

STATE OF MAINE

v.

MARTIN D. CLARK

Submitted on Briefs January 20, 2006
Decided February 17, 2006

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

MEMORANDUM OF DECISION

Martin D. Clark appeals from a judgment of the Superior Court (Aroostook County, *Hunter, J.*) denying his motion for judgment of acquittal as to one count of burglary (Class B), 17-A M.R.S. § 401(1)(B)(4) (2005), and one count of theft (Class B), 17-A M.R.S. § 353(1)(B)(2) (2005). A jury found Clark guilty of four counts of burglary, four counts of theft, and one count of possession of a firearm by a prohibited person. The court subsequently granted Clark's motion for judgment of acquittal as to two counts each of burglary and theft; Clark does not argue that the court erred or exceeded its discretion in denying his motion as to the remaining three counts. Contrary to Clark's contentions, when viewing the

evidence in the light most favorable to the State, there is competent evidence to support the jury's verdict that Clark was guilty of theft and burglary, including his exclusive possession of the firearm and box of ammunition that were recently taken from the victim's residence. *See* 17-A M.R.S. § 361-A(1) (2005). Moreover, any error the court made in stating that the firearm and box of ammunition had been recovered was harmless because that fact was neither a part of, nor affected the court's analysis in denying Clark's motion for judgment of acquittal, and, as stated, the evidence was sufficient to support the conviction. *See* M.R. Crim. P. 52(a); *State v. Phillip*, 623 A.2d 1265, 1268 (Me. 1993) (stating that an error is harmless if it is "highly probable" that it did not affect the verdict). Finally, the court did not err or exceed its discretion when it refused to release a juror who may have briefly seen Clark in handcuffs prior to jury selection. *See State v. White*, 456 A.2d 13, 15-16 (Me. 1983) ("A brief and inadvertent exposure to jurors of a defendant in handcuffs, without more, is not so inherently prejudicial as to require a mistrial, especially when, as here, the defendant is afforded an opportunity for jury voir dire or precautionary instructions.").

The entry is:

Judgment affirmed.

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