

STATE OF MAINE

v.

BRADLEY S. THERIAULT

Submitted on Briefs June 4, 2009

Decided June 25, 2009

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

MEMORANDUM OF DECISION

Bradley S. Theriault appeals from a judgment of conviction of manslaughter (Class A), 17-A M.R.S. § 203(1)(A) (2008), entered in the Superior Court (Piscataquis County, *Anderson, J.*) following a jury-waived trial. Theriault contends on appeal that the evidence presented at trial was insufficient to support both the court's subsidiary finding of excessive speed and, ultimately, the finding of guilt beyond a reasonable doubt.

In view of the consistent testimony of four drivers passed by Theriault immediately prior to the accident in question, including testimony that he was traveling "very fast," and passed by "like a red streak," as well as the range of speed offered by State's expert, the court's finding of excessive speed is well supported in the record. *See State v. Diecidue*, 2007 ME 137, ¶ 10, 931 A.2d 1077, 1080. This finding, considered in conjunction with the other testimony regarding Theriault's failure to control his vehicle after passing five vehicles at once while traveling on a road with noticeably poor conditions, supports the court's determination that Theriault failed to be aware of a risk that his conduct would cause the death of another, and that this failure amounted to "a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation." 17-A M.R.S. § 35(4)(C) (2006) (defining criminal

negligence).¹ Accordingly, considering the evidence in the light most favorable to the State, and allowing for all reasonable inferences drawn therefrom, the evidence was sufficient for the court to find every element of manslaughter beyond a reasonable doubt. *See State v. Bickart*, 2009 ME 7, ¶ 46, 963 A.2d 183, 195; 17-A M.R.S. § 203(1)(A).

The entry is:

Judgment affirmed.

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¹ Portions of this statute have since been amended to make the language gender neutral. P.L. 2007, ch. 173, § 8 (effective Sept. 20, 2007) (codified at 17-A M.R.S. § 35(4) (2008)).