

STATE OF MAINE

v.

ANDREW E. BALL

Submitted on Briefs February 26, 2003  
Decided March 4, 2003

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, ALEXANDER, CALKINS,  
and LEVY, JJ.

#### MEMORANDUM OF DECISION

Andrew Ball appeals from a judgment of conviction of OUI (Class D), 29-A M.R.S.A. § 2411 (1996), entered in Superior Court (Penobscot County, *Mead, J.*) after two jury trials. The District Court (Bangor, *Murray, J.*) did not err in denying Ball's motion to suppress because he was not seized when the officer approached his parked vehicle without a show of authority, *see State v. Brewer*, 1999 ME 58, ¶¶ 11, 12, 727 A.2d 352, 355, and there was no obvious error in the court's conclusions that Ball was not in custody for *Miranda* purposes when he made a potentially incriminating remark, *see State v. Lewry*, 550 A.2d 64, 65 (Me. 1988),

and that the officer had probable cause to arrest Ball for OUI, *see State v. Forsyth*, 2002 ME 75, ¶ 14, 795 A.2d 66, 70. The Superior Court (*Hjelm, J.*) did not err in denying Ball's motion to dismiss the complaint on double jeopardy grounds because the court at the first trial (*Warren, J.*) did not abuse its discretion in deciding there was manifest necessity for a mistrial when the jury repeatedly indicated it was deadlocked. *See State v. Torrie*, 2002 ME 59, ¶ 9, 794 A.2d 82, 86. The court at the second trial (*Mead, J.*) did not abuse its discretion in declining to give Ball's requested jury instruction because the court's instructions were adequate and legally correct. *See State v. Collin*, 1999 ME 187, ¶ 10, 741 A.2d 1074, 1077.

The entry is:

Judgment affirmed.

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