

STATE OF MAINE

v.

MICAH N. DAY

Argued November 9, 2016
Decided April 13, 2017

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Micah N. Day appeals from a judgment of conviction entered by the trial court (Cumberland County, *Marden, J.*) after a jury found him guilty of operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(C)(1) (2016), and refusing to sign a uniform summons and complaint (Class E), 17-A M.R.S. § 15-A(1) (2016). Day asserts that the court erred by admitting evidence of his refusal to submit to a chemical test to measure his blood alcohol level following his arrest for operating under the influence over his objection that admission of such evidence violates the Fourth Amendment, that it is not relevant to or probative of intoxication, and that Maine's "implied consent" statute violates separation of powers principles. He also contends that the court committed obvious error when it allowed the State to present evidence regarding his refusal to sign a uniform summons and complaint because the court had earlier ruled that evidence inadmissible.

With respect to Day's argument that evidence of his refusal to submit to a blood test violated his Fourth Amendment rights, we conclude that any such error, if indeed error occurred, is harmless given the fact that Day's refusal of

the breath test was properly admitted in evidence and argued by counsel. See *Birchfield v. North Dakota*, 579 U.S. ---, 136 S. Ct. 2160, 2185 (2016) (holding that a warrantless breath test “may be administered as a search incident to a lawful arrest for drunk driving”); see also *State v. Patton*, 2012 ME 101, ¶ 17, 50 A.3d 544 (“A constitutional error made at trial may be deemed harmless if we are satisfied beyond a reasonable doubt that the error did not contribute to the verdict obtained.” (quotation marks omitted)); *State v. Hassapelis*, 404 A.2d 232, 237-38 (Me. 1979) (concluding that although evidence was obtained in an unconstitutional search and should not have been admitted at trial, the error was harmless). Here, the court specifically instructed the jury that the State’s allegation of refusal had to be based on the evidence of Day’s refusal “to submit to an Intoxilyzer test,” and there was significant evidence at trial that would allow the jury to conclude that Day was intoxicated. The facts and circumstances surrounding Day’s declining to complete the blood test that he requested were simply cumulative.

Further, we conclude that the trial court did not commit obvious error when it allowed the State to reference and present evidence concerning Day’s failure to sign a uniform summons and complaint (USAC). See M.R.U. Crim. P. 52(b); *State v. Westgate*, 2016 ME 145, ¶ 15, 148 A.3d 716. The record is abundantly clear that the trial court’s order in limine, while couched in ostensibly broad language, was never intended to exclude evidence of ancillary activities such as Day’s failure to sign the USAC. The parties’ apparent acceptance of this limitation and Day’s failure to object (and his mention of the refusal to sign in his closing argument to the jury) inform our conclusion that the admission of the evidence does not in any way suggest obvious error.

The entry is:

Judgment affirmed.

Rory A. McNamara, Esq. (orally), Drake Law, LLC, Lebanon, for appellant
Micah N. Day

Stephanie Anderson, District Attorney, and William J. Barry, Asst. Dist. Atty. (orally), Prosecutorial District Two, Portland, for appellee State of Maine

Tyler J. Smith, Esq., Libby O'Brien Kingsley & Champion, LLC, Kennebunk, for amicus curiae Association of Criminal Defense Lawyers

Jamesa J. Drake, Esq., and Zachary L. Heiden, Esq., American Civil Liberties Union of Maine Foundation, Portland, for amicus curiae American Civil Liberties of Maine Foundation

Janet T. Mills, Attorney General, and Donald W. Macomber, Asst. Atty. Gen., Office of the Attorney General, Augusta, for amicus curiae Department of the Attorney General

Cumberland County Unified Criminal Docket docket number CR-2014-6161
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