

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Law Court Docket No. Pen-23-502

State of Maine
Appellee

v.

Debbie Anderson
Defendant/Appellant

On appeal from a conviction in the Penobscot County Unified Criminal Court

BRIEF & APPENDIX FOR APPELLANT

Michelle R. King
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April 2, 2024

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PROCEDURAL HISTORY

The Appellant, Debbie Anderson, was charged on March 23, 2021, with one count of Criminal OUI, one prior, pursuant to 29-A M.R.S. § 2411(1-A)(B)(1)[R. 1, 14]. Ms. Anderson entered a not guilty plea on April 22, 2021. [R. 1]. A jury trial was held on September 21, 2023, (Ociepka, J., presiding). [R. 5]. Ms. Anderson's motion for Judgment of Acquittal at the close of all the evidence was denied. [R. 5]. The jury found Ms. Anderson guilty on the charge of OUI. [R. 5]. Ms. Anderson filed a Motion to Dismiss on October 2, 2023, pursuant to 17-A M.R.S. § 12 (the *de minimus* statute). [R. 15]. That motion was denied on October 30, 2023. [R. 13].

Ms. Anderson was sentenced to seven (7) days in the Penobscot County Jail and assessed a fine in the amount of \$700.00. [R. 6]. Ms. Anderson filed a timely Notice of Appeal on December 12, 2023, [R. 7], and the case was subsequently docketed in this Court.

STATEMENT OF FACTS

On January 27, 2021, Debbie Anderson awoke and took her prescribed medications as instructed at approximately 9:00 a.m., except she was unsure if she had taken Gabapentin. [Tr. 56, 125, 127]. Ms. Anderson stated that she had taken her prescribed Vicodin that morning which she had been taking for approximately 30 years due to her numerous back surgeries and that it had never caused her to be

drowsy in the past. [Tr. 126]. However, one medication, Abilify was a new medication to her, and her doctor had directed her to gradually increase her dosage. [Tr. 58, 125]. On the first two days, she was instructed to take only one-half of a pill, and then on this day, which was her third day, she was instructed to double the dose and take one whole pill. [Tr. 125-126].

Later that day she took a friend to the Holden Police Department to file a police report after she was raped. [Tr. 123]. Ms. Anderson waited in her car in the parking lot for her friend. [Tr. 123]. At some point, Ms. Anderson needed to use the restroom but was unable to do so at the police department because she could not do the stairs. [Tr. 130]. Instead, she drove her car to Ledbetter's which was just down the street from the police station. [Tr. 124]. When Ms. Anderson was turning into Ledbetter's parking lot, she started to feel lightheaded, although she had felt fine all morning. [Tr. 124-125]. She pulled her car evenly into a handicap spot but did not pull completely into the spot. [State's Ex. D2].

As Ms. Anderson pulled into the parking spot, Jill Curtis, a cashier at Ledbetter's noticed her vehicle and that it was not completely in the spot. [Tr. 25]. Once Ms. Anderson left her car and went into the store, Ms. Curtis observed that she had problems walking, although she did not know why Ms. Anderson was having trouble walking. [Tr. 26, 35-36]. Ms. Anderson, who observed video of this event in court, testified that her unsteady gait was a result of her many back

surgeries. [Tr. 129]. Ms. Curtis went to help Ms. Anderson by getting her a chair, but Ms. Anderson went into the restroom, which was the reason for her visit to Ledbetter's. [Tr. 26, 124]. While Ms. Anderson was in the restroom, Ms. Curtis called 9-1-1 because she thought Ms. Anderson was having a medical issue. [Tr. 26].

Chief Eduardo Benjamin of the Holden Police Department was interviewing a sexual assault victim at Holden Police Department when he was dispatched to Ledbetter's. [Tr. 44]. Chief Benjamin attended Maine Criminal Justice Academy and is a certified Drug Recognition Expert (DRE). [Tr. 38]. Once at Ledbetter's, Chief Benjamin went to the bathroom door and knocked; Ms. Anderson said, "I'll be right out," and then came out of the restroom. [Tr. 47].

Chief Benjamin noticed that Ms. Anderson was unsteady on her feet and had bloodshot and watery eyes. [Tr. 48]. Ms. Anderson told Chief Benjamin that while she was driving her vision got blurry and that she had taken a new prescription medication, Abilify. [Tr. 48]. Chief Benjamin asked Ms. Anderson if she believed the medication was affecting her, and she said "yes." [Tr. 49]. Chief Benjamin then contacted Holden Fire Department for medical assistance. [Tr. 49]. Ms. Anderson was not taken to the hospital at that time, although later that day she went by ambulance from her home to St. Joseph's Hospital, where she was diagnosed in the Emergency Department with dehydration. [Tr. 50, 128].

At that point, Chief Benjamin believed that Ms. Anderson's medications were affecting her. [Tr. 60]. Because of this belief, Chief Benjamin asked Ms. Anderson to perform Standardized Field Sobriety Tests (SFSTs). [Tr. 61]. The first test Chief Benjamin had Ms. Anderson perform was the Horizontal Gaze Nystagmus (HGN), which tests for involuntary jerk of the eyes. [Tr. 61]. There are three components to this test for each eye, with each positive clue equal to one point. [Tr. 64]. Ms. Anderson scored a 6/6 on this test. [Tr. 66]. Chief Benjamin next had Ms. Anderson perform the Vertical Gaze Nystagmus (VGN) and observed bouncing in her eyes which indicated a high dose of medications. [Tr. 67]. Chief Benjamin also noticed that Ms. Anderson's eyelids were droopy, which he testified was a sign that Ms. Anderson was on a depressant. [Tr. 68].

Chief Benjamin also had Ms. Anderson perform a Modified Romberg Balance test. [Tr. 69]. This test is normally conducted with the person standing up, but in Ms. Anderson's case, Chief Benjamin had Ms. Anderson perform the test while seated in the driver's side seat of her car. [Tr. 69]. Chief Benjamin had Ms. Anderson bring her head back (while seated in the car), close her eyes, and estimate the passage of 30 seconds. [Tr. 69]. Ms. Anderson estimated that 23 seconds was equal to 30 seconds, meaning she was counting slightly faster than time. [Tr. 69]. After this test, Chief Benjamin placed Ms. Anderson under arrest for OUI because he believed she was impaired by medications. [Tr. 77].

Once back at the Holden Police Department, Chief Benjamin had Ms. Anderson perform a breathalyzer test to check for alcohol consumption. [Tr. 81]. Ms. Anderson scored a 00 – meaning she did not have any alcohol whatsoever in her system. [Tr. 81]. Chief Benjamin then conducted a 12-step drug influence evaluation on Ms. Anderson. [Tr. 81-100]. Based upon Ms. Anderson’s performance on the drug influence evaluation Chief Benjamin formed the opinion that Ms. Anderson was impaired by a central nervous system depressant. [Tr. 100]. Nevertheless, the urine sample test, which is step 12 in the procedure and is meant to confirm the opinion of the DRE, was not submitted to the jury in this case.¹

Despite having Ms. Anderson perform these tests, Chief Benjamin admitted that at no time did he observe Ms. Anderson driving a car and that her car, while parked at Ledbetter’s, was more “in” the parking spot than “out.” [Tr. 108]. Chief Benjamin also testified that Ms. Anderson was prescribed the medications found in her purse for a medical condition, and that he could not say whether his observations of her were related to any of those medical conditions. [Tr. 109]. He also testified that common side-effects of Abilify are drowsiness, blurred vision, and having a hard time walking. [Tr. 113].

¹ An objection on Confrontation Clause grounds was sustained and the certificate of analysis was not admitted at trial. [Tr. 106].

ISSUES FOR REVIEW

- I. Whether the lower court erred by denying Ms. Anderson's Motion to Dismiss pursuant the *de minimus* statute?
- II. Whether the lower court erred in denying Ms. Anderson motion for judgment of acquittal because there was insufficient proof of impaired operation of a motor vehicle?

ARGUMENT

I. THE LOWER COURT ERRED BY DENYING MS. ANDERSON'S MOTION TO DISMISS PURSUANT TO THE *DE MINIMUS* STATUTE.

Because the lower court erred by denying Ms. Anderson's Motion to Dismiss her charge under the *de minimus* statute, this Court must reverse that decision. Although this Court generally reviews a denied motion to dismiss under the *de minimus* statute for abuse of discretion, where the lower court errs as a matter of law by failing to address the required statutory factors, this Court need not defer to the lower court's decision. *State v. Kargar*, 679 A.2d 81, 83 (Me. 1996).

Pursuant to the *de minimus* statute, the trial court may dismiss a prosecution if it finds the defendant's conduct:

- A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and

- which is not inconsistent with the purpose of the law defining the crime; or
- B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or
 - C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime.

17-A M.R.S. § 12(1). “Maine’s *de minimis* statute is based on the Model Penal Code and the Hawaii Penal Code, and its purpose is to ‘introduce a desirable degree of flexibility in the administration of the law.’” *Kargar*, 679 A.2d at 83 (*citing* 17-A M.R.S. § 12). As this Court has noted, “The language of the statute expressly requires that courts view the defendant’s conduct ‘having regard to the nature of the conduct alleged and the nature of the attendant circumstances.’” *Id.* (citation omitted).

This Court has adopted the New Jersey and Hawaii courts factors for analysis of a *de minimis* motion:

The background, experience and character of the defendant which may indicate whether he knew or ought to have known of the illegality; the knowledge of the defendant of the consequences to be incurred upon violation of the statute; the circumstances concerning the offense; the resulting harm or evil, if any, caused or threatened by the infraction; the probable impact of the violation upon the community; the seriousness of the infraction in terms of punishment, bearing in mind that punishment can be suspended; mitigating circumstances as to the offender; possible improper motives of the complainant or prosecutor; and any other data which may reveal the nature and degree of the culpability in the offense committed by the defendant.

Id. at 84. “The focus is not on whether the conduct falls within the reach of the statute criminalizing it. ... The focus is on whether the admittedly criminal conduct was envisioned by the Legislature when it defined the crime.” *Id.* The statute “provides a safety valve for circumstances that could not have been envisioned by the Legislature” and “is meant to be applied on a case-by-case basis to unanticipated extenuations, when application of the criminal code would lead to an ordered but intolerable result.” *Id.* (quotation marks omitted). *See also State v. Akina*, 828 P.2d 269, 272 (Haw. 1992) (determining that defendant’s conduct “was too trivial to warrant the condemnation of conviction” and he was entitled to “shield against prosecution”); *State v. Viernes*, 988 P.2d 195 (Haw. 1999) (affirming trial court’s motion to dismiss where defendant possessed 0.001 grams of a substance that contained methamphetamine); *State v. Zarrilli*, 532 A.2d 1131 (N.J. app. 1987) (per curiam) (affirming lower court’s dismissal of alcoholic-beverage charge as *de minimis* where 20-year-old defendant had taken one sip of beer).

Section 12(1)(B) provides strong support for a determination that Ms. Anderson’s conduct was too trivial to warrant a conviction. The unrebutted testimony from Ms. Anderson demonstrated that she had been operating her car without incident earlier in the day, after taking her medications, and had not taken a new medication or an illegal drug; rather, she had increased her dosage of one

medication. A few hours later, while driving a short distance down a heavily-traveled road, Ms. Anderson suddenly felt unwell, the result of either a medical event (as she testified) or intoxication by her prescribed medications (as Chief Benjamin believed). She immediately pulled into a gas station's parking lot and parked her car. The duration of this possibly impaired operation could not have been longer than a few minutes, and the distance traveled was minimal. No one was harmed. The threat of the harm sought to be prevented by this law was trivial, and ameliorated by Ms. Anderson's prompt response of pulling into the gas station as soon as she felt unwell.

Section 12(1)(C), which involves a determination of whether the defendant's conduct could "reasonably be regarded as envisaged by the Legislature in defining the crime," is not easily applied in this case. Legislative records that might illuminate the Maine Legislature's purposes when enacting the current OUI statute, codified at 29-A M.R.S. § 2411, or its predecessors from Title 29 could not be located by either trial counsel or appellate counsel. Nonetheless, it seems reasonably apparent that the aim of the statute is to prevent individuals from beginning to operate motor vehicles after knowingly consuming a known intoxicant if the intoxicating effects are being felt already or if they might reasonably be expected to be felt during operation.

Application of the evidence from trial to paragraph (C) could support a determination that Ms. Anderson's conduct was not within the parameters envisioned by the legislature when it enacted the OUI statute. If it were otherwise, the implicit suggestion would be that someone in Ms. Anderson's situation should abandon his or her vehicle on a busy road as soon as the feeling of possible intoxication arises, walk away from it, and contact a tow truck driver. Of course, the legislature made OUI a strict-liability offense, but conforming one's conduct to the strict letter of the law under these circumstances seems absurd.

Moreover, other factors for consideration, as found by this Court in interpreting the statute, favor a dismissal of this case. Several of those factors are addressed above, but "the seriousness of the infraction in terms of punishment, bearing in mind that punishment can be suspended; [and] mitigating circumstances as to the offender" also favor a determination of a *de minimis* infraction here. Because of Ms. Anderson's prior OUI conviction (from 2016), she faces a mandatory week in jail that cannot be suspended. *See* 29-A M.R.S. § 2411(5)(B). Her only other criminal conviction was for theft in 1980. As she testified at trial, Ms. Anderson is disabled by serious physical infirmities that would make any incarceration exceptionally difficult. Her disability makes her a poor candidate for the multiple-offender program, which may reject her application because she cannot perform significant manual labor.

Nevertheless, in denying Ms. Anderson's motion to dismiss, the trial court did not specifically address the statutory requirements of either Section 12(1)(B) or Section 12(1)(C). [R. 13]. Instead, the trial court summarily determined that Ms. Anderson had knowledge of the illegality of her actions because she had a prior OUI conviction and admitted that she was impaired. [R. 13]. As to the former, Ms. Anderson's prior OUI conviction was for impaired driving while under the influence of alcohol, which has no relation whatsoever to Ms. Anderson's conduct here of taking legally prescribed medications that may have caused a medical reaction. Ms. Anderson's admission that she was impaired is also unrelated to the purpose of the *de minimus* statute – the relevant analysis is whether the impairment suffered by Ms. Anderson² as a result of her medication change is the type of offense the legislature contemplated in enacting the OUI statute. That analysis was not conducted by the trial court.

The trial court did address whether the legislature placed a distance or temporal requirement for operation in the OUI statute and determined that because it did not, Ms. Anderson's operation fit squarely within the OUI statute. [R. 13]. However, the court should consider and information that “reveal[s] the nature and degree of the culpability in the offense committed by the defendant” and in doing so the court must contemplate whether a driver who has a medical reaction to a

² Ms. Anderson does not concede that she was impaired under the OUI statute.

legally prescribed medication and who immediately and successfully pulls out of traffic when feeling the effects of the drug is the type of person who is legally culpable under the statute.

Finally, the trial court addressed the penalty received by Ms. Anderson, here a mandatory jail term, and determined that it would be inappropriate to dismiss the action because the defendant disagrees with the sentence and because the legislature set the penalty by statute. In so doing, the trial court missed the point. This case is the exact type of infraction that the statute contemplated – a policy decision also made by the legislature.

Therefore, because Ms. Anderson’s operation of her motor vehicle in this case squarely fits within the purpose of the *de minimus* statute, this Court should find that the trial court erred by denying the motion to dismiss and reverse Ms. Anderson’s conviction.

II. THE LOWER COURT ERRED IN DENYING MS. ANDERSON’S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THERE WAS INSUFFICIENT PROOF OF OPERATION OF A MOTOR VEHICLE WHILE IMPAIRED.

Because there was insufficient evidence, even in the light most favorable to the State, that Ms. Anderson operated her vehicle while impaired, this Court should vacate her conviction. Maine Rules of Unified Criminal Procedure provide that the court “shall order the entry of judgment of acquittal of one or more crimes charged

in the indictment, information, or complaint after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such crime or crimes. ME R. U. Crim. P. Rule 29. On appeal, this Court will “review the denial of a motion for judgment of acquittal by viewing the evidence in the light most favorable to the State to determine whether a jury could rationally have found each element of the crime proven beyond a reasonable doubt.” *State v. Williams*, 2020 ME 17, ¶ 19, 225 A.3d 751, 758. *See also State v. Chad B.*, 1998 ME 150, ¶ 9, 715 A.2d 144, 147 (*citing* M.R. Crim P. 29(a)) (“A motion for a judgment of acquittal tests whether the State's evidence would permit a fact finder to find that every element of the charged offense had been proven beyond a reasonable doubt.”). In evaluating whether there is sufficient evidence to convict, this Court will review the evidence as a whole, including any defense witnesses and rebuttal witnesses, to determine if the trial court erred. *See State v. Stinson*, 2000 ME 87, ¶ 6, 751 A.2d 1011, 1013–14.

In order to overcome a Motion for Judgment of Acquittal on the charge of Operating under the Influence (OUI), the State must demonstrate beyond a reasonable doubt that the alleged offender “Operates a motor vehicle: (1) While under the influence of intoxicants.” 29-A M.R.S. § 2411 (West 2023). *See also State v. Atkins*, 2015 ME 162, ¶ 1, 129 A.3d 952, 954 (to convict a person of operating under the influence (OUI) the State must prove, beyond a reasonable

doubt, two elements: (1) the person operated a motor vehicle, and (2) at the time of operation, the person was under the influence of an intoxicant).

Here, the proof provided by the State that Ms. Anderson was driving while impaired was lacking. Specifically, although Ms. Anderson stated she was impaired when asked approximately a half hour after she had operated her vehicle, [Tr. 61], she was not asked how she felt while driving. Ms. Anderson did testify that she felt fine all morning, but as she was pulling in Ledbetter's she felt "lightheaded," and thereafter drove immediately into a parking spot. [Tr. 124-125]. Once inside Ledbetter's Jill Curtis observed that Ms. Anderson was unsteady on her feet, an observation that Ms. Anderson stated was an issue with her gait due to multiple back surgeries, [Tr. 129], and which was acknowledged by Chief Benjamin. [Tr. 116].

Furthermore, that Ms. Anderson allegedly performed poorly on her Standardized Field Sobriety Tests and Drug Influence Evaluation also fails to provide any evidence that Ms. Anderson was driving while impaired. At no time did Chief Benjamin make any observations of Ms. Anderson while she was driving. [Tr. 108]. The only evidence whatsoever regarding Ms. Anderson's performance while driving was that she pulled evenly, but three-quarters into a parking spot at Ledbetter's [State's Ex. D2] – hardly evidence sufficient to prove impaired driving beyond reasonable doubt. *Williams*, 2020 ME at ¶ 19.

Consequently, because even in the light most favorable to the State, there was insufficient evidence to demonstrate that Ms. Anderson drove while impaired by intoxicants, this Court must reverse her conviction.

CONCLUSION

For the foregoing reasons, this Court should vacate Ms. Anderson's conviction.

April 2, 2024

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CERTIFICATE OF SERVICE

I, Michelle R. King, attorney for Debbie Anderson, hereby certify that on this date I made service of two copies of the foregoing Brief and Appendix, by email and First-class mail, to the following counsel:

Dated: April 2, 2024

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APPENDIX TABLE OF CONTENTS

Docketing Record 0001

Judgment and Commitment.0009

Order Denying Motion to Dismiss 0012

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Motion to Dismiss 0015

STATE OF MAINE
v.
DEBBIE ANDERSON
[REDACTED]

CRIMINAL DOCKET
PENOBSCOT, ss.
Docket No PENCD-CR-2021-00760

DOCKET RECORD

DOB: [REDACTED]/1959

Attorney: MICHELLE KING
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PO BOX 7030
183 MIDDLE STREET SUITE 400
PORTLAND ME 04112-7030
APPOINTED 01/22/2024

State's Attorney: MARIANNE LYNCH

Filing Document: CRIMINAL COMPLAINT
Filing Date: 03/08/2021

Major Case Type: MISDEMEANOR (CLASS D,E)

Charge(s)

1 OUI (DRUGS OR COMBO), 1 PRIOR 01/27/2021 HOLDEN
Seq 12945 29-A 2411(1-A)(B)(1) Class D
BENJAMIN / HLN

Docket Events:

03/23/2021 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 03/08/2021

03/23/2021 Charge(s): 1
HEARING - ARRAIGNMENT SCHEDULE OTHER COURT ON 04/21/2021 at 10:30 a.m.

BANSC

04/22/2021 Charge(s): 1
HEARING - ARRAIGNMENT HELD ON 04/21/2021
ANN MURRAY, JUSTICE
Attorney: JOSEPH BELISLE
DA: MARIANNE LYNCH
DEFENDANT INFORMED OF CHARGES.

101/11:12:59

04/22/2021 Charge(s): 1
PLEA NOT GUILTY ENTERED BY DEFENDANT ON 04/21/2021

04/22/2021 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 04/21/2021

04/22/2021 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 04/21/2021
ANN MURRAY, JUSTICE
COPY TO PARTIES/COUNSEL

04/22/2021 ORDER - ORDER APPOINTING COUNSEL ENTERED ON 04/21/2021
ANN MURRAY, JUSTICE
BASED UPON THE INFORMATION CONTAINED IN THE DEFENDANTS FINANCIAL AFFADAVIT, MOTION FOR
ASSIGNMENT OF COUNSEL IS GRANTED. ATTORNEY ZACH SMITH IS APPOINTED TO REPRESENT DEFENDANT.

04/22/2021 Party(s): DEBBIE ANDERSON
ATTORNEY - APPOINTED ORDERED ON 04/21/2021

Attorney: ZACHARY SMITH

04/22/2021 Charge(s): 1
HEARING - DISPOSITIONAL CONFERENCE SCHEDULE OTHER COURT ON 06/02/2021 at 09:30 a.m.
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BANSC
04/22/2021 Charge(s): 1
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 04/22/2021

05/05/2021 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY DEFENDANT ON 04/29/2021

05/05/2021 OTHER FILING - NTS OF EMAIL FILING/RESP DEADL FILED ON 04/29/2021

05/11/2021 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 05/07/2021
ANN MURRAY , JUSTICE
COPY TO PARTIES/COUNSEL
ATTYS MAILED DEF. EMAILED BOTH

05/11/2021 Party(s): DEBBIE ANDERSON
ATTORNEY - WITHDRAWN ORDERED ON 05/07/2021

Attorney: ZACHARY SMITH

05/11/2021 Party(s): DEBBIE ANDERSON
ATTORNEY - APPOINTED ORDERED ON 05/07/2021

Attorney: DENNIS HAMRICK

05/28/2021 Charge(s): 1
HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 05/28/2021

COVID

05/28/2021 HEARING - DISPOSITIONAL CONFERENCE SCHEDULE OTHER COURT ON 06/14/2021 at 10:30 a.m. in Room No. 3

BANSC

05/28/2021 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ELECTRONICALLY ON 05/28/2021

06/14/2021 HEARING - DISPOSITIONAL CONFERENCE HELD TELEPHONICALLY ON 06/14/2021
WILLIAM R ANDERSON , JUSTICE
Attorney: DENNIS HAMRICK
DOCKET CALL

07/27/2022 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 08/09/2022 at 08:31 a.m. in Room No. 12

BANSC

07/27/2022 TRIAL - DOCKET CALL NOTICE SENT ON 07/27/2022

08/09/2022 TRIAL - DOCKET CALL HELD ON 08/09/2022
WILLIAM R ANDERSON , JUSTICE

08/09/2022 MOTION - MOTION TO CONTINUE FILED BY STATE ON 08/08/2022

8/9

08/09/2022 MOTION - MOTION TO CONTINUE GRANTED ON 08/09/2022
WILLIAM R ANDERSON , JUSTICE
COPY TO PARTIES/COUNSEL

08/09/2022 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 10/04/2022 at 08:30 a.m. in Room No. 12

BANSC

10/05/2022 TRIAL - DOCKET CALL HELD ON 10/04/2022
WILLIAM R ANDERSON , JUSTICE
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SET FOR JURY SELECTION ON 10/6

10/05/2022 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 10/06/2022 at 08:30 a.m. in Room No. 12

BANSC FOR JURY SELECTION

10/07/2022 TRIAL - JURY TRIAL NOT REACHED ON 10/06/2022

Defendant Present in Court

DEF COUNSEL DID NOT APPEAR

10/07/2022 Party(s): DEBBIE ANDERSON
ATTORNEY - APPOINTED ORDERED ON 10/06/2022

Attorney: ZACHARY SMITH

10/07/2022 Party(s): DEBBIE ANDERSON
ATTORNEY - WITHDRAWN ORDERED ON 10/06/2022

Attorney: DENNIS HAMRICK

10/09/2022 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 12/29/2022 at 08:30 a.m. in Room No. 12

BANSC

10/09/2022 TRIAL - DOCKET CALL NOTICE SENT ON 10/09/2022

12/22/2022 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 12/21/2022

Attorney: ZACHARY SMITH
FOR DEC 29 DC

12/28/2022 TRIAL - DOCKET CALL CONTINUED ON 12/28/2022

12/28/2022 MOTION - MOTION TO CONTINUE GRANTED ON 12/27/2022
ANN MURRAY , JUSTICE
COPY TO PARTIES/COUNSEL

12/28/2022 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 03/02/2023 at 08:30 a.m. in Room No. 12

BANSC

12/28/2022 TRIAL - DOCKET CALL NOTICE SENT ELECTRONICALLY ON 12/28/2022

03/02/2023 TRIAL - DOCKET CALL HELD ON 03/02/2023
MEGHAN SZYLVIAN , JUDGE
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BANSC NOTICE IN OPEN COURT

04/04/2023 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 03/31/2023

Attorney: ZACHARY SMITH
FOR APRIL DOCKET CALL

04/10/2023 MOTION - MOTION TO CONTINUE GRANTED ON 04/05/2023
BRUCE MALLONBE , JUSTICE
COPY TO PARTIES/COUNSEL

04/10/2023 TRIAL - DOCKET CALL CONTINUED ON 04/05/2023

04/10/2023 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 05/04/2023 at 08:30 a.m. in Room No. 12

BANSC
WITH MTC

05/04/2023 TRIAL - DOCKET CALL HELD ON 05/04/2023
ANN MURRAY , JUSTICE
CONTINUED AT THE REQUEST OF THE DEFENDANT WITHOUT OBJ FROM THE STATE. DEF HAS RECENT
MEDICAL ISSUES

05/04/2023 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 07/06/2023 at 08:30 a.m. in Room No. 12

BANSC NOTICE IN OPEN COURT

07/06/2023 Charge(s): 1
MOTION - MOTION TO CONTINUE FILED BY STATE ON 07/06/2023

DA: MERCEDES GURNEY

07/06/2023 Charge(s): 1
MOTION - MOTION TO CONTINUE GRANTED ON 07/06/2023

COPY TO PARTIES/COUNSEL

07/06/2023 TRIAL - DOCKET CALL CONTINUED ON 07/06/2023
PATRICK LARSON , JUSTICE

07/06/2023 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 08/10/2023 at 08:30 a.m. in Room No. 12

BANSC NOTICE IN OPEN COURT

07/06/2023 OTHER FILING - WITNESS LIST FILED BY DEFENDANT ON 07/06/2023

07/06/2023 OTHER FILING - OTHER DOCUMENT FILED ON 07/06/2023

REQUEST FOR PROTECTION FILED BY DEFENDANT

08/08/2023 MOTION - MOTION TO CONTINUE FILED BY STATE ON 08/08/2023

DA: MERCEDES GURNEY

PER JUSTICE ANN MURRAY TO BE ADDRESSED AT THE CALL OF THE DOCKET

08/14/2023 TRIAL - DOCKET CALL CONTINUED ON 08/10/2023

ANN MURRAY , JUSTICE
Attorney: ZACHARY SMITH

DA: MERCEDES GURNEY

202/9:38

PROTECTION LISTED

REQUESTS FOR

08/14/2023 TRIAL - DOCKET CALL SCHEDULE OTHER COURT ON 09/07/2023 at 08:30 a.m. in Room No. 12

BANSC
OPEN COURT

NOTICE GIVEN IN

09/07/2023 TRIAL - DOCKET CALL HELD ON 09/07/2023

ANN MURRAY , JUSTICE
Attorney: ZACHARY SMITH

DA: MERCEDES GURNEY

09/07/2023 TRIAL - JURY TRIAL SCHEDULE OTHER COURT ON 09/08/2023 at 08:30 a.m. in Room No. 12

BANDC

JURY SELECTION

09/07/2023 TRIAL - JURY TRIAL NOTICE SENT ELECTRONICALLY ON 09/07/2023

09/15/2023 MOTION - MOTION IN LIMINE FILED BY DEFENDANT ON 09/14/2023

Attorney: ZACHARY SMITH

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Printed on: 01/23/2024

09/15/2023 TRIAL - JURY TRIAL SELECTED ON 09/08/2023
BRUCE MALLONEE , JUSTICE
Attorney: ZACHARY SMITH
DA: JOANNE LEWIS Reporter: MAUREEN WHITEHOUSE
Defendant Present in Court

202 / GENERAL QUESTIONNAIRES REVIEWED. RACE QUESTIONNAIRE GIVEN TO JURY AND REVIEWED.
JURY SWORN IN. TRIAL SELECTED. FOREPERSON ASSIGNED. MATTER CONT TO TRIAL 9/21/2023.

09/18/2023 MOTION - OTHER MOTION FILED BY DEFENDANT ON 09/15/2023

Attorney: ZACHARY SMITH
MOTION TO PERMIT REMOTE TESTIMONY

09/21/2023 MOTION - OTHER MOTION GRANTED ON 09/19/2023

SEAN OCIEPKA , JUDGE
MOTION TO PERMIT REMOTE TESTIMONY

09/21/2023 MOTION - MOTION IN LIMINE DENIED ON 09/21/2023

SEAN OCIEPKA , JUDGE
COPY TO PARTIES/COUNSEL

09/21/2023 TRIAL - JURY TRIAL HELD ON 09/21/2023

SEAN OCIEPKA , JUDGE
Attorney: ZACHARY SMITH
DA: MERCEDES GURNEY
Defendant Present in Court

202 CTA LISA MOTION IN
LIMINE DENIED. JURY SWORN IN. COMPLAINT READ. STATE AND DEF PRESENT OPENING. STATE
PRESENTS CASE. DEF PRESENTS CASE. STATE REST FINALLY. STATE AND DEF PRESENT CLOSING. CASE
TURNED OVER TO JURY FOR DELIBERATION. MOTION FOR ACQUITTAL DENIED. VERDICT RETURNED: GUILTY
CONT FOR SENTENCING.

09/21/2023 Charge(s): 1
VERDICT - GUILTY RETURNED ON 09/21/2023

09/21/2023 Charge(s): 1
FINDING - GUILTY ENTERED BY COURT ON 09/21/2023

SEAN OCIEPKA , JUDGE

09/21/2023 Charge(s): 1
FINDING - GUILTY CONT FOR SENTENCING ON 09/21/2023

SEAN OCIEPKA , JUDGE

09/21/2023 HEARING - SENTENCE HEARING SCHEDULE OTHER COURT ON 10/06/2023 at 08:30 a.m. in Room No. 55

BANSC

09/22/2023 Charge(s): 1
MOTION - MOTION FOR JDGMT OF ACQUITTAL MADE ORALLY BY DEF ON 09/21/2023

Attorney: ZACHARY SMITH

09/22/2023 Charge(s): 1
MOTION - MOTION FOR JDGMT OF ACQUITTAL DENIED ON 09/21/2023

SEAN OCIEPKA , JUDGE
COPY TO PARTIES/COUNSEL

10/02/2023 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 10/02/2023

Attorney: ZACHARY SMITH
WITH PREJUDICE

CR_200, Rev. 07/15

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Printed on: 01/23/2024

10/04/2023 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 10/04/2023

Attorney: ZACHARY SMITH

10/12/2023 MOTION - MOTION TO CONTINUE GRANTED ON 10/06/2023

SEAN OCIEPKA , JUDGE
COPY TO PARTIES/COUNSEL

10/12/2023 HEARING - SENTENCE HEARING CONTINUED ON 10/06/2023

SEAN OCIEPKA , JUDGE

10/12/2023 HEARING - SENTENCE HEARING SCHEDULE OTHER COURT ON 12/12/2023 at 08:30 a.m. in Room No. 55

BANSC

10/12/2023 HEARING - SENTENCE HEARING NOTICE SENT ELECTRONICALLY ON 10/12/2023

10/31/2023 MOTION - MOTION TO DISMISS DENIED ON 10/30/2023

SEAN OCIEPKA , JUDGE
COPY TO PARTIES/COUNSEL

11/01/2023 ORDER - COURT ORDER ENTERED ON 10/30/2023

SEAN OCIEPKA , JUDGE
ORDER DENYING MOTION TO DISMISS

THE CLERK SHALL INCORPORATE

THIS ORDER ON THE RECORD BY REFERENCE.

11/29/2023 OTHER FILING - SENTENCING MEMORANDUM FILED BY DEFENDANT ON 11/29/2023

12/12/2023 HEARING - SENTENCE HEARING HELD ON 12/12/2023

SEAN OCIEPKA , JUDGE
Attorney: ZACHARY SMITH
DA: MERCEDES GURNEY
Defendant Present in Court

101/8:55:31

12/12/2023 Charge(s): 1

RULING - ORIGINAL ORDERED ON 12/12/2023
SEAN OCIEPKA , JUDGE

It is adjudged that the defendant is guilty of 1 OVI (DRUGS OR COMBO), 1 PRIOR 29-A 2411(1-A)(B){1} Class D as charged and convicted.

The defendant is sentenced to the PENOBSCOT COUNTY JAIL for a term of 7 day(s).

Execution stayed pending appeal.

It is ordered that the defendant's motor vehicle operator's license or permit to operate, right to operate and right to apply for and obtain a license is suspended for a period of 3 year(s).

Charge #1: It is ordered that the defendant forfeit and pay the sum of \$ 700.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

10% GOV'T OPERATION SURCHARGE FUND \$ 70.00
\$ 20 VICTIMS COMPENSATION FUND
100% GENERAL FUND \$ 700.00
\$ 125 DEPARTMENT OF TRANSPORTATION FINES
1% COUNTY JAIL \$ 7.00
5% GENERAL FUND ADDL 5% SURCHARGE \$ 35.00
3% MAINE CRIMINAL JUSTICE ACADEMY 2006 \$ 21.00
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Printed on: 01/23/2024

1% MSP COMPUTER CRIMES \$ 7.00
\$ 15 COURT MANAGEMENT SYS FEE FINE
\$ 5 VICTIMS PROPERTY COMP FUND
TOTAL DUE:\$ 1,005.00.

12/12/2023 Charge(s): 1
RULING - ORIGINAL ISSUED ON 12/12/2023
SEAN OCIEPKA , JUDGE
DEFENDANT ACKNOWLEDGES RECEIPT

12/12/2023 MOTION - MOTION TO CONTINUE MOOT ON 12/12/2023
SEAN OCIEPKA , JUDGE
BY JUDGMENT

12/12/2023 OTHER FILING - FINE PAYMENT SCHEDULE ORDERED ON 12/12/2023

INSTALLMENT PYMTS: 0;DAILY: F;WEEKLY: F;BI-WEEKLY: F;MONTHLY: F;BI-MONTHLY: F;PYMT BEGIN:
AT 0;PYMT IN FULL: 20251212 AT 0;THRU PPO: F;PYMT DUE AMT: 1005;PMT DUE: 20251212 AT
0;OTHER: STAYED PENDING APPEAL

12/12/2023 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 12/12/2023

Attorney: ZACHARY SMITH

12/12/2023 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 12/12/2023
SEAN OCIEPKA , JUDGE
COPIES TO PARTIES/COUNSEL

12/12/2023 Party(s): DEBBIE ANDERSON
ATTORNEY - WITHDRAWN ORDERED ON 12/12/2023

Attorney: ZACHARY SMITH

12/12/2023 Charge(s): 1
ABSTRACT - BMV ISSUED ON 12/12/2023

STAYED PENDING APPEAL.

12/12/2023 Charge(s): 1
APPEAL - NOTICE OF APPEAL FILED ON 12/12/2023

Attorney: ZACHARY SMITH

12/12/2023 ORDER - TRANSCRIPT ORDER ENTERED ON 12/12/2023

Attorney: ZACHARY SMITH
9/21 TRIAL

12/13/2023 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 12/13/2023

12/15/2023 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 12/14/2023
BRUCE MALLONRE , JUSTICE

12/15/2023 Charge(s): 1
APPEAL - NOTICE OF APPEAL SENT TO REPORTER/ER ON 12/15/2023

12/15/2023 Charge(s): 1
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 12/15/2023

01/23/2024 Charge(s): 1
APPEAL - RECORD ON APPEAL DUE IN LAW COURT ON 01/16/2024

01/23/2024 LETTER - FROM NON-PARTY FILED ON 01/22/2024
CR_200, Rev. 07/15

NOTICE OF DOCKETING IN THE LAW COURT (CRIMINAL PROCEEDINGS)
01/23/2024 ORDER - ORDER APPOINTING COUNSEL ENTERED ON 01/22/2024

THE TRIAL COURT PERMITTED ZACHARY SMITH TO WITHDRAW AS COUNSEL FOR DEBBIE ANDERSON, BUT DID NOT APPOINT SUCCESSOR COUNSEL. MICHELLE R KING ESQ HAS AGREED TO ACCEPT APPOINTMENT TO REPRESENT ANDERSON ON APPEAL. IT IS THEREFORE ORDERED THAT ATTORNEY KING IS APPOINTED TO REPRESENT ANDERSON ON APPEAL. ATTORNEY SMITH MUST TRANSFER HIS COMPLETE FILE TO ATTORNEY KING ON OR BEFORE FEBRUARY 20, 2024.

01/23/2024 Party(s): DEBBIE ANDERSON
ATTORNEY - APPOINTED ORDERED ON 01/22/2024

Attorney: MICHELLE KING

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

FINE PAYMENT SCHEDULE

Execution/payment stayed to pay in full by 12/12/2025 or warrant to issue.

A TRUE COPY

ATTEST: _____
Clerk

It is ordered that the defendant forfeit and pay the sum of \$ _____ as restitution for the benefit of _____ (17-A M.R.S. § 1152-2-A).

- Restitution is joint and several pursuant to 17-A M.R.S. § 1326-B.
- Restitution is to be paid through the Office of the prosecuting attorney, except that during any period of commitment to the Department of Corrections and/or any period of probation imposed by this sentence, restitution is to be paid to the Department of Corrections.
- A separate order for income withholding has been entered pursuant to 17-A M.R.S. § 1326-B Incorporated by reference herein.
- Execution/payment stayed to pay in full by _____
- Installment payments of _____ to be made (weekly) (biweekly) (monthly) or warrant to issue
- Restitution is to be paid to the Department of Corrections on a schedule to be determined by the Department.

It is ordered pursuant to applicable statutes, that the defendant's motor vehicle operator's license or permit to operate, right to operate a motor vehicle and right to apply for and obtain a license and/or the defendant's right to register a motor vehicle is suspended in accordance with notice of suspension incorporated herein. 3 years

It is ordered that the defendant perform _____ hours of court-approved community service work within _____ (weeks) (months) for the benefit of _____

It is ordered that the defendant pay \$ _____ for each day served in the county jail, to the treasurer of the above named county. (up to \$80/Day) (17-A M.R.S. § 1341)

Execution/payment stayed to pay in full by _____ or warrant to issue.

It is ordered that the defendant shall participate in alcohol and other drug education, evaluation and treatment programs for multiple offenders administered by the office of substance abuse. (29 M.R.S. § 1312-B (2)(D-1), 29-A M.R.S. § 2411 (5)(F))

It is ordered that the defendant forfeit to the state the firearm used by the defendant during the commission of the offense(s) shown above. (17-A M.R.S. § 1158)

It is ordered that the defendant is prohibited from owning, possessing or having under the defendant's control a firearm. (15 M.R.S. § 393)

Other: _____

It is ordered that the defendant be unconditionally discharged. (17-A M.R.S. § 1201)

If the defendant has been convicted of an applicable offense listed in 25 M.R.S. § 1574, then the defendant shall submit to having a DNA sample drawn at any time following the commencement of any term of imprisonment or at any time following commencement of the probation period as directed by the probation officer.

WARNING: IT IS A VIOLATION OF STATE LAW, AND MAY BE A VIOLATION OF FEDERAL LAW, FOR THE DEFENDANT TO OWN, POSSESS OR HAVE UNDER THEIR CONTROL A FIREARM IF THAT PROHIBITION HAS BEEN ENTERED AS PART OF THIS JUDGMENT OR ANY OTHER COURT ORDER.

It is further ordered that the clerk deliver a certified copy of this judgment and commitment to the sheriff of the above named county or his authorized representative and that the copy serve as the commitment of the defendant. Reasons for imposing consecutive sentences are contained in the court record or in attachments hereto.

All pending motions, other than motions relating to payment of fees and bail are hereby declared moot (except _____.)

A TRUE COPY, ATTEST: _____
Clerk

Judge / Justice

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITMENT. I hereby acknowledge that the disclosure of my Social Security number on the Social Security Disclosure Form is mandatory under 36 M.R.S. § 5276-A. My Social Security number will be used to facilitate the collection of any fine that has been imposed upon me in this action if that fine remains unpaid as of the time I am due a State of Maine income tax refund. My Social Security number also may be used to facilitate the collection of money I may owe the State of Maine as a result of having had an attorney appointed to represent me. Collection of any fine or reimbursement of money, which I owe to the State of Maine, will be accomplished by offsetting money I owe to the State against my State of Maine income tax refund.

Date: 12-12-23

~~SS Number Disclosure Required on separate form~~

Defendant: Debbie Anderson

Address _____

STATE OF MAINE
Penobscot, ss.

UNIFIED CRIMINAL DOCKET
DOCKET NO. CR-2021-760

STATE OF MAINE)
)
v.) ORDER DENYING MOTION TO
) DISMISS
DEBBIE ANDERSON)

On September 21, 2023, a jury returned a verdict finding Debbie Anderson guilty of one count of Criminal Operating Under the Influence, Class D. On October 2, 2023, the Defendant filed a Motion for Dismissal with Prejudice, arguing that the nature of the conduct alleged and the nature of the attendant circumstances requires dismissal of this matter pursuant to Maine’s de minimis infraction statute. *See* 17-A M.R.S. § 12. The State did not file a response.

Maine’s de minimis provides that “[t]he court may dismiss a prosecution if, ... having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant’s conduct: A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime.” *Id.*

In *State v. Kargar*, 679 A.2d 81 (Me. 1996), the Law Court identified a number of factors the Court should consider in analyzing whether a “the admittedly criminal conduct was envisioned by the Legislature when it defined the crime.” *Id.* at 84.

As an initial matter, it is not clear that the issue raised by the motion is timely and properly before the Court. The issue was not raised in advance of trial and was brought forward

only after the jury returned a guilty verdict. In *Kargar* the Law Court described a “de minimis hearing,” at which a court could accept evidence regarding the factors to be considered. *Id* at 83. Here, the Court has only the trial record, which presents a much narrower scope of evidence than the Court is directed to consider pursuant to the de minimis analysis.

Nevertheless, the Court has considered the factors as articulated in *Kargar* and concludes that a few significant factors are dispositive in this case. First, the Defendant here was charged with a second offense OUI, and the parties stipulated to her prior conviction. She also admitted to the investigating officer that she was impaired. Under these circumstances, there is little question that the Defendant can be charged with “knowledge” of the illegality. Second, “operation” for purposes of the OUI statute is defined very broadly and does not contain either a distance or temporal requirement, 29-A M.R.S. § 2401(6), suggesting that the legislature envisioned encompassing a wide range of operating activity. Finally, although the penalties imposed by statute can exact harsh consequences, that is a policy decision that has been made by the Legislature. *See* 29-A M.R.S. § 2411(5)(B). It would be inappropriate for the Court to dismiss a matter after a guilty verdict because a Defendant disagrees with the imposition of mandatory minimum penalties.

After consideration of the relevant factors, the Court therefore **DENIES** Defendant’s Motion to Dismiss.

This Order is to be incorporated on the docket for this case by reference.

Date: 10/30/23


Sean Ocipka
Judge, Unified Criminal Docket

STATE OF MAINE
PENOBSCOT, ss

PENOBSCOT COURT
LOCATION: BANGOR
DOCKET NO:

CP-2021-760

STATE OF MAINE

COMPLAINT

v.

DEBBIE ANDERSON

COUNT 1: CRIMINAL OUI

G: Female Ht: 5' 1" Wt: 165 H: Brown
E: Brown R: White

The undersigned officer, being duly sworn, states upon information and belief that:

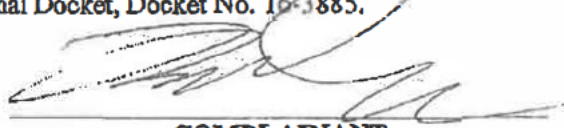
COUNT 1:

29-A M.R.S. §2411(1-A)(B)(1)
Seq No: 12945
CRIMINAL OUI
CLASS D
ATNCTN 393403B001

On or about January 27, 2021, in Holden, Penobscot County, Maine, DEBBIE ANDERSON, did operate a motor vehicle while under the influence of intoxicants. DEBBIE ANDERSON had one previous OUI offense within a ten year period. DEBBIE ANDERSON was convicted or adjudicated of CRIMINAL OUI on November 23, 2016 in the Penobscot Unified Criminal Docket, Docket No. 16-3885.

DATED:

3-8-21



COMPLAINANT

Sworn to before me,

3/8/21



CLERK/JUDGE/JUSTICE

OFFICER: Eduardo Benjamin
DEPT: Holden Police Department
ARRAIGNMENT: April 21, 2021
PROS: Stephen J. Burlock, ADA
JW#: 21-524 (Inc: 21-006236)
Jail + Restitution Requested

JC BANGOR COURTS
MAR 8 '21 PM3:58

State of Maine

Unified Criminal Docket

Penobscot County

Case No. PENCD-CR-2021-760

State of Maine,

Defendant's Motion for Dismissal

Plaintiff,

with Prejudice

v.

Debbie Anderson,

Defendant.

1. Now comes the Defendant through her undersigned counsel and moves for a dismissal with prejudice under M.R.U. Crim. P. 12(b)(3)(B). A motion for judgment of acquittal under Rule 29(a) was denied before the jury returned its verdict of guilty.

De Minimis Infractions Statute

2. "The court may dismiss a prosecution if, upon notice to ... the prosecutor and opportunity to be heard, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant's conduct:

- A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or
- B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or

C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime.”

17-A M.R.S. § 12(1).

3. “Maine’s *de minimis* statute is based on the Model Penal Code and the Hawaii Penal Code, and its purpose is to ‘introduce[] a desirable degree of flexibility in the administration of the law.’” *State v. Kargar*, 679 A.2d 81, 83 (Me. 1996). The Law Court has agreed with New Jersey and Hawaii’s courts about the following appropriate factors for analysis of a *de minimis* motion:

the background, experience and character of the defendant which may indicate whether he knew or ought to have known of the illegality; the knowledge of the defendant of the consequences to be incurred upon violation of the statute; the circumstances concerning the offense; the resulting harm or evil, if any, caused or threatened by the infraction; the probable impact of the violation upon the community; the seriousness of the infraction in terms of punishment, bearing in mind that punishment can be suspended; mitigating circumstances as to the offender; possible improper motives of the complainant or prosecutor; and any other data which may reveal the nature and degree of the culpability in the offense committed by the defendant.

Id. 84. “The focus is not on whether the conduct falls within the reach of the statute criminalizing it. ... The focus is on whether the admittedly criminal conduct was envisioned by the Legislature when it defined the crime.” *Id.* The statute “provides a safety valve for circumstances that could not have been envisioned by the

Legislature” and “is meant to be applied on a case-by-case basis to unanticipated extenuations, when application of the criminal code would lead to an ordered but intolerable result.” *Id.* (quotation marks omitted). *See also* State v. Akina, 828 P.2d 269, 272 (Haw. 1992) (determining that defendant’s conduct “was too trivial to warrant the condemnation of conviction” and he was entitled to “shield against prosecution”); State v. Viernes, 988 P.2d 195 (Haw. 1999) (affirming trial court’s motion to dismiss where defendant possessed 0.001 grams of a substance that contained methamphetamine); State v. Zarrilli, 532 A.2d 1131 (N.J. app. 1987) (per curiam) (affirming lower court’s dismissal of alcoholic-beverage charge as *de minimis* where 20-year-old defendant had taken one sip of beer).

Application to this Case

4. Title 17-A, Section 12(1)(A), concerning “customary license or tolerance,” does not seem relevant to this case.

5. Section 12(1)(B) provides strong support for a determination that Ms. Anderson’s conduct was too trivial to warrant a conviction. The unrebutted testimony from Ms. Anderson demonstrated that she had been operating her car without incident earlier in the day, after taking her medications, and had not taken a new medication or an illegal drug; rather, she had increased her dosage of one medication. A few hours later, while driving a short distance down a heavily-traveled road, Ms. Anderson suddenly felt unwell, the result of either a medical event (as she testified) or intoxication by her prescribed medications (as Chief Benjamin believed). She immediately pulled into a gas station’s parking lot and

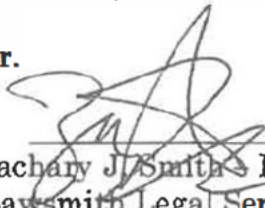
parked her car. The duration of this possibly impaired operation could not have been longer than a few minutes, and the distance traveled was minimal. No one was harmed, and any threat of the harm sought to be prevented by this law was trivial.

6. Section 12(1)(C), which involves a determination of whether the defendant's conduct could "reasonably be regarded as envisaged by the Legislature in defining the crime," is not easily applied in this case. The undersigned counsel has not been able to find legislative records that might illuminate the Maine Legislature's purposes when enacting the current OUI statute, codified at 29-A M.R.S. § 2411, or its predecessors from Title 29. Nonetheless, it seems reasonably apparent that the aim of the statute is to prevent individuals from beginning to operate motor vehicles after knowingly consuming a known intoxicant if the intoxicating effects are being felt already or if they might reasonably be expected to be felt during operation.

7. Application of the evidence from trial to paragraph (C) could support a determination that Ms. Anderson's conduct was not within the parameters envisioned by the legislature when it enacted the OUI statute. If it were otherwise, the implicit suggestion would be that someone in Ms. Anderson's situation should abandon his or her vehicle on a busy road as soon as the feeling of possible intoxication arises, walk away from it, and contact a tow truck driver. Of course, the legislature made OUI a strict-liability offense, but conforming one's conduct to the strict letter of the law under these circumstances seems absurd.

8. Moreover, other factors for consideration, as found by the Law Court in interpreting the statute, favor a dismissal of this case. Several of those factors are addressed above, but “the seriousness of the infraction in terms of punishment, bearing in mind that punishment can be suspended; [and] mitigating circumstances as to the offender” also favor a determination of a *de minimis* infraction here. Because of Ms. Anderson’s prior OUI conviction (from 2016), she faces a mandatory week in jail that cannot be suspended. See 29-A M.R.S. § 2411(5)(B). Her only other criminal conviction was for theft in 1980. As she testified at trial and can further address at sentencing, Ms. Anderson is disabled by serious physical infirmities that would make any incarceration exceptionally difficult. Her disability makes her a poor candidate for the multiple-offender program, which may reject her application because she cannot perform significant manual labor.

9/28/23
date


Zachary J. Smith, Bar No. 5343
Lawsmith Legal Services, L.L.C.
P.O. Box 1049
Bangor, ME 04402
zachary@lawsmithmaine.com

C: Mercedes Gurney, ADA (via email)

