

STATE OF MAINE

v.

MICHAEL E. GREENLEAF JR.

Argued May 7, 2025
Decided May 20, 2025

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

MEMORANDUM OF DECISION

Michael E. Greenleaf Jr. appeals from a judgment of conviction of criminal operating under the influence (OUI), 29-A M.R.S. § 2411(1-A)(A) (2025), entered by the trial court (Kennebec County, *Daniel Mitchell, J.*), after a jury trial. The court erred when it failed to curatively instruct the jury after an officer testified that the results of a Horizontal Gaze Nystagmus test indicated that Greenleaf was “over the legal limit” because it is improper to use HGN results to quantify blood alcohol content.¹ *See State v. Taylor*, 1997 ME 81, ¶ 13, 694 A.2d 907 (holding that “the results of an HGN test are admissible only as evidence supporting probable cause to arrest without a warrant or as circumstantial evidence of intoxication”). However, the court’s error was harmless because of the abundant quantity of evidence of Greenleaf’s impairment at the time of the stop. *See id.* ¶ 15; M.R.U. Crim. P. 52(a).

¹ Although the officer did not give a specific blood alcohol number, we perceive that significant numbers of the populace understand that the “legal limit” refers to 0.08 blood alcohol content, and thus, the officer’s testimony effectively quantified Greenleaf’s blood alcohol content.

Moreover, reviewing the jury instructions as a whole, the court did not err in instructing the jury or handling the jury's fourth, fifth, and sixth notes during deliberations. *See State v. Hopkins*, 2018 ME 100, ¶ 46, 189 A.3d 741. The court properly reinstructed the jury after it indicated it was deadlocked, allowed the jury to rehear testimony admitted at trial, and determined that the sixth note should not be considered because it was not appropriately presented to the court. *See State v. Gantnier*, 2008 ME 40, ¶¶ 17-19, 942 A.2d 1191; *State v. Braddick*, 2002 ME 63, ¶¶ 2, 5, 794 A.2d 64; *State v. Tremblay*, 2003 ME 47, ¶ 11, 820 A.2d 571. Further, the court did not coercively reemphasize the charge or frame a deadlock as an unacceptable outcome. *See Gantnier*, 2008 ME 40, ¶¶ 17-19, 942 A.2d 1191; *cf. State v. Weidul*, 628 A.2d 135, 137 (Me. 1993).

The entry is:

Judgment affirmed.

Darrick X. Banda, Esq. (orally), Bourget & Banda, Augusta, for appellant Michael E. Greenleaf Jr.

Maeghan Maloney, District Attorney, and Tracy DeVoll, Asst. Dist. Atty. (orally), Prosecutorial District IV, Augusta, for appellee State of Maine