STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

DOCKET NO. PEN-23-502

STATE OF MAINE

APPELLEE

v.

DEBBIE ANDERSON

APPELLANT

ON APPEAL FROM THE PENOBSCOT COUNTY UNIFIED CRIMINAL DOCKET, BANGOR, ME

BRIEF OF APPELLEE

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II. Whether there was sufficient record evidence to find beyond a reasonable doubt that Anderson operated a motor vehicle under the influence of intoxicants, when the State presented video footage of Anderson driving and parking haphazardly, testimony from a law enforcement officer who administered field sobriety tests and a drug recognition evaluation, and Anderson's admissions to being affected by her medication?

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STATEMENT OF THE FACTS

On January 27, 2021, Jill Curtis, an employee at the Holden Ledbetter's, watched as a vehicle came into the parking lot to the store and parked partially in a handicapped spot, failing to pull all the way forward. (Tr. 25.) A woman, later identified as appellant Debbie Anderson, exited the vehicle and entered the store. (Tr. 26.) She was unsteady on her feet and appeared close to falling. *Id.* She used various items to steady herself before going into the store's bathroom, where she remained until police arrived on scene. *Id.*

Curtis called 911 and reported that Anderson was experiencing either a medical event or "something else." State's Exhibit A, 00:00:05-00:00:11. She stated that Anderson "probably shouldn't be driving." *Id.* at 00:00:06-00:00:07. She further reported that Anderson was in the Ledbetter's bathroom and reiterated that she "really should not be driving." *Id.* at 00:00:22-00:00:24, 00:01:00-00:01:10. Upon inquiry from the dispatcher, Curtis reiterated that she was unsure whether the issue was related to a medical event or the result of impairment, but that the woman could "barely come through the door." *Id.* 00:01:57-00:02:10. Anderson was holding onto various items for balance, and review of security footage showed her losing her balance upon entering the bathroom, nearly falling over. *Id.* at 00:02:20-00:02:30; State's Exhibit B, interior view of store, 12:02:50-12:02:55; (Tr. 26.)

Eduardo Benjamin, a drug recognition expert and patrol lieutenant for the Holden Police Department, responded to the scene. (Tr. 37, 38, 43-44.) He took a picture of the unusually parked vehicle, *see* State's Exhibits D1 and D2, contacted Anderson upon her exit from the bathroom, and immediately noted that she was unsteady on her feet and exhibited "bloodshot eyes and watery eyes." (Tr. 48.) Her speech was heavily slurred, and she told Lt. Benjamin that she had taken a full dose of a new medication, Abilify, for the first time at nine o'clock that morning, and that while she was driving her vision got blurry. (Tr. 48-49.) Lt. Benjamin offered Anderson his arm to assist her in walking out of the store, where she freely admitted that her medication was affecting her. (Tr. 49.) She performed poorly on field sobriety tests and thereafter admitted that *at the time of operation* she was a nine on a scale from one to ten, with one being sober and ten being "falling down impaired or drunk." (Tr. 61-77.); *See* State's Exhibit C, 00:27:28-00:28:35.

Anderson was arrested for operating under the influence of drugs. (Tr. 77.) She was transported to the Holden Police Department, where pursuant to his training, Lt. Benjamin conducted a drug recognition evaluation, concluding that she was impaired by a central nervous system depressant. (Tr. 100.) Lt. Benjamin summarized the basis for this conclusion and testified that Abilify is a depressant. (Tr. 102.)

Anderson testified that she began to feel lightheaded while driving her vehicle to Ledbetter's. (Tr. 124.) On cross-examination, she conceded that she felt unwell "[w]hen [she] was going to the store . . . ." (Tr. 131.) She testified that on the morning at issue she had—for the first time—taken a full dose of Abilify in addition to her previously prescribed Gabapentin (which she admitted made her feel ill), Vicodin, and a host of other medications. (Tr. 134-38.) Pursuant to her doctor's instructions, she had taken partial doses on days prior so that she would know how the medication affected her. (Tr. 133.) She testified that her boyfriend controls her medication intake. (Tr. 139.)

Anderson was charged with a single count of second offense operating under the influence (Class D) on March 8, 2021. (A. 1.) She was arraigned and pled not guilty on April 21, 2021. *Id.* After multiple substitutions of counsel, docket call was held on September 7, 2023. (A. 4.) Jury trial commenced on September 21, 2023. (A. 5.) At the close of evidence, Anderson moved for judgment of acquittal. *Id.* The trial court (*Ociepka, J.*) denied the motion, and the case was submitted to the jury, which returned a guilty verdict. *Id.* The matter was continued for sentencing, and Anderson submitted a motion to dismiss the conviction as *de minimis* on October 2, 2023. *Id.*; (A. 15-19.) The motion was denied in an order dated October 30, 2023. (A. 6.); (A. 12-13.) Sentencing occurred on December 12, 2023, and Anderson appealed. (A. 6-7.)

STATEMENT OF THE ISSUES PRESENTED

I. **Whether the court abused its discretion in denying Anderson's motion to dismiss her conviction as *de minimis*, when she admitted to operating a motor vehicle while intoxicated by her prescription medication, and when she had a prior conviction for operating under the influence?**

II. **Whether there was sufficient record evidence to find beyond a reasonable doubt that Anderson operated a motor vehicle under the influence of intoxicants, when the State presented video footage of Anderson driving and parking haphazardly, testimony from a law enforcement officer who administered field sobriety tests and a drug recognition evaluation, and Anderson's admissions to being affected by her medication?**

ARGUMENT

I. The court did not abuse its discretion in denying Anderson's motion to dismiss her conviction as *de minimis*, when she admitted to operating a motor vehicle while intoxicated by her prescription medication, and when she had a prior conviction for operating under the influence.

Consistent with a desire to maintain "flexibility in the administration of the law," courts have the authority to dismiss prosecutions as *de minimis* upon making certain written findings. *State v. Kargar*, 679 A.2d 81, 83 (Me. 1996).

> 1. The 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:
>
> . . . .
>
> 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. In determining whether an offense falls within the ambit of the *de minimis* statute, this Court has authorized "objective consideration of surrounding circumstances" including:

> 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.

Kargar, 679 A.2d at 84 (Me. 1996.) (citations omitted). The court's decision on a motion to dismiss a matter as *de minimis* is reviewed for abuse of discretion. *State v. Curtis*, 2003 ME 94, ¶ 4, 828 A.2d 795.[1]

Anderson argues that section 12(1)(B) favors dismissal because the circumstances surrounding her operation (her impairment purportedly resulted from having ingested a new dose of a prescription medication) and the distance and time traveled rendered the "threat of harm sought to be prevented by this law . . . trivial." (Blue Br. 9.) While no harm resulted from Anderson's operation, it does not follow that her actions only threatened the harm the statute seeks to address in so trivial a manner as not to merit the "condemnation of conviction." 17-A M.R.S. § 12(1)(B). The harm the OUI statute seeks to address is the loss of property and life at the hands of intoxicated drivers. This is no abstract concern, and the absence of an intent requirement

[1] In its written order, the trial court questioned whether the motion was timely made. (A. 12-13.) The State made a similar argument in *State v. Labbe*, 2024 ME 15, ¶ 24 n. 14, --- A.3d ---. This Court rejected the argument, noting that 17-A M.R.S. § 12 contains no timing or procedural requirements. *Id.*

in the statute signals a legislative recognition that operation while intoxicated presents a real threat to public safety that can rarely be regarded as trivial regardless of the intent of the operator.

Consideration of more "innocuous" conduct that this statute criminalizes is instructive. For example, it is illegal to operate a motor vehicle on *any* way, and the Statute on its face criminalizes the conduct in which Anderson engaged even on a privately maintained road. 29-A M.R.S. § 2411. Given the definition of operation, the Statute also criminalizes any attempt to operate a motor vehicle on a privately maintained road under the circumstances presented in this case. 29-A M.R.S. § 2401(6). The court acknowledged this in its written order denying Anderson's motion to dismiss. (A. 13.) ("'operation' for purposes of the OUI statute is defined very broadly and does not contain either a distance or temporal requirement . . . .") Intoxicated drivers present a real risk of property damage, injury, and even death for the duration of their journey, however brief. Contrary to Anderson's contention, the conduct at issue "threaten[ed] the harm sought to be prevented by the laws defining the crime" in a real and non-trivial way. 17-A M.R.S. § 12(1)(B).

Anderson next argues that section 12(1)(C) favors dismissal based upon the assertion that the OUI statute might reasonably be aimed at "prevent[ing] 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." (Blue Br. 9.) This reading of the Legislature's intent is belied by the absence of any intent requirement in the statute itself. Section 12(1)(C) permits the court to look to the unique factors of the case at hand and consider whether they constitute type of conduct the Legislature foresaw when enacting the statute at issue. While unusual, the fact that an individual could lapse from sobriety into a state of intoxication while driving is not an extenuating circumstance of the type so attenuated as to be beyond legislative contemplation. Given the range of conduct contemplated by the OUI statute, it seems the legislative prerogative is to keep intoxicated drivers off the road; no less, no more.

Anderson's argument as to both subsections raised in her brief rests in large part on the notion that she was suddenly and unpredictably overtaken by the effects of a new medication. She argues that because she could not have seen this coming, she should not be penalized for becoming intoxicated while driving and taking the corrective measure of pulling into a parking lot when she felt ill. This Court considered and rejected a similar argument in *State v. Curtis*, 2003 ME 94, ¶ 4, 828 A.2d 795. There, Curtis argued that his conviction should be overturned as *de minimis* because he was impaired by prescription medication and "'had no idea' that the medication might affect his driving . . . ."

Id. ¶ 2. In rejecting his argument, this Court noted that Curtis admitted to having been "warned about driving after consumption." *Id.* ¶ 4. Similarly, in this case Anderson testified that the date at issue represented the first time she had taken a full does of her medication, having taken half doses on the previous days because her doctor "wanted to make sure [she] knew how it affected [her]." (Tr. 133.) As in *Curtis*, Anderson was aware that consumption of this medication could affect her mental or physical faculties and nonetheless drove her car having taken a full dose for the first time. This undermines the principal argument advanced in her brief: that she should escape conviction because her conduct in pulling off the road was responsible in light of an unknown—and unknowable—circumstance.

As to the factors outlined in *Kargar*—a case which truly presented circumstances beyond legislative contemplation—the trial court noted that Anderson was aware of the illegality of her actions because she had previously been convicted of OUI. (A. 13.) She must also have been somewhat aware of the consequences of violation, having suffered said consequences, albeit to a lesser extent, following her first conviction. Further, the court noted that though the OUI statute "can exact harsh consequences," this was the legislative prerogative. (A. 13.) Finally, the court had a full view of the "circumstances

concerning the offense" and clearly found that they did not require dismissal. *Kargar*, 679 A.2d at 84.

This Court can conclude on the record before it that the trial court did not abuse its discretion in denying Anderson's motion to dismiss the conviction. To the extent this Court finds the record insufficient to make such a finding, the proper remedy is not dismissal, but remand for further hearing as to the motion to dismiss. The State submits that the court's written findings are insufficient to support vacating the jury's verdict absent further factfinding. A number of the *Kargar* factors went unaddressed because the court, by its own admission, felt limited to the record before it. (A. 12-13.) Assuming *arguendo* this Court finds that the trial court abused its discretion in denying the motion, it should remand for further proceedings.[2]

II. There was sufficient record evidence to find beyond a reasonable doubt that Anderson operated a motor vehicle under the influence of intoxicants, when the State presented video footage of Anderson driving and parking haphazardly, testimony from a law enforcement officer who administered field sobriety tests and a drug recognition evaluation, and Anderson's admissions to being affected by her medication.

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[2] The reasons this Court has sufficient information to affirm the trial court's order but does not have sufficient information to find the conduct at issue *de minimis* on the record before it are threefold: 1) this Court knows and can evaluate the court's rationale for denying the motion. This is a closed universe because it has the court's order. It cannot, however, fully appreciate other factors because several relevant factors went unaddressed below; 2) relatedly, the State should have an opportunity to answer newly provided information. This is contemplated by the statute; and 3) to find the conduct *de minimis* at this juncture would displace a jury verdict. That decision should be made only with the full scope of the issue reduced to record.

This Court "review[s] 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 (citation omitted). "The jury may draw all reasonable inferences from the evidence presented at trial." *Id.* (citing *State v. Woodard*, 2013 ME 36, ¶ 19, 68 A.3d 1250).

Anderson's chief contention is that the State failed to prove that she was impaired *at the time of operation*. *See State v. Atkins*, 2015 ME 162, ¶ 1, 129 A.3d 952. Contrary to Anderson's contention, Lt. Benjamin specifically asked her to describe her level of intoxication at the time of operation on a scale from one to ten. (Tr. 61.); *See* State's Exhibit C, 00:27:28-00:28:35. After some back and forth, she replied that she was a nine. *Id.* In addition, Anderson testified consistent with Lt. Benjamin that she began to feel lightheaded while driving her car. (Tr. 48-49, 124.) The jury heard testimony that Anderson parked her vehicle poorly, and a picture of the vehicle in the parking spot was admitted in evidence. (Tr. 25.); State's Exhibits D1 and D2. This direct evidence would support a finding that she was impaired at the time of operation.

In addition, Jill Curtis testified that when Anderson entered the store, she was unsteady on her feet. State's Exhibit B, interior view of store, 12:02:50-12:02:55; (Tr. 26.) The jury watched as she nearly fell over trying to access the bathroom. *Id.* They heard her significantly slurred speech as she spoke with Lt. Benjamin. State's Exhibit C, 00:02:20-00:03:00. These signs and symptoms were visible within minutes of operation, and the jury could rationally infer that she was exhibiting some of these indicia of impairment at the time of operation, as opposed to rapidly deteriorating from complete sobriety the moment she parked her car in the Ledbetter's parking lot.

CONCLUSION

The jury verdict was supported by competent record evidence, and the trial court did not abuse its discretion in declining to dismiss the jury verdict as *de minimis*. To the extent the record is insufficient to support such a finding, the remedy is not to vacate the conviction, but to remand for further proceedings on the motion to dismiss. Absent this, the jury verdict should be affirmed.

Dated: May 10, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Mark A. Rucci, Esq., Attorney for the State, hereby certify that on this 10th day of May, 2024, I mailed two copies of the foregoing brief via U.S. mail, postage prepaid, to Appellant's attorney Michelle R. King, Esq., P.O. Box 7030, Portland, Maine 04112.

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