

STATE OF MAINE

v.

MICHELLE M. MCGAUGHEY

Submitted on Briefs June 20, 2024
Decided July 2, 2024

Panel: STANFILL, C.J., and MEAD, HORTON, LAWRENCE, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

Michelle M. McGaughey appeals from a judgment of conviction of criminal operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(A), (5) (2024), entered by the trial court (Penobscot County, *Roberts, J.*), following a jury trial. Contrary to McGaughey's contention, the court did not commit obvious error when it failed to, sua sponte, strike comments made by the prosecutor during closing arguments or to deliver a limiting instruction. *See State v. Penley*, 2023 ME 7, ¶¶ 22, 26-27, 29, 288 A.3d 1183; *State v. Wai Chan*, 2020 ME 91, ¶ 25, 236 A.3d 471; *State v. Sousa*, 2019 ME 171, ¶¶ 7, 10, 12, 222 A.3d 171. Additionally, the court did not commit obvious error when, using the exact language of 29-A M.R.S. § 2411(5)(A)(3)(a)(i) (2024), it instructed that the jury was required to decide, beyond a reasonable doubt, whether McGaughey was tested as having an alcohol level of .15 grams or more. *See State v. Thurlow*, 2019 ME 166, ¶ 10, 221 A.3d 548; *State v. Beeler*, 2022 ME 47, ¶ 18, 281 A.3d 637; *State v. Vanassche*, 566 A.2d 1077, 1081 (Me. 1989).

The entry is:

Judgment affirmed.

Tyler J. Smith, Esq., Libby O'Brien Kingsley & Champion, LLC, Kennebunk, for
appellant Michelle M. McGaughey

R. Christopher Almy, District Attorney, and Lori Ann Renzullo Quam, Dep. Dist.
Atty., Prosecutorial District V, Bangor, for appellee State of Maine

Penobscot Unified Criminal Docket docket number CR-2022-2470
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