 12 statute's designed to do. It's designed to have -- overcome  
 13 the hesitation people would have calling someone to say,  
 14 there's been a drug-related overdose.  
 15 THE COURT: But is that policy served when somebody is  
 16 just, like, you know, if I'm just calling somebody because  
 17 they look sick or they've had a heart attack, does that have  
 18 any -- is -- is the policy being served? I -- I wouldn't ever  
 19 hesitate from doing that because it's the calling about a drug  
 20 overdose that would make people hesitate that the statute's  
 21 intended to overcome. If she's just calling because  
 22 somebody's -- looks ill, then does the policy and the statute  
 23 apply? Is it necessary? Is it protecting anything?  
 24 MR. FELDMAN: Right. So the reality is is that we  
 25 don't -- this is not that case, right? This is not the case

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1 person at the location of a drug-related overdose for which  
 2 medical assistance was sought or Naloxone, I never say that  
 3 right, was administered.  
 4 We know medical assistance was sought. Right? She  
 5 doesn't have to know that it's because medical assistance is  
 6 related to the drugs. I understand that is probably the  
 7 primary use of the statute. But there's no reason to believe  
 8 that the legislature intended, and they wrote no language to  
 9 indicate, that those things have to happen in a particular  
 10 order. All we have to have is a dispatch, a medical  
 11 emergency -- for a medical emergency, and a suspected drug-  
 12 related overdose for this law to apply. I believe at this  
 13 point, Your Honor, the defendant has met his burden on a prima  
 14 facie basis of ensuring those things exist. I understand  
 15 there's some concern about exactly how to put that all  
 16 together and I'm happy to answer whatever questions I can out  
 17 of that.  
 18 THE COURT: I'm all set for right now.  
 19 Attorney Barry?  
 20 MR. BARRY: I'm not sure I can follow his logic, Judge.  
 21 I just don't think it's logical. What he's trying to do is  
 22 really bootstrap what happened at the scene with the fact that  
 23 it was a medical emergency drug overdose. And that's not what  
 24 the statute says. This -- he -- he's -- he says that the --  
 25 not the primary purpose of the statute. It is the only



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1 purpose of the statute is medical emergency suspected drug  
 2 overdose. Those are simultaneous.  
 3 According to the officer's report, he said he met this  
 4 witness in the parking lot, and she would like him to check on  
 5 a broken down motor vehicle and said it had been there  
 6 about -- for about an hour. She was unsure if anyone was even  
 7 inside. Her statement was written after the incident. It  
 8 wasn't written simultaneously and handed it to the officer. I  
 9 suspect the officer, when he got that -- when he talked to  
 10 her, he immediately went to the scene.  
 11 But the most important thing is the statute is so clear  
 12 when it says, not a medical emergency. But it has to be a  
 13 medical emergency in response to a call for assistance for a  
 14 suspected drug-related overdose. I don't see how you can  
 15 dissect those. I think they go together. And -- and  
 16 clearly in this case, there is zero evidence that there was  
 17 suspected drug use until the officer arrived on scene and then  
 18 observed the victim and the defendant. And then at that  
 19 point, suspected he might be under the influence. But he  
 20 hasn't met his burden at all, Judge.  
 21 THE COURT: Okay. Thank you.  
 22 So I -- I'm prepared to rule on this. First of all,  
 23 thank you, Attorney Feldman, for making this challenge.  
 24 It's an interesting statute and took me a little while to  
 25 apply. I am looking at the two pieces of evidence I have, the

Page 24

1 every time a law enforcement officer finds someone overdosing,  
 2 does that mean the overdosing is immune -- overdosing person  
 3 is immune?  
 4 I don't read the statute to say that. The statute's  
 5 intended to protect people who otherwise would be scared to  
 6 report an overdose. And I'm not persuaded, based on this  
 7 evidence, that that would have provided protection to Ms.  
 8 Dunning's report with respect to that. So I made a record.  
 9 Attorney Feldman's gung-ho, so he may take this somewhere  
 10 else.  
 11 So is there anything else that you would like me to put  
 12 on the record?  
 13 MR. FELDMAN: Yes, Your Honor. Are you making a finding  
 14 about dispatch?  
 15 THE COURT: Yes. I -- I believe that by the -- whether  
 16 it was the police officer at the police station who went or --  
 17 or he called somebody else, radioed Ofc. Scott who completed  
 18 the report and said, go check out this car, I -- I -- I agree  
 19 with you that he was dispatched.  
 20 MR. FELDMAN: And we agree that there is a medical --  
 21 the -- the word, medical emergency, does not have to be used.  
 22 But we can use the word, medical event, that she's concerned  
 23 about that this meets the level of medical emergency?  
 24 THE COURT: No. This is all I have --  
 25 MR. FELDMAN: Okay.

Page 23

1 two -- the two documents. I'm making a factual finding that I  
 2 do believe I'm taking her statement and what she was thinking  
 3 at the time before she went to the police station and I am  
 4 assuming, for the record, that -- that the -- there's a  
 5 factual determination. I think what she said she was worried  
 6 about at the time is probably more accurate -- even though she  
 7 said it afterward is probably more accurate than what the  
 8 police officer recorded as thinking was the concern at the  
 9 beginning. So I am going to find that she was worried that  
 10 the driver had a medical event and that that's why she went to  
 11 the police officer.  
 12 And I will also find factually that the police officer  
 13 went there to the scene because of her concern that he had a  
 14 medical event. I don't think, however, that the statute  
 15 applies to that scenario. The statute specifically applies to  
 16 when a law enforcement officer dispatches to the location of  
 17 the medical emergency in response to a call for assistance for  
 18 suspected drug-related overdose.  
 19 The purpose of the statute is to make it so people aren't  
 20 scared to call police and say, my friend is overdosing or I'm  
 21 overdosing or somebody else is overdosing. The statue doesn't  
 22 apply in this case because Ms. Dunning would not have been  
 23 intimidated to call about a medical event. It -- that's not  
 24 one of the protected acts by the statute. It does turn out  
 25 that Mr. Beaulieu was having an overdose. But then we get to

Page 25

1 THE COURT: -- is that she said she was worried that he  
 2 had a medical event.  
 3 MR. FELDMAN: Right. And I understand -- what I  
 4 understand Your Honor was saying was, look, we've got this.  
 5 We've got this, and I guess for the sake of -- if we're going  
 6 to appeal this, I should say, we have dispatch. We have a --  
 7 a medical emergency, although I understand you --  
 8 THE COURT: We have a medical event.  
 9 MR. FELDMAN: -- you're not --  
 10 THE COURT: That's --  
 11 MR. FELDMAN: Right.  
 12 THE COURT: -- what we have.  
 13 MR. FELDMAN: And then we do have a suspected drug-  
 14 related overdose. But we don't have the dispatch related to  
 15 the suspected drug overdose which is why --  
 16 THE COURT: We don't have the --  
 17 MR. FELDMAN: -- the statute's --  
 18 THE COURT: -- first sentence. It wasn't in response to  
 19 a call for assistance for a suspected drug-related overdose.  
 20 That's what you don't. That's it.  
 21 MR. FELDMAN: Right.  
 22 THE COURT: You got everything else.  
 23 MR. FELDMAN: Thank you, Your Honor.  
 24 MR. BARRY: Thank you, Judge.  
 25 THE COURT: Thank you.

1 Thanks to both parties for arguing an interesting issue.  
2 MR. FELDMAN: Thank you.  
3 (Proceedings concluded at 2:34 p.m.)  
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1 CERTIFICATION

2 I HEREBY CERTIFY, that the foregoing, pages 1 through 26,  
3 is a true transcript of a CD recorded on Tuesday, December 5,  
4 2023, at the Cumberland County Unified Criminal Docket Court  
5 located at Portland, Maine, of the case entitled, STATE OF  
6 MAINE VS. BILLY BEAULIEU, to the best of my professional  
7 skills and abilities.

8  
9 January 29, 2024  
10  
11

12 Valerie Baxter  
13 Court-Approved Transcriber  
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STATE OF MAINE  
CUMBERLAND, ss

UNIFIED CRIMINAL DOCKET  
LOCATION: PORTLAND  
DOCKET NO: CR-2022-03439

STATE OF MAINE

**INDICTMENT**

v.

**BILLY LEE BEAULIEU**

**COUNT 1: CRIMINAL OUI**

DOB: [REDACTED] 1983

SIN: MEY006856

[REDACTED]  
G: Male Ht: 5'11" Wt: 220 H: Brown  
E: Blue R: White

**THE GRAND JURY CHARGES:**

**COUNT 1:**

**29-A M.R.S. §2411(1-A)(B)(2)**

**Seq No: 12947**

**CRIMINAL OUI**

**CLASS C**

**ATNCTN 449726B001**

On or about August 22, 2022, in Brunswick, Cumberland County, Maine, **BILLY LEE BEAULIEU**, did operate a motor vehicle while under the influence of intoxicants. BILLY LEE BEAULIEU had two previous OUI offenses within a ten year period. BILLY LEE BEAULIEU was convicted of OPERATING UNDER THE INFLUENCE on May 15, 2019 in the Penobscot County Superior Court, Maine, Docket No. PENCDCR 2019-01579 and was convicted of OPERATING UNDER THE INFLUENCE on November 02, 2015 in the Piscataquis County Superior Court, Maine, Docket No. PISCDCR 2015-00173.

DATED: 12/8/22

A TRUE BILL

*Whitney Medina*  
FOREPERSON

REC'D CUMB CLERKS OFC  
DEC 9 '22 AM 9:33

STATE OF MAINE  
CUMBERLAND, ss.

UNIFIED CRIMINAL DOCKET  
LOCATION: PORTLAND  
DOCKET NO. CUMCD-CR-22-3439

STATE OF MAINE	)	
	)	
v.	)	DEFENDANT’S MOTION TO DISMISS DUE TO
	)	IMMUNITY FROM PRESECUTION PURSUANT
BILLY BEAULIEU,	)	TO 17-A M.R.S. §1111-B
Defendant	)	

Now comes Defendant, pursuant to 17-A M.R.S. §1111-B (4) to determine that the defendant is immune from prosecution for the charges in this Complaint/Indictment.

In support thereof, the Defendant states as follows:

1. Defendant was encountered by law enforcement after a report of a vehicle on the side of the roadway for more than an hour.
2. The report was of a car on the side of the roadway-- out of the road-- which the reporter had been there for about an hour, and she was unsure if anyone was inside. The reporter wrote in her Witness Statement “I was very worried the driver was or had [sic] a medical event.”
3. The responding officer notes in his report that “I approached the vehicle and saw a male slum[p]ed over with his head between his knees. He was slumped over so far it looked like it would be extremely uncomfortable for a person. The window was down and it was raining, and his clothes looked wet. I had to reach in and shake the male in order to rouse him. He sat up and a long glob of drool was hanging from his mouth. I began to speak to the male and asked if he was all set. The male's speech was heavily slurred and he mumbled so much I could only hear him now and then. I told him multiple times to speak up throughout the interaction. His pupils were very small and his eyelids were droopy. While he was speaking to me his eyes constantly opened and shut. From my training, education, and experience, this behavior is consistent with drug use.”

4. The officer's report makes clear that he suspected that the suspect, later determined to be the defendant, was indeed potentially suffering from a drug overdose. The report by the good Samaritan expressed concern for a “medical event” even if she did not explicitly reference a drug-related overdose.

### LEGAL AUTHORITY

17-A M.R.S. §1111-B provides immunity from arrest, prosecution and revocation and termination proceedings when assistance has been requested for suspected drug-related overdose. Specifically 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 except in limited circumstances not applicable here, immunity applies for the duration of the response to the medical emergency and end when the medical professional or law enforcement officer leaves the location of the medical emergency. Section 1111-B(4) authorizes this Court to 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.

The immunity provisions of subsections 2 and 3 apply for the duration of the response to the medical emergency and end when the medical professional or law enforcement officer leaves the location of the medical emergency. *Id.* Pursuant to the statute Defendant is a “Protected person” because he was a “person who is experiencing a suspected<sup>1</sup> drug-related overdose.”

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1 It is unclear what it means to experience a “suspected drug-related overdose” but it seems to imply that it is not necessary that when Law Enforcement or Medical personnel arrived, the person suspected of experiencing a drug-related overdose was in fact suffering from an actual overdose. Section 1111-B does have a section of statutory definitions but none of the relevant terms here are defined. The New Mexico Supreme Court, in a different context, has held that Under its ordinary meaning, we find “suspected” is broader than alleged, that a person can be "suspected" of criminal activity regardless of whether the person is subject to custodial interrogation. *State v. Javier M.*, 33 P. 3d 1, 14 (NM 2001).

Wherefore, Defendant requests this Court find that he is immune from prosecution as a protected person under the statute and for other relief this Court finds just and proper.

Dated: October 20, 2023

/s/ Daniel Feldman  
Daniel D. Feldman, Bar #5638  
Law Office of Daniel Feldman, LLC  
277 E Main Street Yarmouth Me 04096  
(207) 370-7073  
email.daniel.feldman@gmail.com

**ORDER**

The Defendant's Motion is:

granted.

denied.

Date:

\_\_\_\_\_  
Judge/Justice Maine Unified Criminal Docket

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Again, in a different context, another court has ruled that “suspected” and “accused” are “dramatically different. In the instant context, "accused" connotes that she is guilty of the crime of theft, as in "you stole the inventory." Whereas, "suspected" means a mere suspicion of having committed the crime, which implies doubt of her guilt, as in the statement which Plaintiff says that the employer actually made.” *Esprey v. Tobacco Plus, Inc.*, 772 So.2d 389, 392-93 (La. Ct. App. 3rd Cir. 2000). At this point the adjective “suspected” may be taken to mean that the immunity applies even when the facts later suggest that there was no actual drug-related overdose.