

STATE OF MAINE

v.

JOSEPH COUNTS

Submitted on Briefs February 19, 2025<sup>1</sup>  
Decided February 27, 2025

Panel: MEAD, HORTON, CONNORS, LAWRENCE, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

Joseph Counts appeals from a judgment of conviction for criminal OUI (Class D), 29-A M.R.S. § 2411(1-A)(A) (2024), entered by the trial court (Penobscot County, *Roberts J.*) following a jury trial. The 0.08 blood-alcohol level threshold of the criminal OUI statute does not violate the provisions of the United States Constitution that Counts cites on appeal.<sup>2</sup> The record does not indicate that Counts's Sixth Amendment right to an impartial jury was infringed upon, and we have never pronounced that this right entitles a defendant to demand proof of ad hoc elements that diverge from the plain language of the relevant statute. *See* 29-A M.R.S. § 2411(1-A)(A)(1), (2); *State v. Kendall*, 2016 ME 147, ¶ 14, 148 A.3d 1230. The criminal OUI statute also does not infringe upon Counts's rights under the Fifth Amendment Takings Clause because Counts does not have a property interest in having his impairment evaluated

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<sup>1</sup> The Court received a request to hold oral argument but has elected to decide the appeal based on the parties' briefs. The request is accordingly denied.

<sup>2</sup> On appeal, Counts has not developed arguments based on the corresponding provisions of the Maine Constitution, so he has waived his right to present a challenge under the Maine Constitution. *See State v. Norris*, 2023 ME 60, ¶ 52, 302 A.3d 1.

based on his reaction ability instead of the precise 0.08 threshold. U.S. Const. amend. V; *see MacImage of Me., LLC v. Androscoggin Cnty.*, 2012 ME 44, ¶ 36, 40 A.3d 975. Nor does the statute interfere with Counts's due process right because Counts lacks a property interest, and, in any event, Counts benefited from robust procedural safeguards at trial, *cf. State v. Gagne*, 554 A.2d 795, 796 (Me. 1989).

The entry is:

Judgment affirmed.

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Joseph Counts, appellant pro se

R. Christopher Almy, District Attorney, and Mark A. Rucci, Asst. Dist. Atty.,  
Prosecutorial District V, Bangor, for appellee State of Maine