STATE OF MAINE
CUMBERLAND, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. CUM-23-508

BILLY BEAULIEU,
Appellant

v.

STATE OF MAINE,
Appellee

ON APPEAL FROM THE SUPERIOR COURT

BRIEF OF APPELLEE

JACQUELINE A. SARTORIS
District Attorney

WILLIAM J. BARRY
Assistant District Attorney

State's Attorney Below and
on Appeal

CLIO M. BARR
Student Attorney on Appeal

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

State Statutes:

STATEMENT OF THE ISSUES

1. Is this appeal reviewable before final judgment?
2. Did the trial court correctly deny Appellant's motion to dismiss due to immunity from prosecution pursuant to 17-A M.R.S. § 1111-B, when the concerned citizen/dispatcher informed the police officer that Appellant may have had a "medical event" but said nothing to suggest the incident had to do with a suspected drug-related overdose?

SUMMARY OF THE ARGUMENT

This appeal is interlocutory and not immediately reviewable by this Court, because it does not fall under one of the exceptions to the final judgment rule. Delaying this appeal would not irreparably deprive Appellant of a substantial right.

The trial court correctly denied Appellant's motion to dismiss due to immunity from prosecution pursuant to 17-A M.R.S. § 1111-B because the concerned citizen/dispatcher informed the police officer that Appellant may have had a "medical event" but said nothing to suggest the incident had to do with a suspected drug-related overdose, as required by the statute to properly invoke immunity.

INTRODUCTION AND STATUTORY PROVISION

The text of 17-A M.R.S. § 1111-B (2021) is relevant to the determination of the present case. This law is often referred to as a "Good Samaritan" law, because

it was written to eliminate any hesitation arising due to fear of possible legal consequences that people may have about calling for assistance for suspected drug-related overdoses. The law grants immunity to a category of protected persons who call for assistance, render aid, or are located at the scene when help arrives, and the immunity lasts for the duration of the response, subject to certain key conditions. One required condition for immunity to apply is that the responding medical professional or police officer has been dispatched in response to a call for assistance for a drug-related overdose and not any other type of medical event. The statute 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. 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.
>
> . . . .
>
> 1. Definitions.
> 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 drug-related overdose.
>
> . . . .

2. Immunity from arrest or prosecution. Except with regard to an excluded crime, a protected person is immune from arrest or prosecution for a violation of law if:
A. The grounds for 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 . . . .

17-A M.R.S. § 1111-B (2021).

This case appears to be one of first impression. The only other time this Court has made a ruling in relation to 17-A M.R.S. § 1111-B is in *State v. Tripp*, 2024 ME 12, ¶ 16, 314 A.3d 101, in which the issue was whether the statute as amended applied retroactively, and this Court ruled it did not. The case at bar raises a new issue: Whether someone requesting police assistance – who provides no indication that the request pertains to a suspected drug-related overdose – triggers the immunity provisions of the statute to protect a person from prosecution who is later found to be under the influence of drugs at the scene. The statutory language is clear that immunity is not available under this set of circumstances.

PROCEDURAL HISTORY

On October 27, 2022, the State filed a criminal complaint in the Cumberland County Unified Criminal Docket Court in Portland, Maine, charging Appellant with felony OUI, in violation of 29-A M.R.S. § 2411(1-A)(B)(2). *State of Maine v. Billy Beaulieu*, Cumberland Unified Criminal Docket, Docket No. CUMCD-CR-2022-03439; (A. 1). Appellant failed to appear for his initial appearance on November 15, 2022, and the Court issued a warrant of arrest. (A. 1.)

On December 9, 2022, the Cumberland County Grand Jury returned an indictment for felony OUI, charging that on or about August 22, 2022, in Brunswick, Maine, Appellant operated a motor vehicle while under the influence of intoxicants. (A. 1.) The Appellant had two previous OUI convictions within a ten-year period. (A. 1.)

The warrant for Appellant's failure to appear was executed on March 1, 2023, and Appellant was released on personal recognizance bail on March 6, 2023. (A. 1.) Appellant entered a plea of not guilty to the charge at arraignment on October 17, 2023. (A. 3.) Pursuant to 17-A M.R.S. § 1111-B(4), Appellant filed a motion to dismiss due to immunity from prosecution on October 23, 2023. (A. 3.) Under section 4 of the statute, a criminal defendant may move to have the court make a determination on immunity prior to trial. The defendant has the burden of establishing immunity, and once the defendant has presented evidence to do so, the burden shifts to the State to prove by clear and convincing evidence that the grounds for immunity do not apply. The court then makes a finding on immunity.

In the case at bar, the trial court found that Appellant failed to meet his burden and Justice McKeon denied the motion to dismiss after a hearing on December 5, 2023. (A. 4.) At the hearing, without objection from the State, Appellant offered into evidence Exhibit 1, witness Jennifer Dunning's written

statement, and Exhibit 2, Brunswick Police Officer Patrick Scott's written report. (A. 4, 6.) After considering the evidence, the trial court made three key findings:

1. First, the Court found that Dunning's witness statement, although made after the fact, is a more accurate representation of what she was worried about at the time she asked for police assistance than what Officer Scott thought was her concern, as recorded in his report. (A. 11.) Therefore, the Court made the factual finding that "[Dunning] was worried that the driver had a medical event and that's why she went to the police officer." (A. 11.)
2. Second, the Court found that Officer Scott "went there to the scene because of [Dunning's] concern that [the driver] had a medical event." (A. 11.)
3. Finally, the Court made a legal finding that the statute does not apply to this case: "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 [a] suspected drug-related overdose." (A. 11.) The Court went on to clarify that "[t]he 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. . . . [T]hat's not one of the protected acts by statute." (A. 11.)

After the motion to dismiss was denied, Appellant filed a timely notice of appeal on December 7, 2023. (A. 4.)

STATEMENT OF FACTS

On August 22, 2022, at approximately 9pm, Officer Patrick Scott of Brunswick Police Department was sitting in his patrol vehicle in the police department's parking lot when he was approached by a female, later identified as Jennifer Dunning. (Ex. 2.) In his report, he wrote that Dunning told him she would like him to check on a broken-down motor vehicle that had been parked by the Jug Handle on outer Pleasant Street for about an hour, and she was not sure if anyone was inside. (Ex. 2.) Officer Scott's report makes no mention that she was concerned about a possible medical event or a drug overdose. (Ex. 2.)

Dunning wrote in her witness statement, written on September 24, 2022, that she drove by a vehicle parked a little sideways on the shoulder of the road on her way to dinner with her family, and the vehicle was still there two hours later when she was driving home. (Ex. 1.) She was worried the driver may have had a medical event, so she went to the police station and notified Officer Scott to promptly check on the person and vehicle. (Ex. 1.)

Officer Scott went to the location and saw the parked vehicle, which appeared to have been traveling eastbound from I-295. (Ex. 2.) As Officer Scott approached the vehicle, he saw a man slumped over with his head between his

knees in what appeared to be an extremely uncomfortable position. (Ex. 2.) The window was down and the man's clothes looked wet from the rain. (Ex. 2.) Officer Scott had to reach through the window and shake the man to rouse him. (Ex. 2.) When he sat up, there was a glob of drool hanging from his mouth, his speech was heavily slurred and difficult to hear, his pupils were small, and his eyelids were droopy. (Ex. 2.) Officer Scott had to ask the man to speak up several times during their interaction. (Ex. 2.)

The man verbally identified himself as Appellant and said he had just left his mother's house in Brunswick and was headed to a sober house in Bangor. (Ex. 2.) (The vehicle was headed in the wrong direction toward Brunswick and not Bangor.) (Ex. 2.) Appellant said he was very tired and believed it to be 1:30am and that he had only been parked for about an hour. (Ex. 2.) Officer Scott asked whether he had done any drugs or had anything to drink since he parked, and he replied he had not but said he had taken Gabapentin and Suboxone as prescribed earlier that day. (Ex. 2.) Appellant also confirmed he was not a diabetic and had not suffered any recent head injuries. (Ex. 2.)

Officer Scott believed Appellant's behavior to be consistent with drug use, and based on these observations, began conducting standardized field sobriety tests. (Ex. 2.) Appellant had trouble getting out of the car and displayed a number of clues of impairment. (Ex. 2.) Officer Scott then arrested Appellant and brought

him to the police station, where he found three small baggies in Appellant's sock. (Ex. 2.) Two of the baggies were empty and one had a small rock in it that tested positive for Methamphetamine but failed to register a weight. (Ex. 2.) When Appellant provided two valid breath samples and his breath alcohol concentration showed .00 grams of alcohol per 210 liters of breath, Officer Scott called Officer Bernier, a Drug Recognition Expert, to perform an exam. (Ex. 2.) Officer Bernier ultimately determined that Appellant was under the influence of drugs. (Ex. 2.) The State charged Appellant with felony OUI because he had two prior OUI convictions within a ten-year period. (A. 1.)

ARGUMENT

I. This appeal is interlocutory and not immediately reviewable by this Court because it does not fall under one of the exceptions to the final judgment rule. Delaying this appeal would not irreparably deprive Appellant of a substantial right.

What the Appellant asserts as a threshold procedural matter bears further discussion. This Court has defined interlocutory appeals as generally not reviewable. *State v. Maine State Employees Ass'n*, 482 A.2d 461, 463 (Me. 1984). This is because the "judicially-created rule requiring a final judgment" serves important judicial purposes:

> The reasons for the final judgment rule are many and strong. It helps curtail interruption, delay, duplication and harassment; it minimizes interference with the trial process; it serves the goal of judicial economy; and it saves the appellate court from deciding issues which may ultimately be mooted, thus not only leaving a crisper, more

> comprehensible record for review in the end but also in many cases avoiding an appeal altogether.

Id. at 463-64. For these reasons, this Court has only recognized a few narrow exceptions to the final judgment rule, including the collateral order exception, the judicial economy exception, and the death knell exception. *Id.* at 464.

Appellant argues that this interlocutory appeal should be heard under the death knell exception to the final judgment rule. (Blue Br. 7.) "The death knell doctrine allows an appeal to be taken from an interlocutory order where 'substantial rights of a party will be irreparably lost if review is delayed until final judgment.'" *Moshe Myerowitz, D.C., P.A. v. Howard*, 507 A.2d 578, 580 (Me. 1986) (quoting *Moffett v. City of Portland,* 400 A.2d 340, 343 n. 8 (Me. 1979)). A substantial right is defined as "an important or essential right that merits enforcement or protection by the law."[1]

In the case at bar, Appellant contends that the substantial right that stands to be irreparably lost if this Court refuses to immediately review the trial court's denial of immunity is the right "to be free from the burden of prosecution." (Blue Br. 7, 8.) Appellant draws a comparison to a case in which this Court agreed to immediately review an interlocutory appeal dealing with the right to be free from

[1] https://www.merriam-webster.com/legal/substantial%20right (viewed on August 1, 2024).

double jeopardy. (Blue Br. 8.) In *State v. Hanson*, this Court found the appeal immediately reviewable on the grounds that "[t]he right to be free from exposure to double jeopardy requires that a challenged prosecution be subject to review before the exposure occurs." *State v. Hanson*, 483 A.2d 723, 724 (Me. 1984). However, unlike the right to be free from double jeopardy – which is guaranteed under the U.S. and Maine constitutions – the right to be free from prosecution is not a substantial right afforded any special constitutional or legal protection. Furthermore, Appellant will have the opportunity to argue the issue of immunity after final judgment. Importantly, 17-A M.R.S. § 1111-B does not explicitly provide for interlocutory review, and it appears that the only cases in which this Court has granted review of interlocutory appeals under the death knell exception have been civil cases. Not only is the present case a criminal one but also no substantial right of Appellant's is lost by delaying review until final judgment.

In an analogous case, this Court denied emergency review of an interlocutory order when the appealing party provided no evidence that they would be irreparably harmed or that they would lose the chance to contest the order on later appeal. *See Maine State Employees*, 482 A.2d at 464. Similarly, in the case at bar, Appellant will not be irreparably harmed because he will have the opportunity to raise the question of immunity on appeal from final judgment. Thus, "[n]o

'death knell' will sound if [Appellant] fails to obtain immediate appellate review." *Id.*

II. The trial court correctly denied Appellant's motion to dismiss due to immunity from prosecution pursuant to 17-A M.R.S. § 1111-B because the concerned citizen/dispatcher informed the police officer that Appellant may have had a "medical event" but said nothing to suggest the incident had to do with a suspected drug-related overdose, as required by the statute to properly invoke immunity.

Assuming arguendo that this Court finds the appeal reviewable before final judgment, the trial court's ruling that immunity grounds for dismissal do not apply in the present case should be affirmed. The trial court found that there was a dispatch of an officer and there was a "medical event," but the dispatch was not in response to a call for assistance for a suspected drug-related overdose. (A. 11.) Therefore, not all the elements required for the immunity provisions of the statute to apply are satisfied in the case at bar.

The determination of immunity in the present case hinges on basic statutory interpretation.

> When interpreting a statute, we first look at the plain meaning of the statutory language, seeking to give effect to legislative intent, and consider the particular language in the context of the whole statutory scheme. We construe the language to reach a harmonious result and to avoid absurd, illogical, or inconsistent results. If an ambiguity is found in the statute, we look to the legislative history of the statute to ascertain the legislative intent.

Reagan v. Racal Mortg., Inc., 1998 ME 188, ¶ 7, 715 A.2d 925. In the case at bar, the statutory language is clear, and it is not necessary to look beyond the plain

meaning to conclude that Appellant is not subject to immunity under 17-A M.R.S. § 1111-B.

Reading 17-A M.R.S. § 1111-B in its entirety, it is consistent throughout and should be interpreted accordingly. The first paragraph of the statute refers to "a medical emergency in response to a call for assistance for a suspected drug-related overdose." The words, "medical emergency" and "in response to a call for assistance for a suspected drug-related overdose" must be taken together and cannot be dissected. To do so would change the meaning of the statute entirely.

The first paragraph of 17-A M.R.S. § 1111-B also cites to subsections 2 and 3, stating that the immunity provisions apply to protected persons for the duration of the "medical emergency." Although subsections 2 and 3 do not include the language, "for a suspected drug-related overdose," in order to be consistent with the whole statute, the request for medical assistance must be for a suspected drug-related overdose. To read it otherwise would render the first paragraph meaningless.

Appellant argues that the statute is ambiguous as to whether the person calling for assistance must themselves suspect a drug-related overdose, and, if so, whether that suspicion must be communicated in the call for help. (Blue Br. 11.) On the contrary, the statute makes clear that the person requesting assistance must suspect a drug-related overdose, because law enforcement cannot know the nature

of an incident before an officer arrives on the scene except from what is relayed by the dispatcher. This means that an officer would not be able to respond to a call for assistance for a suspected drug-related overdose without being told by the dispatcher the nature of the incident.

Turning to the case at bar, there is no evidence that Officer Scott was given any notice that the incident involved a suspected drug-related overdose. It was only once he arrived at the scene and began interacting with Appellant that Officer Scott suspected Appellant was under the influence of drugs, at which point he was past the point of initial dispatch and was actively responding to the unfolding event. Moreover, the fact that Appellant was later confirmed to be under the influence of drugs has no bearing on the determination of statutorily granted immunity. What matters to this determination is whether, in the first instance, a suspected drug-related overdose was the impetus for the dispatcher requesting assistance.

For immunity to apply to any protected person at the scene, the dispatcher must in some way identify and represent to the responding officer that there is a suspected drug-related overdose involved. Here, the witness's statement – taken by the trial court as the truest representation of why she sought help – mentions nothing about a drug-related overdose. The witness's concern that the driver may have had a "medical event" conveyed nothing about drugs. The Appellant claims that given the increasingly common occurrence of drug overdoses, a reasonable

person in the witness's situation would suspect that a car off the road may be attributable to the driver overdosing, and this is sufficient reason to invoke immunity. (Blue Br. 12.) This is an untenable application of the immunity statute, because a vehicle operator might haphazardly pull their vehicle over to the side of the road for a variety of medical reasons, such as a stroke, heart attack, or seizure, none of which are covered by 17-A M.R.S. § 1111-B.

If immunity pursuant to 17-A M.R.S. § 1111-B was applied as broadly as Appellant claims it should be, absurd consequences would ensue. For example, a dispatch for any medical event could provide immunity from prosecution for a whole range of crimes, and this was not the intent of the legislature. At the motion to dismiss hearing, Justice McKeon alluded to these consequences, positing: "[e]ven if the law enforcement officer was summoned for some garden variety medical event, the fact that once he got there, he observed an overdose, . . . you're suggesting that's enough?" (A. 10.) He went on to ask, "[i]f she's calling because somebody looks ill, then does the policy and the statute apply? Is it necessary? Is it protecting anything?" (A. 10.) The witness's request for help is not the kind of dispatch meant to trigger immunity protection. This is because there is no reason the witness would have feared that she or the Appellant might get in legal trouble because she asked for police assistance for a medical event, not a suspected drug-related overdose.

17-A M.R.S. § 1111-B serves an important public safety purpose of encouraging people to call for help to prevent overdose deaths without having to make calculations about the legal risk of doing so. However, distinguishing the case at bar from the types of cases to which statutorily granted immunity is intended to apply will not have the chilling effect that Appellant claims. (Blue Br. 13.) This is because the witness's request for police assistance is not the kind of "well-being check" that 17-A M.R.S. § 1111-B anticipates and attempts to protect. (Blue Br. 13.) Thus, public policy weighs in favor of adhering to the plain meaning of the statute and its specific application of immunity.

CONCLUSION

For all the foregoing reasons, the trial court's denial of Appellant's motion to dismiss should be affirmed. This appeal is not immediately reviewable by this Court, because immunity from prosecution is not a substantial right and Appellant would have the opportunity to argue immunity on appeal from final judgment. Moreover, the statutory language is clear: The immunity protections afforded to protected persons pursuant to 17-A M.R.S. § 1111-B are not available unless a law enforcement officer is put on notice by a dispatcher that they are responding to a medical emergency for a suspected drug-related overdose. Accordingly, Appellant is not entitled to immunity from prosecution for the crime of OUI.

Respectfully submitted,

Jacqueline A. Sartoris
District Attorney

DATED: August 5, 2024

William J. Barry, Bar No. 3929
Assistant District Attorney
142 Federal Street
Portland, Maine 04101
barryw@cumberlandcounty.org
(207) 871-8384

Clio M. Barr
Student Attorney

CERTIFICATE OF SERVICE

I, William J. Barry, Assistant District Attorney for Cumberland County, hereby certify that I have this date caused a copy of the foregoing Appellee Brief to be served upon Maxwell Coolidge, Esq. by depositing it in the United States mail, postage prepaid, addressed as follows:

P.O. Box 332
Franklin, ME 04634

DATED: August 5, 2024

William J. Barry, Bar No. 3929
Assistant District Attorney

Clio M. Barr
Student Attorney