

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE  
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Cum-25-438

STATE OF MAINE,

Appellee

v.

LORDINA OSEI,

Appellant

ON APPEAL from the Cumberland County  
Unified Criminal Docket

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APPELLANT'S BRIEF

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## INTRODUCTION

Lordina Osei, a Ghanaian immigrant and native Twi speaker, was convicted of operating under the influence, criminal trespass, and failure to sign a criminal summons following a traffic stop in Portland. A language barrier infected each conviction. The OUI conviction rests on insufficient evidence of impairment, where the indicators of intoxication the State relied upon, such as unsteadiness, confusion, an inability to follow instructions, and Ms. Osei’s “confrontational” behavior, are equally consistent with a non-native English speaker struggling in freezing conditions to understand commands given in her second language. The failure-to-sign conviction punishes Ms. Osei for declining to sign a document she did not understand, after her requests for someone to explain it were refused. And the criminal trespass conviction rests on the remarkable theory that Ms. Osei knowingly defied an order to leave the police station while she was still in handcuffs.

This appeal asks the Court to examine what happens when a person with limited English proficiency is expected to understand field sobriety instructions she cannot follow, sign legal documents she cannot read, and comply with orders she cannot comprehend—all without the language assistance she begged for.

This Court should vacate all three convictions.

### **STATEMENT OF FACTS**

On February 13, 2022, Lordina Osei was traveling in Portland's Old Port with a colleague from work in the passenger seat. Trial Transcript ("Tr.") 113-14. They had been eating a late dinner at a restaurant and were headed home. Tr. 114. Ms. Osei, a naturalized citizen originally from Ghana, had only moved to Maine two years prior. Tr. 113. She was unfamiliar with the area, so she had to rely on her GPS to navigate. Tr. 114. Additionally, her car had experienced mechanical issues throughout the night, including a need to call a friend to replace a tire, which had kept her out later than planned. Tr. 115, 136.

As she was leaving Portland, Ms. Osei, while trying to navigate with GPS, failed to come to a full stop at a red flashing light. Tr. 138-39. This was observed by Officer Craig Knight of the Portland Police Department. Tr. 53-54. He initiated a stop, and Ms. Osei pulled over to the side of the road. Tr. 18. While waiting for Officer Knight to approach, Ms. Osei dropped her license between her seat and the center console. Tr. 18, State's Ex 5 at 01:35. She asked to get out of her car and into the backseat to retrieve it. State's Ex. 5 at 01:45. She did so, and as she handed it to Officer Knight. Id.

at 02:10. Officer Knight testified that she was “unsteady on her feet” and as she “stood back up” from getting her license, she “kind of turned back, and she fell – fell into the car, basically.” Tr. 19. That was not evident on his body camera footage, which only showed her making a noise as she spun away from the car to face Officer Knight, and taking one step to the side as she brushed her long braids back from her face. State’s Ex. 5 at 02:10-02:15. Ms. Osei returned to the driver’s seat of the car. Id. at 02:17.

After checking her license and registration back in the cruiser, Officer Knight returned to Ms. Osei’s vehicle and resumed questioning her. He asked her where they were coming from, and Ms. Osei responded, “Westbrook,” where she lived. Id. at 06:55. She then said, “not from Westbrook,” and turned to her passenger for the name of the district where they had been, and they both said at the same time, “the Old Port.” Id. at 06:58. Officer Knight took this to mean she was “a little bit confused.” Tr. 20. Ms. Osei said she “didn’t know the area.” State’s Ex. 5 at 07:00.

Officer Knight asked Ms. Osei if she had anything to drink, and she said she had had one drink during dinner. Tr. 20-21; State’s Ex. 5 at 07:08. Because she had admitted to drinking, Officer Knight ordered Ms. Osei out of the car to perform field sobriety tests. Tr. 21. In his report, however,

Officer Knight wrote that Ms. Osei had denied drinking any alcohol. Tr. 20-21. Ms. Osei complied with the order and exited her car. Tr. 21.

As she exited the car, Ms. Osei complained of “freezing” and asked Officer Knight to hurry up with “whatever you’re going to do.” Tr. 21; State’s Ex. 5 at 08:00. Ms. Osei was wearing a thin jacket, so Officer Knight asked her if she wanted to get a heavier coat out of her car. Tr. 21. As she did this, she took off her thinner jacket, revealing that she was only wearing a tube top. State’s Ex. 5 at 08:15. Officer Knight asked her to go to a flatter place away from the car, but on a very dark portion of the sidewalk on a side street. State’s Ex. 5 at 08:30. She was taken “20-30 yards around the corner” from her car, Tr. 22, on a street so dark that it was difficult to see her at times in the officer’s bodycam footage. *See generally* State’s Ex. 5.

Ms. Osei told him she was very cold and very uncomfortable. Tr. 119. Several times during the test, she told Officer Knight that she was “crying” because of the cold. State’s Ex. 5 at 13:52, 14:40. Officer Knight, however, insisted on administering a series of field sobriety tests on Ms. Osei. Id.

On the Horizontal Gaze Nystagmus (“HGN”) test, he testified there were “six clues of intoxication, three for each eye. And she showed all — all six clues, basically.” Tr. 23. For the Walk and Turn test, Officer Knight

stated he observed “seven of the eight clues,” Tr. 25, including that she “lost her balance” during the instructional phase, and “during the walking phase of the test, she missed multiple heel to toe steps, stepped off line, used her arms to balance, did a improper turn, and did a wrong number of steps.” Tr. 25. Only a few of these “indications” can be seen on the video, given the darkness of the condition.

Each became more frustrated with the other as testing continued. Ms. Osei continued to tell Officer Knight that she was having a hard time keeping still and keeping her legs together because she was shivering in the cold. State’s Ex. 5 at 15:50. Officer Knight did not believe she was that cold, and said his leg was “shaking a little bit too, but [he] can still hold it up.” Id. As she complained of the cold, he kept giving his instruction over top of her. Id. at 16:15. She expressed difficulty in counting out loud using the “one-one thousand” instructions he gave, because she was “not from this country,” seemingly a reference to the fact that English was not her first language. Id. at 16:30. Officer Knight allowed her to just use the numbers in her counting. Id.

She continued to express how uncomfortable she was with the conditions, not only the cold, but the fact that she was a black woman who

was not from the United States on a dark street surrounded by three white male officers. Id. at 17:00, 17:50. Officer Knight did not address her concerns; rather, he kept talking over her, asking if she was going to “do the third test for me.” Id. at 17:17. After concluding she was not, Officer Knight arrested her and put her in handcuffs. Id. 18:45.

After she was in handcuffs, Officer Knight began searching Ms. Osei. She told him she did not consent, and he informed her he did not need her consent. While reaching into her jacket, Officer Knight touched one of her breasts, causing her to shout, “he just touched my boobs.” State’s Ex. 5 at 19:55. He responded, “I unzipped your shirt.” Id. at 20:03. Ms. Osei testified later that this made her feel violated and uncomfortable. Tr. 124.

The mood between Officer Knight and Ms. Osei did not improve upon arrival at the Portland Police Department. Ms. Osei testified that she did not let him direct her because she was still upset “because of what had happened prior with the search and with him touching my right breast, I felt uncomfortable with him touching me, or holding me, or anything like that.” Tr. 124. Once inside, Officer Knight took Ms. Osei to the Intoxilyzer room. Upon entering the room, she asked to use the restroom. She testified, “Oh, yes. I did ask to use the restroom...Yeah. I had to use the bathroom. I had to

pee really bad.” Tr. 125. She repeatedly asked, and Officer Knight repeatedly refused. Ms. Osei testified: “After requesting a couple times, he told me no. He told me no. And I kept asking him. I'm going to end up peeing on myself if — if you don't let me use the bathroom, and to which he still didn't care.” Tr. 125.

Officer Knight confirmed that he denied the bathroom requests. He testified that “upon her arrival at the Intoxilyzer room, she indicated that she had to use a bathroom” and that he did not allow her to use one. Tr. 87-88. He conceded that the Intoxilyzer test “does not” require “a urine screen,” that he “never asked her to submit to a urine sample,” and that “there was no reason, as part of [his] OUI investigation, that she couldn't have used the bathroom.” Tr. 89-90. He admitted he did not need the urine for an investigative reason and that denying Ms. Osei access to the bathroom “was a judgment call that [he] made.” Tr. 90. Despite this admission, and despite Ms. Osei’s escalating distress about needing to urinate, Officer Knight did not permit her to use the restroom. Ms. Osei urinated on herself shortly thereafter. Tr. 88.

Officer Knight asked Ms. Osei whether she would “submit to an Intoxilyzer,” and she “said no.” Tr. 31. Officer Knight testified that while he

read the Implied Consent form, Ms. Osei “shouted at [him] the whole time and made real no attempt to actually hear what I was trying to say to her.” Tr. 33. Ms. Osei testified that she “talked over him the entire time” because she “had to use the restroom.” Tr. 146. Officer Knight confirmed that he “asked [her] at the end of every paragraph, ‘did you understand? Did you understand?’” and she said “no.” Tr. 93, 146.

Officer Knight determined he would charge Ms. Osei with operating under the influence. He prepared a summons for the OUI charge and asked her, while she remained handcuffed, to sign the summons. Tr. 93-94. He testified he asked her to stand up so he could sign the summons. Tr. 94, State’s Ex. 5 at 51:14. Ms. Osei continued to ask him questions and question his actions towards her, but she did not stand up. Id. She again asked for a translator. State’s Ex. 5 at 51:17. Twenty seconds after first asking her to stand up, Officer Knight warned Ms. Osei, who was still handcuffed and in the middle of the Police Department, that if she did not stand up, she would be trespassing. State’s Ex. 5 at 51:38. She began speaking to him in Twi. State’s Ex. 5 at 52:05. One minute and 51 seconds after he first warned her, Officer Knight decided to charge her with criminal trespass and refusing to sign a criminal summons. State’s Ex. 5 at 53:19.

As she sat in the Intoxilyzer room, sitting in a pool of her own urine, Ms. Osei asked for help understanding the legal document Officer Knight demanded she sign. “I do understand English to a certain extent. It’s not my first language,” she testified. Tr. 126. Her first language is Twi. Id. “Certain words are hard for me to understand. Sometimes I use Google to try to understand what certain things are.” Tr. 126. “I asked for a translator, but basically what I was asking was somebody to, like, better explain to me what the summons was. Because at the time, I didn’t know what a summons was at all.” Tr. 125-26. When asked why she felt the need to ask for a translator, she explained: “Because I needed to know what I was signing because I could be signing something that says I’m guilty, or whatever the case might be. I needed somebody to explain to me this is what you’re signing, it’s just saying, hey, you’re going to show up to court and that’s it.” Tr. 126.

Eventually, she was unhandcuffed and escorted out of the police station by Officer Knight and his supervisor.

#### PROCEDURAL HISTORY

Ms. Osei was given summonses for three charges: (1) Operating under the Influence under 29-A M.R.S. § 2411(1-A)(C)(1), (2) Criminal Trespass

under 17-A M.R.S. § 402(1)(D), and (3) Failure to sign a Uniform Summons & Complaint under 17-A M.R.S. § 15-A(1). Appendix (“App.”) 3, 13-14. She entered a not-guilty plea through counsel on March 24, 2022. Id 3. A fourth count, Operating under the Influence under 29-A M.R.S. § 2411(1-A)(A) was added by Information on August 31, 2022. App. 15.<sup>1</sup>

A one-day jury trial was held on February 18, 2025, on Counts 1 through 3. App.6-7. At the close of the State’s evidence, Ms. Osei made a Rule 29 motion for judgment of acquittal. Tr. 103-04. The Court denied the motion, Tr. 105, and the case went to the jury. She was found guilty on each Count. App. 7. Sentencing was held that day, and the Trial Court (McKeon, J.) sentenced her to 96 hours of jail on each count, concurrent with each other, and an additional \$500 fine and a 150-day license suspension on count one. App. 7-8, 15-17.

A notice of appeal was uploaded to the Cumberland County Clerk’s Office Sharefile system on February 19, 2025. *See* Def.’s Mot. for Ext. of Time, Apr. 16, 2025. A stay of the sentence was entered at a hearing on February 21, 2025, pending the appeal. App. 9-10.

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<sup>1</sup> This count was dismissed by the State on February 7, 2024 as part of a plea agreement that “fell through.” App. 6, 19. It does not appear that it was recharged and was not mentioned during the trial.

Trial counsel, subsequently, determined that the Cumberland County Clerk's Office claimed not to have received the notice of appeal, and so, on April 14, 2025, resubmitted the notice of appeal. *See Re-Submission of Notice of Appeal*, Apr. 14, 2025. Trial Counsel also filed a motion to extend the time to refile the notice of appeal. *See Def.'s Mot. for Ext. of Time*, Apr. 16, 2025. While finding that a good cause was present, the Trial Court denied the motion to extend because the 21-day period set out in M.R.App.P. Rule 2B had passed. App. 10-11.

Trial counsel initiated a post-conviction review proceeding, acknowledging that the untimely filing constituted ineffective assistance of counsel. By agreement, relief was granted, and Ms. Osei's right to appeal was restored. App. 11

A new notice of appeal was filed on September 26, 2025. App. 11. This Court, on October 30, 2025, dismissed the appeal as untimely filed. App. 11. (Douglas, J.). Trial counsel filed a motion to reconsider, including all of the documentation related to the PCR. *See Appellant's Mot. to Reconsider Dismissal*, Oct. 30, 2025.

This Court did reconsider and allowed the appeal to proceed, App. 11. (Douglas, J.), and this appeal ensued.

## ISSUES ON APPEAL

- I. **Whether the State proved beyond a reasonable doubt that Ms. Osei committed criminal trespass when she was handcuffed, in police custody, and sitting in an interrogation room at the time Officer Knight told her to leave?**
- II. **Did the State prove beyond a reasonable doubt that Ms. Osei knowingly refused to sign a criminal summons when she repeatedly requested, and was denied, translator assistance to understand the document she was being asked to sign?**
- III. **Was the evidence sufficient to establish impairment when the State's indicators of intoxication – unsteadiness, confusion, and an inability to follow instructions – are equally consistent with a non-native English speaker navigating freezing conditions in her second language?**

## SUMMARY OF THE ARGUMENT

Ms. Osei was handcuffed in a police interrogation room when Officer Knight told her to leave – a place she was only present because he brought her there. Each of the required elements for trespass is missing from the State's case. She could not have known she was free to leave while still in restraints. The order to leave for a person still in custody was unlawful. And the State offered no evidence that Officer Knight was authorized to issue a trespass warning at the police station.

Second, the failure-to-sign conviction fails because Ms. Osei did not refuse to sign the summons. She asked for help understanding it. A refusal under 17-A M.R.S. § 15-A requires an intentional act. Ms. Osei, a native Twi speaker, did not know what a summons was, could not read the legal document presented to her, and requested a translator on twelve occasions to explain it. Officer Knight denied every request. One cannot intentionally refuse what one does not understand.

Finally, the OUI conviction rests on evidence that does not establish impairment. The indicators the State relied upon are equally consistent with a non-native English speaker performing unfamiliar tests while shaking from the cold on a dark street. The State's evidence established a confrontational encounter, not impairment. Further, Ms. Osei did not understand the consequences of not taking a chemical test, a lack of understanding that was reinforced by Officer Knight's refusal to get the translator she repeatedly asked for.

## ARGUMENT

- I. **The State failed to prove that Ms. Osei, handcuffed and in a police interrogation room, refused to leave when told to do so by the officer who took her into custody.**

The State charged Ms. Osei with criminal trespass, despite being handcuffed and in the middle of a police station when she was told she had to leave. The evidence the State offered to support the charge at trial failed to establish any of the necessary elements beyond a reasonable doubt.

- A. **Standard of review**

When there is a challenge to the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the State but must determine if the facts could rationally support every element of the offense beyond a reasonable doubt. *See State v. Woodard*, 2013 ME 36, ¶ 19, 68 A.3d 1250, 1257 (*quoting State v. Haag*, 2012 ME 94, ¶ 17, 48 A.3d 207).

The failure to sufficiently prove this charge was raised in Ms. Osei's Rule 29 motion and thus is preserved for appeal. Tr. 103-05.

- B. **Officer Knight never issued a lawful order, and Ms. Osei never refused to leave.**

The video showed Officer Knight warning Ms. Osei about her "delay" while she was still requesting a translator and telling that English was not

her first language. Talking over her, he warned, “OK, you are now delaying this, so I am warning you for criminal trespass, because you are now trespassing here if you are not here for a good reason.” State’s Ex. 5 at 51:34. Ms. Osei continued to say she did not know what was going on or what she was being asked to sign. She repeatedly requested a translator to assist her. Officer Knight repeatedly asked her to sign the summons and, later, to stand so he could uncuff her to allow her to sign it. Id. Ms. Osei did not explicitly say she would not stand up, she just continued to ask for the translator. Officer Knight refused her request. Id.

It is not clear that Officer Knight expressly gave her a direct order to leave. Officer Knight ordered Ms. Osei to stand up, and she refused. Even if we set aside the fact that she was still in handcuffs, his directions to her were that if she did not get up, she would be considered trespassing. He said, “Okay, you’re now delaying this, so I’m warning you for criminal trespass. Because you’re now trespassing here. If you’re not here for any good reason.” State’s Ex. 5 at 51:33. When she asked for a translator, he said to her, “This is your warning. You have to stand up so I can take your handcuffs off now, so I can let you go home. And if you don't do that, you're going to be staying here, which is criminal trespass.” Id. at 51:46. He

eventually said, “So this is your last chance. This is your chance to stand up so I can take your handcuffs off. I don’t understand why you would not want your handcuffs off.” Id. at 53:00. He then proceeded to write her more summonses.

Even if Officer Knight’s directions can be considered an order to leave, he testified that his lawful order was based on the fact that Ms Osei was disrupting important police work.

And then the fact that she had then stayed in the PD without any reason to now be there, and was now hindering me getting back to my actual job. I give her – – give her a warning that if she stays, she’ll be charged with trespassing. And then she stayed, so then she was charged with that.

Tr. 37. This does not consider that he brought Ms. Osei to the police against her wishes and while she was in custody. It was not her decision to be at the police station, and she repeatedly expressed her views on this, as well as her need for someone to help her understand the documents he presented. She was only on the premises because he forced her there.

In fact, the only time he specifically told her to leave was when, after the handcuffs were removed, he pointed into the hall, and they had this exchange, seen on Officer Knight’s body-worn camera:

**Officer Knight:** Get out.

**Ms. Osei:** Excuse me, what did you say?

**Officer Knight:** Go.

**Ms. Osei:** I'm sorry, what did you say to me?

**Officer Knight:** I said get out. Go. Keep walking.

Id. at 1:03:40. This interaction, however, took place after he had charged her with trespassing. And when he finally took the handcuffs off, Ms. Osei left the premises.

**C. The State failed to prove each element of criminal trespass.**

Ms. Osei was charged under 17-A M.R.S. § 402(1)(D) which reads

A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person...[r]emains in any place in defiance of a lawful order to leave that was personally communicated to that person by the owner or another authorized person.

The State must prove: (1) Ms. Osei knew she was not licensed or privileged to remain; (2) she received a lawful order to leave; and (3) the order came from an authorized person. The State failed on all three elements.

First, Ms. Osei, who was handcuffed in the middle of the police station and struggling with a language barrier, did not know she was not licensed or privileged to remain. Second, Officer Knight's order, given to a person in handcuffs, was not lawful. And finally, the State failed to establish that

Officer Knight was authorized to give a trespass order to Ms. Osei in these circumstances.

**1. “Knowing she was not licensed or privileged to do so”**

What is necessary for a person to know they are not licensed or privileged to be in a public place? The knowledge requirement is made more complex when considered in the context of handcuffed individuals in police custody. An individual brought to a police station by a government authority may be confused about their right to remain or their right to leave. Unlike simple private trespass cases, in-custody cases involve complex questions of governmental authority and detention rights. This is even more pronounced when the person remains in handcuffs.

The State bears the burden to prove beyond a reasonable doubt that Ms. Osei knew she was not permitted to remain in the police station. *See State v. Anthony*, 2002 ME 94, ¶ 4, 798 A.2d 1099, 1101; *State v. Thibeault*, 402 A.2d 445, 449 (1979).

Ms. Osei testified that she did not refuse to leave the station; she did not think that she could. Her belief was reasonable under the circumstances.

**Def. Counsel:** Did you refuse to leave the station?

**Ms. Osei:** No, I did not.

**Counsel:** What were you looking to do?

**Ms. Osei:** He asked me to -- in order for me to basically leave, I would need to sign the summons. To which, again, I kept asking for a translator to tell me what I was asked -- being asked to sign in order for me to sign it for me to leave. But he didn't give me any other option but to sign that before he would be able to take the handcuffs off for me to sign and leave.

**Counsel:** What did the handcuffs signify to you?

**Ms. Osei:** Imprisonment.

**Counsel:** Did you think you could leave?

**Ms. Osei:** No, because I was still handcuffed.

Tr. 127-28. At the time she was charged, she was still handcuffed and sitting in the Police Department's interrogation room. Officer Knight was standing over her. Had she walked out of the room at the time of his order, he would have detained her and likely charged her with theft of the handcuffs.

A reasonable person in Ms. Osei's position - handcuffed, in an interrogation room, with an officer standing over her - would believe they were not free to leave. Indeed, that is the very definition of "in custody." See *State v. Bryant*, 2014 ME 94, ¶ 10, 97 A.3d 595, 599 (citing *State v. Michaud*, 1998 ME 251, ¶ 4, 724 A.2d 1222 ("A subject is "in custody" if he is subjected to either (1) a formal arrest (which the parties agree was not

the case here), or (2) “a restraint on freedom of movement to the degree associated with a formal arrest.”)

## 2. “In defiance of a lawful order”

Even if Ms. Osei had known she was not privileged to remain, the State failed to prove the second element—that Officer Knight's order was lawful. Can an order to vacate a place be considered lawful when the person is in custody? What if they are still in handcuffs?

The State must prove that a “lawful order” was issued. *State v. Tauvar*, 461 A.2d 1065, 1067 (Me. 1983). The term lawful order “has independent meaning; not every order is a lawful order.” *Anthony* at ¶ 5 (citing *Tauvar* at 1067). “With regard to property upon which the general public is invited to enter, an order to leave the premises is lawful only when the owner has some justification for requesting removal.” *Tauvar* at 1067; *see also Holland v. Sebunya*, 2000 ME 160, ¶¶ 21, 22, 759 A.2d 205, 213 (holding, in malicious prosecution action, that defendant's order to plaintiff to leave public meeting was lawful because defendant had sufficient justification for order); *State v. Armen*, 537 A.2d 1143, 1145 (Me.1988) (stating that order to leave property open to the public is lawful only if there is justification for requesting person to leave); *State v. Chiapetta*, 513 A.2d 831, 834

(Me.1986) (applying *Tauvar* and finding defendant's disruptive behavior sufficient justification for order to leave town office).

This Court has never taken up this precise issue. A review of cases from other states in which the decision has been addressed, however, shows that the person charged with trespass came to the station of their own volition. See *Commonwealth v. Bradley*, 2020 PA Super 109, 232 A.3d 747, 757 (2020) (charged after refusing to stop filming in a police station lobby despite a policy prohibiting filming); *State v. Gaffney*, 147 N.H. 550, 555, 795 A.2d 243, 247 (2002) (defendant came to station to register a complaint about an officer); *People v. DeRossett*, 237 Ill. App. 3d 315, 326–27, 604 N.E.2d 500, 508 (1992) (defendant who came to file a complaint was charged after staying in lobby for 45 minutes, leaving, and then returning); *State v. Guess*, 804 S.W.2d 57, 58 (Mo. Ct. App. 1991) (defendant came to the police station intoxicated to file a complaint).

Officer Knight did not give an order to leave; he told her to stand up, and if she did not, she would be charged with trespass. State's Ex. 5 at 51:34. It was not until the very end, after he had taken her handcuffs off, that he gave a definitive order. *Id.* at 1:03:40. His original request for her to

leave, which could not have been accomplished without removing her handcuffs, did not constitute a lawful order.

### 3. “Authorized person”

Finally, the State made no attempt at trial to show that Officer Knight was authorized by anyone to give Ms. Osei a trespass warning. No evidence was offered suggesting the City of Portland or even the chief of the Portland Police Department or their designee authorized Officer Knight to issue the warning. The State appears to have relied on a police officer’s “inherent” authority to issue a trespass warning. But the State never *argued* this theory to the jury and never presented *any* evidence on this element. The absence of evidence is not merely a gap – it is a complete failure of proof on a required element.

This Court’s cases illustrate the importance of a clear line of authority and its delegation in cases involving public and quasi-public spaces. *See State v. Sanchez*, 2014 ME 50, ¶ 4, 89 A.3d 1084, 1085 (bar manager delegating authority to law enforcement); *State v. Armen*, 537 A.2d 1143, 1144-455 (Me. 1988) (office manager and administrative assistant giving trespass warning); *State v. Chiapetta*, 513 A.2d 831, 832 (Me. 1986) (chairman of the Board of Voter Registration giving warning at a town’s

voter office); *Tauvar* at 1066 (an administrator of the church informing law enforcement that an “unwanted guest”).

This Court has declined to independently take up the question of whether a police officer has an inherent authorization to issue a trespass warning, absent an owner’s authority. *Sanchez* at ¶ 9 (“The State did not argue at trial that a police officer has authorization, pursuant to the criminal trespass statute, independent of the authority conferred by an owner or an owner’s representative to order an individual not to enter public property. Accordingly, we do not consider this argument...”). Having waived the opportunity to do it before the Trial Court, the State should not have the chance to do it now.

Ms. Osei was still in custody, in handcuffs, sitting in a chair in an interrogation room. Here, however, the disruption Officer Knight says he is trying to prevent is the one to which Officer Knight is subject. At this time, he is acting as both the aggrieved party and the law enforcement officer issuing the charge.

And then the fact that she had then stayed in the PD without any reason to now be there, and was now hindering me getting back to my actual job. I give her — give her a warning that if she stays, she’ll be charged with trespassing. And then she stayed, so then she was charged with that.

Tr. 37. This is not enough to establish he has the authority to issue a trespass warning, much less charge Ms. Osei for failure to adhere to that warning.

**D. A person cannot commit the act of trespass while handcuffed in the middle of a police station.**

The State failed to meet its burden with respect to each element of the criminal trespass charge. Ms. Osei, handcuffed and detained in an interrogation room, could not have “known” she was not licensed or privileged to remain when she reasonably believed she was not free to leave. Officer Knight’s order was not “lawful” when directed at a person he had forcibly brought to the station and kept in custody - she had no independent ability to comply without his removal of her restraints. And the State offered no evidence that Officer Knight was an “authorized person” under the statute, apparently relying on an unstated theory of inherent police authority that it never argued to the jury.

Each of these failures independently requires reversal. When the government detains someone, brings them to a police station in handcuffs, and then charges them with trespassing for not leaving, it bears the burden

of proving every element beyond a reasonable doubt. The State did not meet that burden here.

**II. Ms. Osei, who struggles with written English, did not refuse to sign the summons and complaint.**

Ms. Osei is not a native English speaker; her first language is Twi. Although she was able to speak with Officer Knight in her second language, she had difficulty understanding the written documents. That difficulty interfered with her ability to knowingly understand elements of the crimes of Failing to Sign a Uniform Summons and Complaint under 17-A M.R.S. § 15-A. She sought a translator to help her understand what was being asked of her. She was flatly refused. Failure to provide the requested translator undermined her ability to refuse to sign, such that the State failed to prove the charge beyond a reasonable doubt.

**A. Standard of review**

As stated *supra* I(A), a challenge to the sufficiency of the evidence requires the Court to view the evidence in the light most favorable to the State to determine whether the jury could have rationally found every element of the offense beyond a reasonable doubt. *Woodard* at ¶ 19.

The failure to sufficiently prove this charge was also raised in Ms. Osei's Rule 29 motion and thus is preserved for appeal. Tr. 103-05.

**B. A defendant with limited English proficiency cannot 'refuse' what she does not understand.**

Ms. Osei did not ask for an interpreter. She requested a translator. Ms. Osei could navigate basic spoken conversation in English, but she unequivocally needed—and requested—translation assistance when confronted with written legal documents and formal orders she did not understand. At trial, she testified that she did not need a translator “until I had to sign something I didn't understand.” Tr. 150. She can be seen on the video requesting a translator or reminding Officer Knight about her requests for a translator on at least twelve separate occasions. State's Ex. 5 at 51:05, 51:08, 51:10, 51:47, 52:18, 54:56, 56:09, 1:01:21, 1:01:37, 1:02:13; 1:03:27, 1:05:09. Officer Knight refused that request, telling her, “you don't need a translator” Id. at 51:19.

It is an “unquestioned principle that a defendant must be afforded the means to understand the proceedings against him,” *State v. Poblete*, 2010 ME 37, ¶ 27, 993 A.2d 1104, 1111 (quoting *State v. Doucette*, 398 A.2d 36, 40 (Me.1978)); see also *State v. Marroquin-Aldana*, 2014 ME 47, ¶ 41, 89

A.3d 519, 531. This court recently recognized that “issues regarding limited English proficiency in this context must be approached with care.

Individuals with limited English proficiency frequently present as understanding English better than they actually do.” *State v. Hernandez-Rodriguez*, 2025 ME 9, 331 A.3d 354, 363 (citing *Aneta Pavlenko, Language Proficiency as a Matter of Law: Judicial Reasoning on Miranda Waivers by Speakers with Limited English Proficiency (LEP)*, 37 Int’l J. Semiotics L. 329, 332-33, 335, 351 (2024)). While *Hernandez-Rodriguez* addressed Miranda warnings, its analysis of LEP issues applies with equal force here. Just as a suspect with LEP may not understand Miranda warnings well enough to waive them, a defendant with LEP cannot ‘refuse’ orders she does not understand. This is especially true if they depend on understanding written legal documents.

**C. Ms. Osei did not refuse to sign a criminal summons.**

A defendant can be convicted of failing to sign a criminal summons if they “refuse[ ] to sign the summons after having been ordered to do so by a law enforcement officer.” 17-A M.R.S. § 15-A(1). The addition of the word “refusal” requires the state to prove a mental state in order to bring about a conviction. “The words ‘refuse’ and ‘attempt’ by their common definitions

describe intentional acts.” *State v. Dana*, 517 A.2d 719, 721 (Me. 1986).<sup>2</sup>

Ms. Osei could not form the requisite mental state because she did not understand the form she was being given.

Officer Knight read out to Ms. Osei the information contained in the summons. State’s Ex. 5 at 50:37-53. However, he never explained that the summons did not constitute an admission of guilt. While Officer Knight explained the contents of the summons, Ms. Osei repeatedly said she didn’t understand “what [he] was saying right now. No English. No English.” *Id.* at 50:55.

Ms. Osei testified she did not refuse to sign the summons; she did not understand what it was or what it signified.

**Ms. Osei:** I asked for a translator, but basically what I was asking was somebody to, like, better explain to me what the summons was. Because at the time, I didn't know what a summons was at all.

**Def. Counsel:** Okay. Why did you feel the need to ask for a translator?

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<sup>2</sup> “Some culpable mental state is an essential requirement for any crime, unless a contrary legislative intent plainly appears. We have described this requirement as a fundamental principle of our Criminal Code. Title 17–A M.R.S.A. § 34(1) (1983) provides that “[a] person is not guilty of a crime unless he acted intentionally, knowingly, recklessly or negligently, as the law defining the crime specifies, with respect to each other element of the crime, except as provided in subsection 5” *Dana* at 720 (cleaned up)

**Ms. Osei:** Because I needed to know what I was signing because I could be signing something that says I'm guilty, or whatever the case might be. I needed somebody to explain to me this is what you're signing, it's just saying, hey, you're going to show up to court and that's it.

Tr. 125-26. Because she did not know the contents of what she was signing, she cannot be held responsible for the act of "refusing." The fact that Ms. Osei could speak conversational English does not mean she understood legal commands or technical terminology, particularly given that she repeatedly requested translation assistance.

The State failed to present sufficient evidence that Ms. Osei understood what she was being asked to sign, and that she intended to refuse to sign the document. Therefore, this Court should vacate the conviction for failure to sign a criminal summons.

**III. There was insufficient evidence to establish that Ms. Osei was under the influence of alcohol.**

The State's evidence of impairment consisted largely of Officer Knight's observations during field sobriety tests conducted in freezing conditions, on a dark side street, with instructions given in Ms. Osei's second language. The behaviors the State attributed to intoxication are equally consistent with cold, confusion, and a language barrier. This is not enough for proof beyond a reasonable doubt.

**A. Standard of review**

When determining whether the record contained enough evidence to support a criminal defendant's conviction, this Court views "the evidence in the light most favorable to the State to determine whether the fact-finder could rationally find every element of the offense beyond a reasonable doubt." *State v. Simons*, 2017 ME 180, ¶ 17, 169 A.3d 399, 406 (quoting *State v. Atkins*, 2015 ME 162, ¶ 20, 129 A.3d 952 (quotation marks omitted)). The fact-finder is permitted to "draw all reasonable inferences from the evidence." *State v. Soucy*, 2012 ME 16, ¶ 10, 36 A.3d 910 (quotation marks omitted).

**B. There was insufficient evidence to support Ms. Osei being impaired.**

The interaction between Ms. Osei and Officer Knight was a confrontational one. Early on in the stop, Ms. Osei accused Officer Knight of targeting her because she was a black woman. Tr. 27. Ms. Osei felt violated when Officer Knight touched her breast during his pat-down search of her. Tr. 122-24. Their attitudes toward each other were evident during the traffic stop and affected Officer Knight's observations.

In an OUI hearing, “testimony that the defendant exhibited symptoms of intoxication can be sufficient to support a finding that the defendant was under the influence.” *State v. McCurdy*, 2002 ME 66, ¶ 10, 795 A.2d 84. “If the State proves that, while operating a motor vehicle, a defendant's mental or physical faculties were impaired however slightly, or to any extent, by alcohol, drugs, or other intoxicants, a defendant is guilty of operating under the influence.” *Soucy* at ¶ 11. The evidence presented, however, was too unreliable as an indicator of intoxication.

Officer Knight testified that Ms. Osei was unsteady on her feet when she got out of the car. Tr. 17. However, that was not reflected in the video of that moment, where it only appears that Ms. Osei took an additional step as she swung her braids around her body. *See State's Ex. 5* at 02:10-02:15.

Additionally, Officer Knight also noted Ms. Osei's speech was “slightly thick at times.” Tr. 28. He made no mention of the fact that she was speaking in a second language and accented English. Ms. Osei noted she has a stutter that can sometimes impact how she speaks in her second language, whether or not she has been drinking. Tr. 127.

Further, while Officer Knight testified to his observations of clues in both the horizontal gaze nystagmus and walk-and-turn tests, Tr. 23-26, his

instructions to the tests were at times contradictory and unclear to Ms. Osei, who was cold to the point that she was shaking. Tr. 121-22.

Officer Knight testified that Ms. Osei did not come to a complete stop at a red light, Tr. 27, and had alcohol on her breath. Tr. 24. These *could* be a part of a finding of impairment, but not on their own, and not given the concerns about Officer Knight's observations when filtered through the lens of his irritation with Ms. Osei.

In fact, much of the State's argument came down to Ms. Osei's hostility to Officer Knight and the fact that she did not act the way he instructed her. Given his responses to Ms. Osei's requests for a translator and his refusal to allow her to have the basic dignity of a bathroom, any defiance or hostility should have been disregarded as a sign of impairment.

As a whole, this evidence did not establish the requisite level of impairment for a conviction of operating under the influence.

### **C. Refusal and the implied consent form**

As discussed above, Ms. Osei is not a native English speaker. When she was given the implied consent form, her limited English impaired her ability to refuse to submit to a chemical test. Officer Knight gave Ms. Osei the implied consent form to read while he read it to her. State's Ex. 5 at

32:57. She had just informed him that she needed to use the bathroom, and if he did not let her, she would likely urinate on herself. *Id.* at 32:48. His response was “we’re not doing that.” *Id.* As he read the form, he repeatedly asked her if she understood her rights. *Id.* at 33:32, 33:50, 34:25. When he gave her an opportunity to respond, she told him she did not understand. *Id.* at 33:33, 34:27.

“[T]here is a strong due process justification for requiring law enforcement officers to inform drivers of implied consent information and to refrain from giving drivers assurances that minimize the seriousness of a subsequent loss of license privileges.” *State v. Stade*, 683 A. 2d 164, 166 (Me. 1996). In *State v. Lemeunier-Fitzgerald*, this Court found that a search was reasonable based on the fact that the defendant’s consent had been gained and that the defendant had been “warned that the lower limit of a court's sentencing range will increase if the driver refuses to submit to testing and is ultimately convicted of OUI.” 2018 ME 85, ¶ 31, 188 A.3d 183. However, this requires a defendant to understand the warnings provided.

In order to be subjected to the additional punishment that accompanies refusing to submit to a test under 29-A M.R.S. §

2411(5)(A)(3)(b), she must knowingly refuse to take the test. As stated above, *see* II, Ms. Osei's language skills as a non-native ESL speaker, and her request for a translator because of those limitations, prevent her from being able to "refuse" in this situation, as is required by § 2411(5)(A)(3)(b). Ms. Osei, while Officer Knight was reading the form, said she did not understand and asked for a translator to read the form in front of her.

Ms. Osei was not properly informed of the consequences of her refusal; therefore, the mandatory minimum sentence of 96 hours should not have applied.

#### CONCLUSION

For the foregoing reasons, Ms. Osei respectfully requests that this Court vacate her convictions for criminal trespass and failure to sign a criminal summons for insufficient evidence. Ms. Osei further requests that this Court vacate her OUI conviction for insufficient evidence or, in the alternative, vacate the enhanced sentence imposed based on an invalid refusal finding and remand for resentencing.

Dated: February 9, 2026 /s/ James Mason

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### CERTIFICATE OF SERVICE

As required by the M.R.App.P. 7(c)(1), I sent a native PDF version of this brief to the Clerk of this Court and the parties' counsel at the email addresses provided with entry of appearance. I will, when directed by the Clerk of Court under M.R.App.P. 7(c)(3), deliver ten paper copies of this brief to this Court's Clerk's office via U.S. Mail, and send two copies to opposing counsel at the addresses provided by that same Directory.

### CERTIFICATE OF COMPLIANCE

I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

Dated: February 9, 2026

/s/ James Mason

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James Mason, Bar # 4206