

STATE OF MAINE

v.

CHESTER J. ANNANCE

Submitted on Briefs January 27, 2011
Decided February 24, 2011

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Chester J. Annance appeals from a judgment of conviction of operating under the influence of intoxicants with one previous OUI offense within a ten-year period (Class D), 29-A M.R.S. § 2411(1-A)(B)(1) (2010), entered in the Superior Court (Piscataquis County, *Studstrup, J.*) after a jury trial. Contrary to Annance's contention, the statutory definition regarding being "under the influence of intoxicants," 29-A M.R.S. § 2401 (2010), does not include a requirement that a person's ability to drive be affected, and it is not unconstitutionally vague in that regard. *See State v. Aboda*, 2010 ME 125, ¶ 15, 8 A.3d 719, 724; *State v. Worster*, 611 A.2d 979, 980-81 (Me. 1992); *State v. Bean*, 430 A.2d 1109, 1110 n.1, 1111 (Me. 1981). Because Annance failed to preserve this issue at trial, we review it for obvious error and discern none. *See State v. Barnes*, 2004 ME 105, ¶ 5, 854 A.2d 208, 209-10. Nor did the court commit obvious error by not instructing the jury that operating under the influence requires a finding that "the person's senses [were] affected to the slightest degree, or to any extent," by drugs, *see State v. Forsyth*, 2002 ME 75, ¶ 14, 795 A.2d 66, 70, because based on the substantial evidence of Annance's impairment, there is no manifest injustice, *see State v. Elliott*, 2010 ME 3, ¶ 22, 987 A.2d 513, 520.

The entry is:

Judgment affirmed.

Attorney for Chester Annance:

Randy G. Day, Esq.
181 Day Road
Garland, Maine 04939

Attorneys for the State of Maine:

R. Christopher Almy, District Attorney
Susan J. Pope, Asst. Dist. Atty.
Prosecutorial District V
97 Hammond Street
Bangor, Maine 04401

Piscataquis County Superior Court docket number CR-2010-3
FOR CLERK REFERENCE ONLY