

STATE OF MAINE

v.

LILIANNE BERUBE

Submitted on Briefs July 26, 2010

Decided August 12, 2010

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

MEMORANDUM OF DECISION

Lilianne Berube appeals from the judgment of the Superior Court (Penobscot County, *Anderson, J.*) convicting her of operating under the influence, 29-A M.R.S. § 2411(1-A)(B)(1) (2009), on a jury's verdict. Berube contends that the court should have declared a mistrial because, in a video of the intoxilyzer process played for the jury, Berube stated that she did not want to lose her license "again." The statement was not noted by counsel at the time the video was played for the jury, and came to counsels' attention when later noted by the court. In the circumstances, the trial court did not abuse its discretion in refusing to grant a mistrial, as any concern could have been avoided with a curative instruction, which Berube refused. *See State v. Dumas*, 2010 ME 57, ¶ 21, --- A.2d ---, --- (motion for mistrial should be denied except in rare circumstance that trial is unable to continue with a fair result and only a new trial will satisfy interests of justice).

The entry is:

Judgment affirmed.

Attorney for Lilianne Berube:

Randy G. Day, Esq.
181 Day Road
Garland, Maine 04939

Attorneys for the State of Maine:

R. Christopher Almy, District Attorney
Susan J. Pope, Asst. Dist. Atty.
Prosecutorial District V
97 Hammond Street
Bangor, Maine 04401

Penobscot County Superior Court docket number CR-2008-1207
FOR CLERK REFERENCE ONLY