

STATE OF MAINE

v.

DUFF POWELL

Submitted on Briefs July 18, 2006
Decided July 21, 2006

Panel: SAUFLEY, C.J., and DANA, ALEXANDER, CALKINS, LEVY, and
SILVER, JJ.

MEMORANDUM OF DECISION

Duff Powell appeals from a judgment of conviction of OUI (Class D), 29-A M.R.S. § 2411(1-A)(C) (2005), entered in the Superior Court (Kennebec County, *Mills, J.*). Contrary to his contention, Powell's due process rights were not violated, and the court did not err in giving a jury instruction that "[a] law enforcement officer shall administer . . . a breath test unless in that officer's determination a breath test is unreasonable." *See* 29-A M.R.S. § 2521(2) (2005). Further, our review of the jury instructions reveals that the court correctly instructed the jury that it had to find all elements of the crime beyond a reasonable

doubt. The prosecutor did not comment on Powell's choice not to testify, and the evidence was sufficient to convict Powell of OUI.

The entry is:

Judgment affirmed.

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