

STATE OF MAINE

v.

ANDREW L. TRIPP

Submitted on Briefs January 28, 2014  
Decided February 4, 2014

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

#### MEMORANDUM OF DECISION

Andrew L. Tripp appeals from a judgment of conviction of operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(A) (2013), and driving to endanger (Class E), 29-A M.R.S. § 2413(1) (2013), entered in the District Court (Rumford, *Carlson, J.*) following a nonjury trial.

Contrary to Tripp's contention, the fact-finder could rationally have found beyond a reasonable doubt that he was under the influence of intoxicants when he was operating a motor vehicle. *See* 29-A M.R.S. § 2411(1-A)(A); *State v. Soucy*, 2012 ME 16, ¶¶ 10-11, 36 A.3d 910 (“In an OUI hearing, testimony that the defendant exhibited symptoms of intoxication can be sufficient to support a finding that the defendant was under the influence.”); *State v. McCurdy*, 2002 ME 66, ¶¶ 10-11, 795 A.2d 84; *see also State v. Nugent*, 2007 ME 44, ¶ 10, 917 A.2d 127 (stating the standard of review).

Additionally, the fact-finder could rationally have found beyond a reasonable doubt that, with criminal negligence, Tripp operated a motor vehicle in a place and manner that endangered the property of another or a person, including Tripp himself. *See* 17-A M.R.S. § 35(4) (2013); 29-A M.R.S. § 2413(1); *State v. Cheney*, 2012 ME 119, ¶ 39, 55 A.3d 473 (“Whether a person was operating under

the influence is relevant evidence which the factfinder may consider in determining whether the operator of a motor vehicle is guilty of criminal negligence.”); *id.* ¶ 40 (holding in a vehicular manslaughter case that the jury could have found beyond a reasonable doubt that, because the defendant “decided to drive a motor vehicle while heavily intoxicated” and crossed the road’s centerline before striking the victim, his operation of his truck constituted a gross deviation from the standard of conduct that a reasonable and prudent person would observe); *State v. Tempesta*, 617 A.2d 566, 567 (Me. 1992); *see generally State v. Davis*, 398 A.2d 1218, 1219 (Me. 1979).

The entry is:

Judgment affirmed.

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**On the briefs:**

David W. Austin, Esq., Rumford, for appellant Andrew L. Tripp

Norman R. Croteau, District Attorney, and Joseph M. O’Connor, Asst. Dist. Atty., Office of the District Attorney, South Paris, for appellee State of Maine