THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Pen-24-401

STATE OF MAINE
Appellee

v.

AUSTIN DAVIS
Appellant

ON APPEAL from the Penobscot County Unified Criminal Docket

REPLY BRIEF OF APPELLANT

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I. ARGUMENT

A. The trial court erred when it refused to consider the voluntariness of the breath test.

The State argues that "a breath test does not require a warrant or consent so long as there is probable cause for the charge of operating under the influence; therefore, the voluntariness of the breath test does not need to be examined." (Red Br. 7.) Appellant disagrees. While the State cites *Birchfield* and *LeMeunier-Fitzgerald* to support their arguments, they miss the important distinction between the statutes analyzed there and the law in Maine.

In *Birchfield v. North Dakota*, 579 U.S. 438, 1336 S.Ct. 2160 (2016), the Supreme Court examined a North Dakota law which makes refusing a breath test an independent criminal offense. Because there was no right to refuse a breath test, *Birchfield* concluded that this breath test was a valid search, falling under the search incident to arrest exception to the warrant requirement. *See Id*. at 478. In *LeMeunier-Fitzgerald*, this Court also recognized this distinction and "concluded that the heightened minimum penalties, including a mandatory minimum period of incarceration, that may be imposed on a person who refuses to submit to testing if convicted of OUI were not equivalent to an independent criminal offense for refusal a described in Birchfield." *State v. LeMeunier-Fitzgerald*, 2018 ME 85, ¶ 6 (citing *Birchfield* at 438, 1336 S.Ct. at 2169-70, 2186). Conversely, in Maine refusing a breath test is not a criminal offense; instead a refusal triggers

administrative penalties. 29-A M.R.S. §§ 2521(3)(A)-(C) (2025). Mr. Davis argues that this crucial distinction means the *Birchfield* holding is not controlling under Maine state law.

The State cites *LeMeunier-Fitzgerald* to support their argument that warrantless breath tests do not require a defendant's consent.

> The Court has reasoned that a breath test is less intrusive than a blood test, and when balanced against the law enforcement needs of keeping impaired drivers off the roads, it is reasonable, even without a warrant, for a law enforcement officer to require a driver to submit to a breath test if probable cause exists. *State v. LeMeunier-Fitzgerald*, 2018 ME 85, ¶ 13.

(Red Br. 7.) Even if breath-tests are less intrusive than blood tests, that does not mean that a suspect can be required to take a warrantless breath test against their will.

The State argues that police officers should be able to compel a warrantless breath test and support this point by citing the compelling public interest, "criminalizing refusal to submit to a breath test is designed to serve the government's interest in preventing drunk driving, which is greater than merely keeping drunk drivers off the roads and does so better than other alternatives." (Red Br. 8.) This Court has ruled that the public interest is not compelling enough to allow for a violation of a defendant's rights. In *State v. Stade*, the Law Court wrote that while "the State's interest in preventing drunk drivers from operating on our highways is great, the State has no legitimate interest in allowing its law

enforcement officer both to ignore the statutory requirements of the implied consent law and to affirmatively mislead citizens about the consequences of taking or failing to take a blood-alcohol test." *State v. Stade*, 683 A.2d 164, 166 (Me. 1996).

As noted above, Maine's law on implied consent does not require suspects to submit to testing. 29-A M.R.S. § 2521 (2025). Instead, the law provides for administrative punishments for refusals. Id at §§ 2521(3)(A)-(C) (2025). The State acknowledges this, "blood draws require a warrant or some exception to the warrant requirement and that Maine's 'duty to submit' statute does not render a defendant's consent to a blood draw 'involuntary.'" (Red Br. 9.) Even so, the State's brief does not address paragraph nineteen of *LeMeunier-Fitzgerald*, which states,

> The duty to submit does not, however, create a statutory *mandate* to submit to testing. Rather, it provides specific consequences for a driver's decision not to comply with that duty. In order for the consequences for a refusal to apply, the driver must have been provided with a direct and clear explanation of those consequences. *See LeMeunier-Fitzgerald*, 2018 ME 85 ¶ 19 (citations omitted).

By not creating a "statutory mandate to submit to testing," the legislature has clearly given Maine drivers a choice to voluntarily submit to a blood-alcohol test or to accept the administrative consequences of refusal. Because the law contains a choice, the United States and Maine constitutions demand that voluntariness be

assessed. As such, the lower court erred by not determining whether Mr. Davis's submission to the breath test was voluntary. Mr. Davis asks the Law Court to remand this case to the trial court, with instructions that a voluntariness analysis be performed.

B. The Law Court has the authority to adopt a stricter standard for searches under the Maine Constitution than is provided under the United States Constitution.

The State argues, because this Court has previously refused to adopt a more stringent standard for this type of Fourth Amendment search under the Maine Constitution, it cannot not do so now. (Red. Br. 9.) In support of this argument, the State cites footnote seven of *State v. Ullring*, 1999 ME 183, n.7, 741 A.2d 1065. Mr. Davis disagrees as this argument disregards the context of *Ullring* and fails to include an analysis of more recent case-law.

Under *Ullring*, the Law Court determined that a warrantless search, pursuant to a bail agreement, was constitutional under the Fourth Amendment. *See Id*. There, as part of a prior case, Ullring had signed a bail agreement which allowed police to search his place of residence, his vehicle, and his person at any time. *Id*. at 1067. Nearly a month after having signed the agreement, a warrantless search was conducted of his home, where the officers found various forms of contraband. *Id*. At the time, Ullring argued that the search was unconstitutional, that it was not authorized by any Maine Statute, and that he had only agreed to the bail conditions

so that he could be released. *Id*. at 1073. This Court held that the search was constitutional, and that searches conducted pursuant to bail agreements do not violate the Fourth Amendment. *Id*.

The State cites the first part of footnote seven, "[W]e have refused to adopt a different or more stringent standard for searches under the Maine Constitution than is provided under the Fourth Amendment to the United States Constitution." The footnote goes on to say "we are not persuaded that the prohibition against unreasonable searches in the Maine Constitution should be broader than the Fourth Amendment *in this situation*." *Id.* (emphasis added). Indicating that this holding is specific to the context of *Ullring,* but future situations might warrant more stringent standards for searches under the Maine Constitution.

In *Ullring*, the State relied upon the Defendant's signature on a bail bond to conduct a warrantless search. Upon review, the Law Court examined the voluntariness of that statement and determined it was made voluntarily. *Id.* at 1067. In this matter, Officer Haass followed the implied consent protocol but then affirmatively misled Mr. Davis about the consequences of taking or failing to take a breath test test and threatened Mr. Davis with incarceration. State's Ex. A 00:11:02-00:11:11. When Mr. Davis challenged voluntariness, the trial court declined to conduct the analysis. Unless voluntariness is assessed officers are able

to follow the implied consent litany established by the legislature, while still violating the constitutional rights of Maine drivers.

Finally, the question of whether the Maine Constitution offers more protection than the United States Constitution is frequently litigated. In more recent case law, *State v. Hutchinson*, the Law Court held,

> The text of article 1, section 5 of the Maine Constitution provides that 'the people shall be secure…from all unreasonable searches and seizures.' Although this provision and the corresponding provision in the Fourth Amendment of the United States Constitution generally offer identical protection, we have all recognized that the Maine Constitution may offer additional protections. *State v. Hutchinson*, 2009 ME 44, n. 9. (citations omitted).

It is a foundational aspect of constitutional law that the States are free to enact stricter protections than those guaranteed by the United States Constitution. Through Maine's implied consent statute the legislature has provided police officers with a script to follow when conducting chemical tests. Mr. Davis simply asks the Law Court to require officers to follow that script without additional threats or coercive conduct.

II. CONCLUSION

For the reasons set forth herein, Mr. Davis respectfully requests that this Court vacate the lower court's judgment and remand this case with instructions that a voluntariness analysis be performed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

As required by M.R. App. P. 7(c)(1), I have this 27th day of June, 2025 sent a native.pdf version of this brief to the Clerk of the Law Court and attorney Mark Rucci at the email address of record. Upon acceptance by the Clerk of the Law Court, I will deliver ten hard copies to the Law Court and two copies to opposing counsel Mark Rucci at Prosecutorial District V, 97 Hammond St., Bangor, ME 04401.

Dated: June 27, 2025

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