

STATE OF MAINE

v.

JOSEPH COUNTS

Submitted on Briefs February 19, 2025¹
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.² 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

¹ 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.

² 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.

Appendix D

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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.

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

Penobscot Unified Criminal Docket docket number CR-2017-1768
FOR CLERK REFERENCE ONLY

MAINE SUPREME JUDICIAL COURT
Sitting as the Law Court

Docket No. Pen-24-302
Decision No. Mem 25-32

State of Maine

v.

Joseph Counts

**ORDER DENYING MOTION
TO RECONSIDER**

Joseph Counts has filed a motion to reconsider the Court's decision dated February 27, 2025. The motion has been reviewed by the panel that decided the original appeal.

The motion to reconsider is DENIED.

Dated: March 21, 2025

For the Court,

A handwritten signature in black ink, appearing to read 'Matthew Pollack', is written over a horizontal line.

Matthew Pollack
Clerk of the Law Court
Pursuant to M.R. App. P. 12A(b)(5)(A)

**Additional material
from this filing is
available in the
Clerk's Office.**