

STATE OF MAINE

v.

APRIL L. CADY

Argued May 16, 2019

Decided June 6, 2019

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

MEMORANDUM OF DECISION

April L. Cady appeals from a judgment of conviction entered by the trial court (Cumberland County, *Warren, J.*) after a jury found her guilty of operating under the influence of intoxicants (OUI), accompanied by a failure to submit to a test at the request of a law enforcement officer, with one prior OUI offense within a ten-year period (Class D), 29-A M.R.S. § 2411(1-A)(C)(2) (2018). *See* M.R. App. P. 2B(b)(1); 15 M.R.S. § 2115 (2018).

Before us, Cady argues for the first time that the court erred by failing, *sua sponte*, to dismiss the charge against her after the arresting officer testified that he did not provide Cady the opportunity to take an alternative chemical test when she refused to remove her removable denture as required for a breath test. Cady also argues for the first time on appeal that, because of the unique circumstances of her case—that she would have needed to take an extra-statutory step to take the breath test by removing her denture—the court erred in instructing the jury that it could consider her failure to take the breath test as evidence of her guilt. Contrary to Cady’s arguments, the court did not commit obvious error by failing to dismiss the charge *sua sponte*, *see*

29-A M.R.S. § 2521(2) (2018); *State v. Lane*, 649 A.2d 1112, 1114 (Me. 1994); *State v. Deering*, 384 A.2d 447, 448 (Me. 1978); *State v. Copeland*, 391 A.2d 836, 838 (Me. 1978), or in its jury instructions, *see* 29-A M.R.S. § 2521(3)(B) (2018); *State v. Perkins*, 2019 ME 6, ¶¶ 16-19, 199 A.3d 1174; *State v. LeMeunier-Fitzgerald*, 2018 ME 85, ¶ 19, 188 A.3d 183; *State v. Baker*, 2015 ME 39, ¶ 11, 114 A.3d 214. *See* M.R.U. Crim. P. 52(b); *State v. Lajoie*, 2017 ME 8, ¶ 13, 154 A.3d 132; *State v. Landry*, 428 A.2d 1204, 1206 (Me. 1981).

Contrary to Cady's remaining argument, when the evidence is viewed in the light most favorable to the State, there was sufficient evidence for a jury to rationally find beyond a reasonable doubt each element of the crime charged. *See* 29-A M.R.S. § 2411(1-A)(C)(2); *State v. Hinkel*, 2017 ME 76, ¶¶ 2, 13, 159 A.3d 854.

The entry is:

Judgment affirmed.

Julie D. Farr, Esq. (orally), Newburgh, for appellant April L. Cady

Jonathan Sahrbeck, District Attorney, Jennifer Ackerman, Dep. Dist. Atty., and Leah Slivinsky, Stud. Atty. (orally), Prosecutorial District Two, Portland, for appellee State of Maine