

STATE OF MAINE

v.

JOSHUA L. JOHNSON

Submitted on Briefs December 12, 2008

Decided December 16, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Joshua L. Johnson appeals from a judgment of conviction of manslaughter (Class A), 17-A M.R.S. § 203(1)(A) (2007), and criminal OUI (Class C), 29-A M.R.S. § 2411(1-A)(D)(1) (2005),<sup>1</sup> entered by the Superior Court (Somerset County, *Jabar, J.*) following a jury trial.

Contrary to Johnson's contention, the court did not abuse its broad discretion in declining to exclude his blood-alcohol test result as a sanction for a discovery violation, because Johnson did not establish the three elements necessary to a finding that the negligent destruction of his blood sample deprived him of a fair trial. *See State v. McCurdy*, 2002 ME 66, ¶ 12, 795 A.2d 84, 88-89 (stating that trial court has broad discretion to decide on appropriate discovery violation sanctions); *State v. Kremen*, 2000 ME 117, ¶ 15, 754 A.2d 964, 968. The court also did not clearly err in admitting the test result over Johnson's objection that the chain of custody was inadequate to establish the result's reliability. *State v. Lobozzo*, 1998 ME 228, ¶ 10, 719 A.2d 108, 110 (stating that trial court's

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<sup>1</sup> Section 2411(1-A)(D) was later amended to make causing the death of another person while operating under the influence a Class B crime. P.L. 2005, ch. 606, §§ A-1, A-3 (effective August 23, 2006) (codified at 29-A M.R.S. § 2411(1-A)(D)(1-A), (5)(D-2) (2007)).

foundational findings concerning chain of custody reviewed for clear error; minor break in chain of custody affects weight assigned to evidence, not admissibility).

Finally, the trial court did not commit obvious error in not excluding *sua sponte* a deputy's assessment of Johnson's credibility at the time he was starting his investigation, *see State v. Dube*, 598 A.2d 742, 746 (Me. 1991), and the evidence was sufficient for the jury to rationally find beyond a reasonable doubt that Johnson's conduct constituted a gross deviation from the standard of conduct that a reasonable and prudent person would have observed in the same situation, *see State v. Schmidt*, 2008 ME 151, ¶ 19, 957 A.2d 80, 86 (stating standard of review when defendant challenges sufficiency of the evidence).

The entry is:

Judgment affirmed.

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