

STATE OF MAINE

v.

RICHARD R. AARON

Submitted on Briefs September 30, 2009
Decided October 8, 2009

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

MEMORANDUM OF DECISION

Richard R. Aaron appeals from an order denying his motion to dismiss a criminal complaint charging him with operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(A), (5)(A)(3)(a)(i) (2008), entered in the Superior Court (Penobscot County, *Cuddy, J.*). Contrary to Aaron’s contentions, the motion court did not err in denying his motion to dismiss on double jeopardy grounds. *See State v. Nielsen*, 2000 ME 202, ¶ 7, 761 A.2d 876, 879 (“[F]ollowing a mistrial based on manifest necessity, we review the [denial of a motion to dismiss on grounds of double jeopardy] to determine whether the findings of fact of the trial justice, and of the motion justice, are supported by substantial evidence, and whether the legal conclusion is correct.”). Although the State is generally prohibited by the Double Jeopardy clauses of the United States Constitution and the Maine Constitution from bringing a second trial after a jury is impaneled, this case presents an exception because the jury was genuinely deadlocked creating a manifest necessity. *See* U.S. Const. amend. V; Me. Const. art. I, § 8; *State v. Landry*, 600 A.2d 101, 102 (Me. 1991) (stating that the State is permitted to bring a second trial after a jury is impaneled when the defendant consents to the mistrial or a manifest necessity exists); *see also State v. Torrie*, 2002 ME 59, ¶ 8, 794 A.2d 82, 85 (stating that “[a] jury that is genuinely deadlocked and has no reasonable probability of reaching an agreement is a classic example of manifest necessity”).

The trial record supports the motion court's finding that the jury was deadlocked and that the declaration of a mistrial was within the sound discretion of the trial court. *See Torrie*, 2002 ME 59, ¶ 9, 794 A.2d at 86 (listing four factors to consider when reviewing a determination that the necessity for a mistrial is manifest).

The entry is:

Judgment affirmed.

Attorney for Richard Aaron:

Wayne R. Foote, Esq.
Law Offices of Wayne R. Foote, PA
273 Hammond Street
PO Box 1576
Bangor, Maine 04402-1576

Attorneys for the State of Maine:

R. Christopher Almy, District Attorney
Susan J. Pope, Asst. Dist. Atty.
Prosecutorial District V
97 Hammond Street
Bangor, Maine 04401