

**STATE OF MAINE
KENNEBEC, ss.**

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: KEN-25-571**

**STATE OF MAINE,
Appellee**

v.

**PERCY DIXON,
Appellant**

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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PROCEDURAL HISTORY

On June 25, 2021, the Kennebec County Grand Jury returned an indictment charging Percy Dixon (“Dixon”) with three counts of Aggravated Trafficking of Scheduled Drugs, Class A.¹ (Appendix, 30-31 [A. __]). Prior to trial, the State filed a motion in limine to allow the testimony of a substitute forensic toxicologist regarding the testing of a blood sample at NMS Laboratories in Pennsylvania on June 16, 2025. (A. 33-50). A hearing was conducted on the motion in limine on June 18, 2025. (A. 13). Following that hearing both parties submitted briefs to the motion court. (A. 51-101). The motion in limine was denied by the motion court by written order on September 22, 2025. (*McElwee, J.*) (A. 18-29).

Based on an agreement between the parties, the State filed Count 4, Unlawful Trafficking, Class B.² On October 29, 2025, Dixon entered a conditional “nolo” plea to Count 4, which resulted in a guilty finding by the court. (*Mitchell, J. Daniel*) (A. 14-16). The State dismissed the remaining charges. (A. 14-15). The matter was continued for sentencing. (A. 15). On December 3, 2025, after hearing arguments from both parties, the sentencing

¹ 17-A M.R.S. § 1105-A(1)(K) (2017) for Count 1 and 17-A M.R.S. § 1105-A(1)(B)(1) (2007) for Counts 2 and 3.

² 17-A M.R.S. § 1103(1-A)(A) (2001).

court imposed a sentence on Count 4 of 3 years, with all but 6 months suspended, two years of probation, and the mandatory \$400 fine. (*Mitchell, J. Daniel*) (A. 16). Dixon timely filed a notice of appeal on December 11, 2025. (A. 17).

STATEMENT OF FACTS

On May 19, 2019, Agent Carlton with the Maine Drug Enforcement Agency responded to the suspected overdose death of William Keating (“Keating”). (A. 177). Initially, Agent Carlton reviewed the content of Keating’s cellphone, finding drug-related messages. (A. 178). Through his investigation, Agent Carlton was able to identify Dixon as having the phone number in question, making him the likely source of the fentanyl. *Id.* Agent Carlton messaged Dixon while using the decedent’s phone and posing as Keating, asking to purchase more of the same fentanyl. *Id.* That purchase was arranged for May 20, 2019. (A. 30-31, 178). Dixon indicated that the drugs would be delivered by another individual, Scott Morissette (“Morissette”). (A. 178). Morissette was stopped by investigators and found to be in possession of a half gram of fentanyl. *Id.* While Agent Carlton was interviewing Morissette about his role in facilitating that second transaction, other members of law enforcement went to Dixon’s residence. Agent Carlton eventually arrived, interviewed Dixon, and ultimately informed Dixon that he would be arrested for his involvement in drug trafficking. (A. 178-180).

On May 20, 2019, while Agent Charton was conducting his criminal investigation, a separate investigation was also taking place. Taylor Slemmer (“Slemmer”), an investigator with the Office of the Chief Medical Examiner

(“OCME”) went to the Kincer Funeral Home. (A. 44, 46). OCME is charged by statute with the investigation of all non-natural deaths, including suspected overdose deaths. (A. 165, 167). Once at the funeral home, Slemmer conducted an external examination of Keating’s body. (A. 44, 46). In addition to documenting her observations from that external examination, Slemmer took samples from Keating’s body. (A. 45). It is the standard practice of OCME to draw samples for every case that falls within their investigatory jurisdiction, usually a blood sample. (A. 166). In cases of suspected overdose deaths, the samples may include blood, urine, and vitreous humor—a form of liquid from the eye. (A. 167). Once obtained, these specimens are held by OCME in refrigeration. (A. 169). If toxicology testing is necessary, OCME sends that specimen to NMS Laboratories (“NMS”) in Pennsylvania. *Id.* As part of the OCME investigation in this case, the blood sample from Keating’s body was sent to NMS, where it was received on May 24, 2019. (A. 40).

NMS is a private laboratory that performs toxicological analysis of samples. (A. 117-118). NMS is certified by the American National Standards Institute (ANSI) National Accreditation Board, the College of American Pathologists, and the American Board of Forensic Toxicology. (A. 115). Maintaining those certifications requires the annual evaluation of each individual who works at NMS, as well as an evaluation of the laboratory’s

testing process. (A. 116). It also requires that NMS maintain standard operating procedures (“SOP”) for their testing process. *Id.* Every aspect of the testing process at NMS is covered by a relevant SOP. (A. 117). The customers of NMS include medical examiners, hospitals, law enforcement, and research institutions. (A. 118). No portion of NMS is dedicated to serving law enforcement clients. (A. 119).

The testing process for a blood sample that is received by NMS generally involves five separate stages. (A. 121). These stages are receiving, sampling, screening, confirmation, and forensic toxicologist review. (A. 121). Multiple individuals will be involved in the testing process for any given sample at NMS. (A. 119). The laboratory operates twenty-four hours a day, seven days a week. (A. 157). The number of individuals involved in the testing of any given sample is dependent on the number of submissions being tested, the time that it takes the instrument to analyze a sample, the availability of the testing instrument, and the work schedules of the employees involved. (A. 157).

Generally, and in the case of the Keating blood sample, NMS receives their samples via FedEx. (A. 123). The samples, which are also referred to as a specimen, will arrive in a box that also contains paperwork from the submitting agency that documents what the samples are, who they belong to, and what testing is requested. *Id.* At the receiving stage, each sample is assigned a work

order number, which is generated by NMS and unique to each sample. (A. 122). The sample is labeled with the work order number and a barcode, which is scanned and used to track the sample throughout the lab. (A. 124). As a result of this labeling, each sample is anonymous as it goes through the testing process. (A. 24).

Following receiving, the sample will go to specimen processing. (A. 127). Pursuant to NMS's standard operating procedures, the specimen processors will remove portions of the original or "parent" sample and put them into their own tubes. (A. 127-128). They are tracked through the laboratory by the workorder number and barcode. (A. 129). The number of these smaller samples that are generated will depend on the number of screening tests that will be conducted. *Id.* In the case of the Keating sample, three smaller samples were created to go through three separate screening processes. (A. 128).

The screening process at NMS is designed to detect a "wide range" of compounds and determine what may be present in a sample. (A. 129). The first screening test that was conducted on the Keating sample was done with the Tecan instrument, which is designed to detect barbiturates, cannabinoids, and salicylates, such as aspirin. (A. 130). The sample was loaded into the instrument by an analyst, referred to as the prep analyst. (A. 130, 134). Along with any samples, the analyst also runs quality control samples, which are samples

containing a known drug at a known concentration. (A. 130-131). Once the samples are loaded into the Tecan instrument, the instrument itself does the testing. (A. 132). After the testing process is complete, an analyst, known as the calculating or review analyst, will upload the testing data into the laboratory information management system, where it can be accessed for review. (A. 132, 134). The testing data that is exported from the instrument cannot be modified, although it may be labeled by the analyst. (A. 138-139). Pursuant to NMS SOP, that data is reviewed by two analysts as part of the testing process. (A. 140). They will verify that all acceptance criteria are met to confirm that the test occurred properly. (A. 128). That includes confirming that the composition of the quality control samples is reported correctly. (A. 131). If problems are detected in this review process, the analyst can require that a secondary test be run, or the test be repeated. (A. 138). Any of these actions are recorded as part of the data and are visible to the forensic toxicologist during their review. (A. 139).

Following the analysis by the Tecan instrument, the Keating sample underwent two additional screening tests to identify any relevant substances in the blood. First, the sample was screened for alcohol with a headspace gas chromatograph. (A. 142). The testing process for that instrument was nearly identical, with the prep analyst loading the sample into the instrument, quality

control samples being loaded into the instrument, the instrument conducting the actual testing of the samples, the data from that testing being exported from the instrument, and the data being reviewed by two analysts. (A. 142-143). Second, the Keating sample was tested for several hundred different compounds through liquid chromatography time-of-flight mass spectrometry. (A. 144). As with the other two instruments, the process of loading the sample into the instrument, testing, exporting the results, and reviewing that data was the same. (A. 145).

During the final screening, the results from the instrument indicated the presences of fentanyl or fentanyl-related compounds. *Id.* As result, NMS ran a confirmation test for fentanyl compounds to “verify the findings and quantitate them.” *Id.* When screening detected the presence of fentanyl in the sample, an alert was created in NMS’s system that indicated another test would be necessary. (A. 146). Consistent with NMS SOP, this alert went to the specimen processing department indicating that another sample would be needed. *Id.* The parent sample was taken out of storage, a sample created, and that sample was sent for confirmation testing. *Id.* The instrument for confirmation testing utilized liquid chromatography and mass spectrometry. *Id.* The process for inserting the sample, use of quality control, exporting the data, and review process would have been the same as the process for the three screening

instruments. (A. 146-147). The results of the confirmation test were also uploaded to the lab's information system. (A. 147).

Once all of the testing and secondary review are complete, the forensic toxicologist will conduct a final review of all of the information that was generated through the testing process. (A. 148). This is an extensive process, which includes a review of the testing results from both the screening and confirmatory testing, the quality controls, calibration, documentation from the sending agency, chain of custody, and any communication regarding the sample. (A. 149). This review process is done pursuant to NMS SOP. (A. 148). The forensic toxicologist will review the information for any errors and can recommend additional testing, if necessary. *Id.* If satisfied that the testing has been done correctly and is complete, the forensic toxicologist will create and sign a report documenting those results, which is sent to the client. *Id.*

In the case of the Keating sample, the original toxicologist was no longer employed by NMS. (A. 121). Chelsea Deisher, the witness called by the State at the motion in limine, had conducted a secondary review of the testing that had been done. *Id.* She conducted the full review process that she would normally conduct as the assigned forensic toxicologist. (A. 149). She was able to review all of the same information that was available to the original forensic toxicologist in 2019. (A. 150). She was able to confirm that all of the testing was

done consistently with NMS SOP. (A. 150). As a result, she generated her own report documenting the results of testing. (A. 40-43, 150).

Once the testing process was completed at NMS, a copy of the forensic toxicologist's report was sent to OCME. (A. 170). Those testing results were used by Dr. Funte at OCME to reach his determination as to cause of death. (A. 171). On June 6, 2019, Dr. Funte determined that the cause of death for William Keating was acute fentanyl intoxication. (A. 44).

STATEMENT OF THE ISSUE

- I. Did the motion court err in determining that the instrument-generated data and analyst-generated records from the testing process at NMS Laboratories are non-testimonial?**

SUMMARY OF ARGUMENT

The Confrontation Clause prohibits the introduction of testimonial hearsay in a criminal trial. The instrument-generated data and analyst-generated records from the testing process at NMS are hearsay because they are being offered for the truth of the matter. However, these materials are non-testimonial.

To be testimonial, the primary purpose of a statement must be focused on the court. Instrument-generated data is non-testimonial because it is the result of the internal processes of the instrument. The analyst-generated records are also non-testimonial because the primary purpose of those records is to show compliance with NMS' standard operating procedures. The records showing compliance with standard operating procedures are necessary for NMS to maintain its scientific accreditation.

Additionally, NMS conducts testing for a variety of entities and utilizes an anonymous testing process. Thus, when an individual analyst creates a record of their work to reflect compliance with NMS' standard operating procedures, the analyst has no knowledge that a sample is associated with a particular person, and no knowledge of the purpose for testing. As a result, the primary purpose of the records is not focused on the court or future criminal proceedings and therefore they are non-testimonial.

ARGUMENT

I. The motion court correctly held that the instrument-generated data and analyst-generated records from the testing process at NMS Laboratories are non-testimonial.

The Sixth Amendment to the United States Constitution provides several trial rights to a criminal defendant, including the right “to be confronted with the witnesses against him[.]” U.S. Const. amend. VI. That right is “applicable to the states through the Fourteenth Amendment[.]” *State v. Jones*, 2018 ME 17, ¶ 8, 178 A.3d 481 (citations omitted). This Court will “review de novo the impact of the admission of testimony on the constitutional right to confront witnesses.” *State v. Gleason*, 2025 ME 52, ¶ 11, 339 A.3d 774 (quoting *State v. Judkins*, 2024 ME 45, ¶ 11, 319 A.3d 443).

A. The Confrontation Clause bars the admission of testimonial hearsay in a criminal trial.

Generally, the Confrontation Clause of the Sixth Amendment requires that a witness against a defendant in a criminal trial be present, so the reliability of their testimony can “be assessed in a particular manner: by testing in the crucible of cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 61 (2004). Thus, the Confrontation Clause bars the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the defendant had had a prior opportunity for cross-examination.” *Id.* at 53-54.

The “critical portion of this holding ... is the phrase ‘testimonial statements.’ ” *Davis v. Washington*, 547 U.S. 813, 821 (2006). “It is the testimonial character of the statement that separates it from other hearsay that, while subject to traditional limitations upon hearsay evidence, is not subject to the Confrontation Clause.” *Id.* As a result, “[t]he Clause’s prohibition ‘applies only to testimonial hearsay’— and in that two-word phrase are two limits.” *Smith v. Arizona* 602 U.S. 779, 784 (2024) (quoting *Davis*, 547 U.S. at 823). To trigger a Confrontation Clause analysis, the statement at issue must be testimonial and it must be hearsay.

Recently in *Smith v. Arizona*, the United States Supreme Court reaffirmed that the Confrontation Clause “applies in full to forensic evidence.” 602 U.S. at 783. That case involved drug testing by the Arizona Department of Public Safety (DPS). *Id.* at 789. That testing was done by a chemist who was aware (1) that the drug samples were associated with the defendant, (2) that he was charged with specific offenses, and (3) that the case was headed to trial. *Id.* at 790. Additionally, the chemist “communicated with prosecutors about exactly what items needed to be examined.” *Id.* The results of that testing were documented by the chemist in a report. *Id.* However, three weeks prior to trial, the original chemist was no longer working for DPS. *Id.* Instead, the prosecution called another chemist from DPS, who reviewed the first chemist’s records and then

offered an opinion as to the composition of the substances at issue. *Id.* at 791. The Supreme Court held that the testimony of the second chemist was hearsay, because the prosecution was offering the statements of the original chemist for the truth of the matter. *Id.* at 803. However, they then remanded the case for a determination by the lower court as to whether the statements were also testimonial. *Id.*

In *State v. Gleason*, this Court recently applied the Supreme Court's decision in *Smith* to a case that is very similar to the present appeal. 2025 ME 52, 339 A.3d 774. That case involved the investigation of an overdose death, in which a sample of the decedent's blood was sent by the OCME to NMS Laboratories in Pennsylvania, where it was tested. *Id.* ¶ 5 A toxicology report documenting the results of that testing was authored by forensic toxicologist Chelsea Deisher. *Id.* Those results were then used by OCME in their determination as to cause of death. *Id.* ¶ 8. In addressing the Confrontation Clause claim in that case, this Court concluded that the "data and records of the lab procedures are out-of-court statements being offered for their truth[.]" *Id.* ¶ 22. In doing so, this Court "determined that the hearsay prong of the Confrontation Clause analysis ha[d] been satisfied[.]" *Id.* ¶23. Given the significant similarities between this case and *Gleason*, that same conclusion

should be controlling: the records of the testing relied upon by Deisher in reaching her opinion as a forensic toxicologist are hearsay.

B. The determination of whether a statement is testimonial depends on the primary purpose of that statement.

In *State v. Thomas*, this Court addressed the legal analysis for determining whether a statement is testimonial for the purposes of the Confrontation Clause. 2025 ME 34, 334 A.3d 686. In outlining that analysis, this Court quoted *Smith*:

To implicate the Confrontation Clause, a statement must be hearsay (“for the truth”) and it must be testimonial—and those two issues are separate from each other. The latter, this Court has stated, focuses on the “primary purpose” of the statement, and in particular on how it relates to a future criminal proceeding. A court must therefore identify the out-of-court statement introduced, and must determine, given all the “relevant circumstances,” the principal reason it was made.

Id. ¶ 62 (quoting *Smith*, 602 U.S. at 800-801). This precedent provides the essential framework for the testimonial analysis, which is two-pronged: (1) identify the statement at issue, and (2) assess the primary purpose for which the statement was made.

The Supreme Court has provided guidance for assessing the primary purpose of a statement to determine if it is testimonial. In *Crawford*, the Supreme Court noted that the Confrontation Clause “applies to ‘witnesses’

against the accused—in other word, those who ‘bear testimony.’ 541 U.S. at 51. On that basis, the Court identified a “core class of ‘testimonial’ statements” that included affidavits, depositions, custodial examinations, and prior testimony that was not subject to cross examination. *Id.* at 51-52.

This standard was applied by the Supreme Court in the context of forensic testing in *Melendez-Diaz v. Massachusetts*, in which the Court found that the certificates of analysis for drug testing results were “quite plainly affidavits” and fell within the “core class of testimonial statements.” 557 U.S. 305, 310 (2009). The Court noted that the “*sole purpose*” of the certificate under state law was for admission in court, and the affidavit included that statutory language. *Id.* at 311 (emphasis in the original).

A similar conclusion was reached by the Court in *Bullcoming v. New Mexico*, which involved a surrogate analyst testifying to the defendant’s blood-alcohol concentration based on the testing and report of another analyst. 564 U.S. 647, 654-655 (2011). The Court found the report of the original analyst to be testimonial, as it resulted from when “a law enforcement officer provided seized evidence to a state laboratory required by law to assist in police investigations,” the analyst prepared a certificate based on his testing, and that certificate included legal references regarding its admissibility in court. *Id.* at 665. Although not notarized, the Court found the other “formalities attending

the ‘report of blood analysis’ are more than adequate to qualify [...] as testimonial.” *Id.*

While not reaching the issue of whether the statements at issue were testimonial, the Supreme Court in *Smith* did offer additional guidance to the lower court on remand. Specifically, the Court noted that:

In then addressing the statements’ primary purpose—why [the analyst] created the report or notes—the court should consider the range of recordkeeping activities that lab analysts engage in. After all, some records of lab analysts will not have an evidentiary purpose. The United States as *amicus curiae* notes, for example, that lab records may come into being primarily to comply with laboratory accreditation requirements or to facilitate internal review and quality control. Or some analysts’ notes may be written simply as reminders to self. In those cases, the record would not count as testimonial.

602 U.S. at 802 (internal citations omitted). In essence, the Court noted that to be testimonial, “the document’s primary purpose must have ‘a focus on court.’” *Id.* In the absence of that primary purpose, a statement does not qualify as testimonial.

C. The data generated by the instruments in the NMS testing process are non-testimonial.

When rendering an opinion regarding what substances are present in a blood sample, the forensic toxicologist will review all the data from the testing process at NMS Laboratories. (A. 147-149). This review will include the

instrument-generated data, including the testing results from the screening and confirmation tests, verifying that the quality control samples tested properly, and confirming the calibration of the instrument. (A. 130-131, 149). The testing in this case involved three separate instruments: the Tecan, the headspace mass chromatograph, and a liquid chromatograph for time-of-flight mass spectrometry. (A. 130, 141-142, 144, 146). For all three instruments, once the sample is loaded into the instrument, the instrument does the actual testing. (A. 131-132, 142, 145). Once the testing is complete, an analyst will export that data from the instrument to the laboratory's information management system. (A. 132). That instrument data, including any chromatograms produced in the testing process, cannot be modified when they are exported. (A. 138-139). When the exporting analyst reviews the data, they can add labels and other notations; however, the data itself cannot be modified. *Id.* That data is then stored until the forensic toxicologist conducts their final review. (A. 148).

This Court has previously addressed the Confrontation Clause implications of instrument generated data in the context of Intoxilyzer results. *State v. Tozier*, 2015 ME 57, 115 A.3d 1240; *State v. Beeler*, 2022 ME 47, 281 A.3d 637. In reaching the conclusion that instrument-generated data at issue was not testimonial, this Court noted that:

Unlike such a report drafted by a laboratory analyst who operates sophisticated scientific testing equipment, however, the only actions reflected in a certificate generated by a self-contained breath-alcohol machine are the internal actions of the machine itself.

Tozier, 2015 ME at ¶ 21. Although the three instruments used by NMS Laboratories in the testing process for this case are more complex than an Intoxilyzer device, they all produce testing results without any human involvement in the testing process once the sample is inserted into the instrument. (A. 131-132, 142, 145). That data is then exported from the instrument without any modification. (A. 132, 138-139). This exported data is similarly the result of the “internal actions of the machine itself,” and therefore should be treated as non-testimonial by this Court. *See Tozier*, 2015 ME at ¶21.

D. The records generated by the analysts in the NMS testing process are non-testimonial.

As part of reaching their conclusion regarding the substances in a blood sample, a forensic toxicologist also reviews materials generated by the various employees, mostly analysts, involved in the testing process at NMS. This will include the chain of custody, as well as any communication logs that relate to the sample. (A. 149). These analyst-generated records document the testing process that occurs apart from the instruments and before the review by the forensic toxicologist, including receiving the sample, specimen processing,

loading the sample, exporting the results, and the two sets of analyst review. (A. 119-120, 123-124, 127, 130, 132, 140).

To determine if these analyst-generated records are testimonial, this Court needs to “look at whether the primary purpose of the statement is to establish or prove a fact to be later used at trial.” *Gleason*, 2025 ME at ¶ 23 (quoting *Beeler*, 2022 ME at ¶22).

NMS Laboratories is an accredited laboratory. (A. 115-117). That accreditation is significant, as it involves an external evaluation of the entire testing process at NMS. (A. 116). To maintain that accreditation, the laboratory undergoes an annual review that evaluates every individual employee and the laboratory’s testing process to confirm that both are operating to the standard required for certification. (A. 116). The laboratory is required to maintain SOPs that cover every aspect of their testing process. (A. 116-117). Employees are required to follow those SOPs, the compliance with which is required to maintain accreditation. (A. 128-129).

In terms of the testing process for the Keating blood sample, the sample was received and labeled for tracking pursuant to a SOP. (A. 125). Smaller samples were created by a specimen processor pursuant to a SOP. (A. 128). Those samples were then loaded into each of the three instruments, along with quality control samples, and tested pursuant to a SOP. (A. 146-147). The results

of that testing were then exported to the laboratory information management system pursuant to a SOP. They were also reviewed by two analysts pursuant to a SOP. (A. 140, 147). In short, all human aspects of the testing on the sample in this case were done pursuant to the controlling NMS SOP, which is required for the laboratory to maintain its accreditation.

Because of this accreditation, NMS Laboratories functions as a private laboratory that operates 24 hours per day, seven days a week, performing testing for various other entities, including medical examiners, hospitals, law enforcement agencies, and research institutions. (A. 117-118, 157). No portion of NMS is dedicated to working with law enforcement clients. (A. 119). Instead, every sample that is received at NMS is given a work order number and barcode as a unique identifier. (A. 122). In addition to maintaining the chain of custody for a sample, the work order and barcode make the identity of the sample anonymous to the analyst conducting the test. (A. 122-125). Additionally, there is no information associated with the work order that would provide information about the purpose of testing. (A. 123).

Based on this combination of accreditation, SOP compliance, variety of clients, and anonymity of samples, there is no basis to conclude that the primary purpose of the analyst-generated records in the NMS testing process have a “focus on court.” *See Smith*, 602 U.S. at 802. To the contrary, it appears

impossible for an individual analyst putting a sample in an instrument or exporting data to the information management system to know who the sample is associated with, why a test is being conducted, or that the record they create will become part of a criminal prosecution in another state. For that reason, these materials do not have a primary purpose “to establish or prove a fact to be later used at trial.” *Gleason*, 2025 ME at ¶ 23 (quoting *Beeler*, 2022 ME at ¶ 22). Accordingly, they do not qualify as testimonial for the purposes of the Confrontation Clause analysis.

E. The testimony of a substitute forensic toxicologist is permissible where their conclusion is based solely on records that are non-testimonial.

The State originally filed its motion in limine in this case because the State planned to call a substitute forensic toxicologist at trial. (A. 33-50). The original forensic toxicologist was Denice Teem (“Teem”). (A. 49). By the time that this case was scheduled for trial, Teem was no longer employed by NMS. (A. 121). As a result, Chelsea Deisher (“Deisher”) reviewed all the testing data and prepared her own report. (A. 40-43, 121, 149). Deisher was able to review all the same records that Teem would have been able to review at the time the original report was created. (A. 149-150). Deisher also did not review the original toxicology report prior to her independent review of the records. (A. 150).

For purposes of the Confrontation Clause analysis, Teem and Deisher are effectively in the same position. Both relied upon the data and records that were generated as part of the NMS testing process. In *Gleason*, which also involved Deisher, this Court found that in her role as a forensic toxicologist at NMS, Deisher was effectively in the same position as the substitute chemist in *Thomas*, 2025 ME at ¶ 19. The issue that was left unaddressed by this Court in *Gleason*, which should be controlling here, is whether the information relied upon by Deisher is testimonial. So long as that information is determined to be non-testimonial, the testimony of a substitute forensic toxicologist who conducted her own review and reached her own expert opinion should be admissible.

CONCLUSION

For the foregoing reasons, the State respectfully asks that the judgment be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John P. Risler, Assistant Attorney General, certify that I have sent a native PDF and will mail two copies of the foregoing “BRIEF OF APPELLEE” to Dixon’s attorney of record, Connor Herrold, Esq.

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