

STATE OF MAINE

v.

CHRISTOPHER C. CHERRY

Submitted on Briefs July 18, 2019
Decided July 25, 2019

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

MEMORANDUM OF DECISION

Christopher C. Cherry appeals from a judgment of conviction of operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(B)(1) (2018), and operating after suspension (Class E), 29-A M.R.S. § 2412-A(1-A)(A) (2018), entered by the trial court (Penobscot County, *Lucy, J.*) after a jury trial. Cherry challenges the denial of his motion to suppress, evidentiary rulings at trial,¹ and the sufficiency of the evidence supporting the jury's finding that he operated a motor vehicle while under the influence.

Beginning with the probable cause findings, there is competent evidence stemming from the motion to suppress hearing that supports the motion court's (Penobscot County, *Budd, J.*) finding that probable cause existed to arrest Cherry for operating after suspension and to test Cherry's blood alcohol content, notwithstanding the lack of standardized field sobriety tests. *See State*

¹ Cherry raises two evidentiary challenges on appeal; however, because his claim of error regarding the exclusion of his purported prior consistent statement was raised for the first time on appeal, we decline to reach that issue. *See State v. Pike*, 306 A.2d 145, 150 (Me. 1973).

v. Palmer, 2018 ME 108, ¶¶ 10-11, 190 A.3d 1009; *State v. Webster*, 2000 ME 115, ¶ 7, 754 A.2d 976.

Turning to Cherry's challenge to the trial court's exclusion of testimony regarding a police officer's prior allegedly inconsistent statement, our review is limited to obvious error because Cherry failed to preserve the claimed error by providing an offer of proof or any theory under which the testimony he sought to elicit would be admissible. *See State v. Snow*, 2007 ME 26, ¶¶ 11-13, 916 A.2d 957. In reviewing this challenge under the obvious error standard, we discern no plain error that affected Cherry's substantial rights. *See id.* ¶ 13; *State v. Clark*, 475 A.2d 418, 421-22 (Me. 1984).

Finally, Cherry's contention regarding the sufficiency of the evidence is unavailing; there is competent evidence in the record supporting the jury's finding, beyond a reasonable doubt, that Cherry operated a motor vehicle while under the influence. *See State v. White*, 2013 ME 66, ¶¶ 17-19, 70 A.3d 1226; *Snow*, 2007 ME 26, ¶¶ 11-13, 916 A.2d 957; *State v. Siracusa*, 2017 ME 84, ¶ 13 n.10, 160 A.3d 531.

The entry is:

Judgment affirmed.

Zachary J. Smith, Lawsmith Legal Services, LLC, Bangor, for appellant
Christopher C. Cherry

Marianne Lynch, District Attorney, and Mark A. Rucci, Asst. Dist. Atty.,
Prosecutorial District V, Bangor, for appellee State of Maine