

STATE OF MAINE

v.

GERALD MCNEAL

Submitted on Briefs February 26, 2013
Decided March 12, 2013

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

MEMORANDUM OF DECISION

Gerald McNeal appeals from a judgment of conviction of operating after habitual offender revocation (Class D), 29-A M.R.S. § 2557-A(1)(A), (2)(A) (2012), and failing to stop for an officer (Class E), 29-A M.R.S. § 2414(2) (2012), entered in the trial court (*Clifford, J.*) after a jury trial. Contrary to McNeal's contentions, the court did not abuse its discretion in denying his motion for a mistrial after the State introduced evidence of McNeal's pre-arrest, pre-*Miranda* invocation of his right to remain silent. *See State v. Patton*, 2012 ME 101, ¶ 15-18, 50 A.3d 544 (discussing the "introduction in evidence of a defendant's pre-arrest, pre-*Miranda* silence in the State's case-in-chief"), *cert. denied*, 133 S. Ct. 667 (2012); *State v. Allen*, 2006 ME 20, ¶ 22, 892 A.2d 447 ("We review a trial court's decision to deny a motion for a mistrial for an abuse of discretion."). Further, when viewed in the light most favorable to the State, the evidence submitted at trial was sufficient for a rational trier of fact to find every element of the charged offenses beyond a reasonable doubt. *See State v. Williams*, 2012 ME 63, ¶ 49, 52 A.3d 911. Finally, although McNeal challenges the instruction given to the jury after jurors indicated that they may be deadlocked, we decline to review that issue because McNeal consented to the trial court's action. *See State v. Rega*, 2005 ME 5, ¶ 17, 863 A.2d 917 ("We do not review alleged errors that resulted

from a party's trial strategy.") However, even if the jury instruction issue had been preserved, there was no error. *See State v. Braddick*, 2002 ME 63, ¶ 3, 794 A.2d 641 (noting that the proper course of action when faced with a deadlocked jury is to give the instruction contained in Alexander, *Maine Jury Instruction Manual* § 8.6 at 8-12 (4th ed. 2012)).

The entry is:

Judgment affirmed.

On the briefs:

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Gerald McNeal

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