

STATE OF MAINE

v.

ALAN CONARY

Submitted on Briefs November 29, 2005
Decided December 5, 2005

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

MEMORANDUM OF DECISION

Alan Conary appeals from a judgment denying his motion to dismiss entered in the Superior Court (Hancock County, *Hjelm, J.*). Conary is charged with operating under the influence (Class D), 29-A M.R.S.A. § 2411(1) (1996), and operating without a license (Class E), 29-A M.R.S.A. § 1251(1) (Supp. 2003). His first trial ended when Conary's motion for a mistrial was granted. Contrary to Conary's contentions, the court did not clearly err in finding that the prosecutor's conduct at the first trial, that is, eliciting testimony that was questionably within the scope of a suppression order, was not intentional misconduct undertaken to prevent an acquittal. *See State v. Chase*, 2000 ME 114, ¶ 7, 754 A.2d 961, 964.

Furthermore, the application of the standard enunciated in *State v. Chase*, ¶¶ 6-7, 754 A.2d at 963-64, does not deprive Conary of his rights under the Due Process Clauses of the United States and Maine Constitutions. U.S. CONST. amend XIV; ME. CONST. art. I, § 6-A.

The entry is:

Judgment affirmed.

Attorney for State:

Michael E. Povich, District Attorney
P.O. Box 722
Ellsworth, ME 04605

Attorney for defendant:

Robert C. Granger, Esq.
Roy, Beardsley, Williams & Granger, LLC
P.O. Box 723
Ellsworth, ME 04605-0723