

**STATE OF MAINE
PENOBSCOT, ss.**

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: PEN-26-77**

**STATE OF MAINE,
Appellant**

v.

**BRANDON ROSSI,
Appellee**

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

REPLY BRIEF OF APPELLANT

**AARON M. FREY
Attorney General**

**JASON HORN
Assistant Attorney General
State's Attorney Below**

**JASON HORN
Assistant Attorney General
State's Attorney on Appeal
6 State House Station
Augusta, Maine 04333
(207) 446 - 1596**

**KATIE SIBLEY
JOHN P. RISLER
Assistant Attorneys General
Of Counsel**

TABLE OF CONTENTS

Section	Page
Table of Authorities	3
Argument.....	4
I. The order of the court, as a practical matter, excludes all evidence foundational to admissibility of the toxicology and OCME reports	4
II. The motion court abused its discretion by misapplying the “primary purpose” test to determine whether NMS analyst statements are testimonial	7
Conclusion.....	9
Certificate of Service.....	10

TABLE OF AUTHORITIES

Cases	Page
<i>Price v. State</i> , 2010 ME 66, 1 A.3d 426.....	6
<i>State v. Beeler</i> , 2022 ME 47, 281 A.3d 637.....	7
<i>State v. Brackett</i> , 2000 ME 54, 754 A.2d 337	4
<i>State v. Gleason</i> , 2025 ME 52, 339 A.3d 774.....	7
<i>State v. Hernandez-Rodriguez</i> , 2025 ME 9, 331 A.3d 354	7
<i>State v. Miller</i> , 2026 ME 37, 355 A.3d 706.....	7
<i>State v. Smith</i> , 2024 ME 56, 320 A.3d 405	7
<i>State v. Thomas</i> , 2025 ME 34, 334 A.3d 686.....	7
<i>State v. Wilcox</i> , 2023 ME 10, 286 A.3d 1200	7

ARGUMENT

I. The order of the court, as a practical matter, excludes all evidence foundational to admissibility of the toxicology and OCME reports.

Rossi complains of a lack of specificity in what statements are at issue, but the motion court's order is both specific and extensive. (A. 10-30). It ruled that statements of NMS employees regarding compliance with standard operating procedures pertaining to chain of custody, sample creation, and the use of blanks and internal standards (among other things) are all testimonial. (A. 30). Rossi initially feigns ignorance of what types of statements are covered by that order and how many witnesses would really be needed, but then later concedes that the evidence the State would be trying to admit, "pertains to excruciating details,"¹ and is, "vital to [the] foundation" of the forensic evidence. (Red Brief, 42).

The Law Court has stated that appeals from motion in limine rulings may be appropriate in some cases. *State v. Brackett*, 2000 ME 54, ¶ 7, 754 A.2d 337. The *Brackett* Court discussed appeals from rulings about "relevancy, probative value and prejudicial effect" as the sort of rulings that the Law Court is "hesitant to entertain" because such rulings lack "the benefit of a more complete view of the evidence found at trial." *Id.* This case is readily distinguishable given the

¹ Said details were extensively outlined at the motion hearing. (Motion Transcript, 14-22, 25-28, 30, 34-39, 41, 45, 48-50, 52-55, 57).

granular details of the hearing, the order, and the fact that the ruling is of a constitutional dimension that is very unlikely to change, as opposed to the more subjective concerns of pretrial rulings regarding relevance, probative value, and prejudice.

Following Rossi's logic to deny consideration of the State's appeal would leave the State with two options. One, would be to proceed forward to trial in bad faith, knowing that it would not be able to produce all of the witnesses that Rossi acknowledges are foundational to the admissibility of the chromatograms, which are foundational to the toxicology report, which are in turn foundational to the medical examiner's report. This would chance that the trial court, and the Law Court, would entertain a stay of proceedings for an interlocutory appeal of the testimonial ruling to play out while a jury was impaneled and sworn, with double-jeopardy having attached to the proceeding. If that extraordinary stay was denied, the outcome would be a judgment of acquittal, extinguishing the State's right of appeal.

The second option would be to dismiss the death-resulting count in favor of a lesser included offense that does not require toxicology or medical examiner reports. This option would likewise deprive the State of the ability to address this question on appeal and would result in a situation where the issue

is repeated in every overdose death prosecution where NMS is the toxicology provider yet evading review by this Court.²

Rossi argues extensively outside the record that the State could bypass the substantial impediment to prosecution³ simply by creating new witnesses from an in-state lab that hypothetically might be able to perform the same function as NMS.⁴ This ignores the record and the issue under review. The record facts are that the toxicology was performed by an out-of-state laboratory. (M. Tr. 17-21, 61, 63). The issue under review is whether the motion court abused its discretion by denying the State's motion in limine. (A. 10-30). Rossi's unsupported contention that the State could 'just go get different evidence' does not answer whether the motion court erred in its ruling about this evidence.

² The State recognizes that concept is one applied as an exception for when a question has become technically moot. *Price v. State*, 2010 ME 66, ¶6, 1 A.3d 426. That is not the present situation in this case, however, the State is analogizing the predicament and theory of review, as this situation appears to be the only way in which this question can be addressed by this Court.

³ The substantial impediment being an order to produce over a dozen out-of-state witnesses at a cost of well over \$100,000 (M. Tr. 62-64); not just in this case but in every case involving NMS.

⁴ Rossi's various claims and theories regarding NMS and HETL (the State Health and Environmental Testing Laboratory) were never raised below and thus there is no record regarding these claims for appellate review. As to the insinuations and negative characterizations, however, the State would observe there is nothing nefarious about a private laboratory publishing resources for its clients about how its practices comply with current law.

II. Rossi’s state constitution argument is unpreserved and thus without any record upon which to rule.

Rossi acknowledges that the primary purpose test is the controlling law yet tacitly sidesteps discussing whether the motion court misapplied that test. Instead, he argues that the State has somehow made a waiver by not arguing a separate state constitutional basis for the primary purpose test. However, the State has cited and argued the controlling standards under federal constitutional law which this Court has thus far adopted. *State v. Gleason*, 2025 ME 52, ¶ 23, 339 A.3d 774; *State v. Thomas*, 2025 ME 34, ¶62, 334 A.3d 686; *State v. Beeler*, 2022 ME 47, ¶22, 281 A.3d 637. If there is any waiver here, it is by Rossi, which he implicitly acknowledges by proceeding immediately to argue that he should not be required to preserve a state constitutional claim before the motion court. (Red Brief, 31).

When a party fails to “argue to the trial court that the Maine Constitution provides more protection than the federal constitution,” the Law Court consistently declines to reinterpret the Maine Constitution. *State v. Wilcox*, 2023 ME 10, ¶ 9 n.4, 286 A.3d 1200; *State v. Miller*, 2026 ME 37, ¶ 19 n.9, 355 A.3d 706; *State v. Hernandez-Rodriguez*, 2025 ME 9, II n.5, 331 A.3d 354; *State v. Smith*, 2024 ME 56, ¶ 29 n.8, 320 A.3d 405. Here, Rossi never raised an argument under the Maine Constitution before the motion court, he never

argued that the Maine Constitution provided a new or different standard from the federal constitution, and the motion court's (incorrect) order relied only on the federal constitution. (A. 10-30).

While the Law Court has sometimes made exceptions in situations where a state constitutional claim was at least referenced, mentioned, or addressed inadequately at the trial court level, here it never came up at all. Consequently, this Court should not address whether Maine's approach might be, or should be, different from that of the federal constitution for the first time on appeal. If Rossi wanted a different, more stringent standard under the state constitution, then he should have raised that before the motion court.

CONCLUSION

For the foregoing reasons, the State respectfully asks that the motion court's order be vacated, and the State's Motion in Limine granted.

Respectfully submitted,

AARON M. FREY
Attorney General

/s/ Jason Horn

Dated: August 14, 2026

Katie Sibley
John P. Risler
Assistant Attorneys General
Of Counsel

Jason Horn, Esq.
Assistant Attorney General
Criminal Division
Maine Bar No.: 6408
6 State House Station
Augusta, Maine 04333
(207) 446-1596

CERTIFICATE OF SERVICE

I, Jason Horn, Assistant Attorney General, certify that I have sent a native PDF and mailed two copies of the foregoing “REPLY BRIEF OF APPELLANT” to Rossi’s attorney of record, Rory McNamara, Esq.

Dated: August 14, 2026

/s/ Jason Horn

Jason Horn, Esq.
Assistant Attorney General
Criminal Division
Maine Bar No.: 6408
6 State House Station
Augusta, Maine 04333
(207) 446-1596