

STATE OF MAINE

v.

ROBERT B. LOVE

Argued April 13, 2010

Decided May 4, 2010

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

## MEMORANDUM OF DECISION

Robert B. Love appeals from a judgment of conviction for operating under the influence (Class C), 29-A M.R.S. § 2411(1-A)(C)(3) (2007),<sup>1</sup> entered in the Superior Court (Cumberland County, *Beaudoin, J.*) after a jury trial. Contrary to Love's contention, section 2411(1-A)(C)(3) is not unconstitutional as applied in this case. The definition of an "OUI offense" includes a "suspension for failure to submit to a test," 29-A M.R.S. § 2401(11) (2007), all elements of the crime with which Love was charged were pleaded and proved, and Love was sentenced according to the minimum penalty mandated by 29-A M.R.S. § 2411(5)(C) (2007).<sup>2</sup> Accordingly, the Sixth Amendment concerns addressed in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), are not implicated here.

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<sup>1</sup> Title 29-A M.R.S. § 2411(1-A) (2007) has since been amended, though that amendment is not relevant in the present case. P.L. 2009, ch. 447, § 37 (effective September 12, 2009) (codified at 29-A M.R.S. § 2411(1-A) (2009)).

<sup>2</sup> Title 29-A M.R.S. § 2411(5) (2007) has since been amended by P.L. 2007, ch. 531, § 2 (effective September 1, 2008) and P.L. 2009, ch. 447, § 41 (effective September 12, 2009) (codified at 29-A M.R.S. § 2411(5) (2009)).

In addition, we find no error or abuse of discretion in the court's decision to admit a video and an implied consent form in evidence. *See State v. Roberts*, 2008 ME 112, ¶ 21, 951 A.2d 803, 810-11. In light of our recent decision in *State v. Murphy*, 2010 ME 28, --- A.2d ---, Love has withdrawn his challenge to the admission of his motor vehicle record.

The entry is:

Judgment affirmed.

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