

STATE OF MAINE

v.

ELIZABETH C. WILD

Submitted on Briefs April 25, 2013

Decided April 30, 2013

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Elizabeth C. Wild appeals from the judgment of conviction of operating under the influence, 29-A M.R.S. § 2411(1-A)(A) (2012), entered after a bench trial by the trial court (*Dobson, J.*). On appeal, Wild challenges the court's finding of sufficient evidence to prove that she had been driving while intoxicated. Wild's admission to the arresting officers that she had been driving, despite her testimony to the contrary, is sufficient to prove that she was operating a motor vehicle. 29-A M.R.S. § 2431(4) (2012). Wild also argues that the court violated her constitutional rights by failing to provide her the opportunity to present a closing argument, and by failing to advise her of her competing rights to remain silent and to testify. Wild did not preserve either argument and the court did not commit obvious error regarding either issue. *In re Anthony R.*, 2010 ME 4, ¶ 9, 987 A.2d 532 (applying obvious error review to unpreserved issues that implicate constitutional rights). Even if the arguments were preserved, Wild waived her opportunity to present a summation, *State v. Gilman*, 489 A.2d 1100, 1103 (Me. 1985) (noting that a defendant can waive his right to present summation), and the court's instruction was sufficient to inform her of her competing rights, *State v. Tuplin*, 2006 ME 83, ¶¶ 19-22, 901 A.2d 792 (explaining the best ways for a court to inform a defendant of these rights). Finally, despite Wild's contention

otherwise, the court did not commit obvious error by allowing the admission of the Intoxilyzer result into evidence. *State v. Pabon*, 2011 ME 100, ¶ 34, 28 A.3d 1147 (applying obvious error review when an argument is not preserved); 29-A M.R.S. § 2431(2)(C) (2012) (listing what prima facie evidence is established by certified Intoxilyzer results).

The entry is:

Judgment affirmed.

On the briefs:

David Paris, Esq., Bath, for appellant Elizabeth Wild

Meaghan Maloney, District Attorney, and Alisa Ross, Asst. Dist. Atty.,
Prosecutorial District IV, Augusta, for appellee State of Maine